PLATFORM ON
SUSTAINABLE FINANCE

Draft Report on Minimum Safeguards

JULY 2022

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Draft SG 4 Report on Minimum Safeguards for Feedback

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This report represents the overall view of the members and observers of the Platform on Sustainable Finance. However, it may not necessarily, in all aspects, represent the individual views of member institutions or experts. This report is not an official Commission document, nor does it state an official Commission position. This document does not reflect the views of the European Commission or its services. Nothing in this document commits the Commission, nor does it preclude any policy outcomes.

Executive Summary

This report advises on the application of minimum safeguards (MS) in relation to the Taxonomy Regulation (TR[1]) Articles 3 and 18. It does so by a) embedding MS in existing EU regulation, b) identifying substantive topics relating to the standards and norms referenced in Article 18 of the Taxonomy regulation and c) presenting advice on compliance with MS.

When exploring the links between MS and EU legislation, the report focuses on the existing Sustainable Finance Disclosure Regulation (SFDR), the upcoming Corporate Sustainability Reporting Directive (CSRD), and the upcoming Corporate Sustainability Due Diligence Directive (CSDDD). These are the key EU regulations linked to this advice. EU initiatives on taxation, corruption and fair competition are also considered in this context.

The SFDR plays a special role in the context of MS because it is explicitly mentioned in Article 18.2 of the Taxonomy Regulation. The report interprets this link by incorporating the five mandatory social principal adverse impacts (PAI) of the SFDR in its advice.

Through analysis of the standards referred in Article 18 of the TR (OECD guidelines for Multinational Enterprises (MNE), UNGPs, the eight conventions on fundamental principles and rights at work, and the international bill of human rights, the report identifies four core topics for which compliance with minimum safeguards should be defined. These are:

- Human rights, including workers' rights
- Bribery/corruption
- Taxation
- Fair competition

The advice on these four topics is aligned with the standards referenced in Article 18, as well as upcoming EU regulation, which is built on these same standards.

As regulation of human rights due diligence (CSDDD) and sustainability reporting (CSRD) is not yet finalised, there remains some uncertainty surrounding their implementation. In this situation, the solution developed in this report is to a) build the requirements for MS compliance on the international standards referenced in Article 18 - especially on the six steps of the UNGPs/ OECD guidelines, b) point to upcoming regulations and disclosure requirements that build on these standards, c) provide independent sources of information on particular aspects of their implementation for external performance checks and d) illustrate potential non-compliance with minimum safeguards, with the help of examples.

Once the CSDDD and CSRD are finalised, and some experience on practical implementation and court rulings is accumulated, this advice should be revised. on the basis of the final version of the legislation and its implementation.

More concretely, the report recommends:

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R0852&from=EN

1. Consider inadequate or non-existent corporate due diligence processes on human rights, including labour rights, bribery, taxation, and fair competition as a sign of non-compliance with MS.
2. Consider final conviction of companies in court in respect of any of these topics as a sign of non-compliance with MS.
3. Consider a lack of collaboration with a National Contact Point (NCP)[2], and an assessment of non-compliance with OECD guidelines by an OECD NCP as a sign of non-compliance.
4. Consider non-response to allegations by the Business and Human Rights Resource Centre as a sign of non-compliance.

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

Additionally, the report gives advice on project finance, SME financing, and green bonds. Finally some advice on how to assess sub-sovereign compliance with MS. An overview of the recommendations is presented at the end of the document.

[2] Presently the implementation of the OECD MNE Guidelines by companies is supported by so called National Contact Points. National Contact Points for Responsible Business Conduct are agencies established by OECD countries For the UNGPs, guidance on their implementation is widely available and continues to be published on a regular basis. This includes guidelines for SME for banks, asset owners like insurers and for sub-sovereigns.

Advice on the functioning of the minimum safeguards

1. Introduction: The mandate, the group, how the group approached the task

The EU platform on sustainable finance was asked by the EU Commission to advise on the functioning of the minimum safeguards (MS) as laid out in Article 18 of the EU Taxonomy Regulation (Regulation EU 2020/852). This advice should, among other things, include an overview of procedures presently applied by undertakings to ensure alignment with the provisions set out in Article 18 of the Taxonomy Regulation, as well as relevant national frameworks in place in member states in respect to matters covered by the MS clause.

The task was approached by identifying and structuring the topics found in Article 18 standards, considering their relevance in the context of the Taxonomy Regulation, and identifying possible overlaps and gaps. In addition, experts on national European due diligence laws, practitioners from ESG rating agencies, companies and mechanisms such as the OECD national contact points, were consulted and provided insights. Three workshops were organised for platform members, one with business associations, and two with investors.

On top of this, the Delegated Regulation (EU) EU) 2021/2178 of 6 July 2021 supplementing Article 8 of the Taxonomy Regulation, the Corporate Sustainability Reporting Directive amending Directive EU 2013/34/ (CSRD), the Sustainable Finance Disclosure Regulation (SFDR), the Commission Delegated Regulation of 6 April 2022 supplementing the SFDR, and the European Supervisory Agencies' (ESAs) final report on draft Regulatory Technical Standards (RTS) from October 2021 were all considered.

Furthermore, an exchange with the representatives of the social clusters of the European Financial Reporting Advisory Group's (EFRAG) taskforce took place. The group also considered the proposed Corporate Sustainability Due Diligence Directive (CSDDD), published in February 2022.

The purpose of this advice is to provide background information and give help to companies and investors navigating the requirements of minimum safeguards in practice. It is not an official legal interpretation or market guidance.

2. The minimum safeguards clause, its purpose and content

2.1. MS in Article 18 of the Taxonomy Regulation and its purpose

The minimum safeguards are part of the Taxonomy Regulation (TR) and are based on the recommendation from the Technical Expert Group (TEG) expressed in its report published in March 2020. They were included during the later stages of the TEG's recommendations following a request from the European Parliament to ensure that entities which are carrying out environmentally sustainable activities and that are labelled as Taxonomy-aligned meet certain minimum governance standards and do not violate social norms, including human rights and labour rights, as laid out in Article 18.

In other words, the purpose of Article 18 of the TR is to prevent green investments from being labelled and regarded as 'sustainable' when they involve negative impacts on human rights including labour rights, corrupt practices, or are linked to non-compliance with letter or spirit of tax laws or anti-competitive practices.

As a result, Article 3 of the TR specifies as one out of three criteria for environmentally sustainable economic activities that they are to be "carried out in compliance with the minimum safeguards".

The minimum safeguards clause (TR Article 3 and Article 18) reads:

> **Art 3 Taxonomy Regulation**
>
> For the purposes of establishing the degree to which an investment is environmentally sustainable, an economic activity shall qualify as environmentally sustainable where that economic activity: (a) contributes substantially to one or more of the environmental objectives set out in Article 9 in accordance with Articles 10 to 16; (b) does not significantly harm any of the environmental objectives set out in Article 9 in accordance with Article 17; (c) **is carried out in compliance with the minimum safeguards laid down in Article 18** (iii).
>
> **Art 18 Taxonomy Regulation**
>
> 1.The minimum safeguards referred to in point (c) of Article 3 shall **be procedures implemented** by an undertaking that is carrying out an economic activity **to ensure the alignment with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, including the principles and rights set out in the eight fundamental conventions identified in the Declaration of the International Labour Organisation on Fundamental Principles and Rights at Work and the International Bill of Human Rights.**
>
> 2.When implementing the procedures referred to in paragraph 1 of this Article, undertakings shall adhere to the principle of 'do no significant harm' referred to in point (17) of Article 2 of Regulation (EU) 2019/2088.

In addition, Recital 35 of the TR clarifies that minimum safeguards "are without prejudice to the application of more stringent requirements related to the environment, health, safety, and social sustainability set out in Union law, where applicable".

Practically, this means that undertakings whose economic activities are to be considered as Taxonomy-aligned have to align with the standards for responsible business conduct mentioned in:

- The OECD Guidelines for Multinational Enterprises (OECD MNE Guidelines)[3]
- The UN Guiding Principles on Business and Human Rights (UNGPs), including the principles and rights set out in the eight fundamental conventions identified in the Declaration of the International Labour Organisation on Fundamental Principles and Rights at Work[4]
- The International Bill of Human Rights[5]

2.2. The nature of Article 18 provisions and methodological approach

The International Bill of Human Rights, the ILO fundamental principles and rights at work, the UNGPs, and the OECD MNE Guidelines all constitute and rest on international agreements reached through extensive stakeholder consultation.

Outside of the minimum safeguards clause, there is already some demand from the EU and from Member States on companies to respect and promote these principles, guidelines, and rights.

[3] https://www.oecd.org/corporate/mne/ncps.htm
[4] https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf
[5] https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights

They are, for example, supported in the EU Communication COM(2022)66 of 23 February 2022 on decent work worldwide. The communication announces measures closely related to the assessment made in the report, including:

1) Promoting human rights and environmental due diligence by companies, to ensure identification, prevention, mitigation, and accountability for actual and potential adverse impacts on human rights along global supply chains.

2) Excluding activities that involve products resulting from forced labour.

3) Strengthening companies' disclosure of information on sustainability aspects, including on decent work in global supply chains, to enhance sustainable investments and transparency for other stakeholders.

4) Providing guidance and strong legal provisions on socially sustainable public procurement and making sustainable products the norm to enhance fair consumption.

Not all items in the Article 18 documents are mandatory for companies today, where governments have not enshrined them in their laws.

Some aspects of these documents are, however, mandatory in many countries, such as the prohibition of child and forced labour, tax fraud, corruption and bribery, and unfair competition. Some EU countries, and especially the EU Commission, are presently working out mandatory due diligence laws in line with the UNGPs, with the proposal for a Directive on Corporate Sustainability Due Diligence by the EU Commission being published on 23rd February 2022,[6] and respective disclosure requirements being worked out by the European Financial Reporting Advisory Group (EFRAG).

This advice on minimum safeguards was developed in the midst of ongoing drafting of these major legislations on due diligence and sustainability reporting. It therefore runs in parallel with other EU initiatives to harden soft law instruments such as the OECD guidelines for MNE and the UNGPs. This situation entails that a revision of this advice might become necessary once these legislative initiatives are finalised and implemented, and some practical experiences have accumulated. In this situation, where the distinction between mandatory and voluntary approaches to human rights including labour rights and governance aspects by businesses is dissolving, the report tries to find an answer to the question of compliance with Article 18 documents.

The report aims to do this in four steps. First, it analyses and sorts the substantive content stemming from Article 18 TR in order to identify the topics on which advice is needed. In a second step, it looks at the existing and emerging EU regulation related to the identified topics covered by the minimum safeguards and, where necessary, national laws on human rights due diligence. This is done to clarify the regulatory landscape of relevance to Article 18. Third, the report provides a) an overview of suggestions by market participants and existing practices by ESG rating agencies with regards to ensuring and verifying compliance with the provisions in Article 18 TR and b) examples of existing practices of implementing Article 18 documents such as the OECD guidelines for MNEs and the UNGPs. Based on the regulatory landscape as well as current market practice, in a fourth step the report makes concrete

[6] https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_2&format=PDF

recommendations on which criteria would signal that a company is not complying with minimum safeguards, as per Article 18 of the TR.

2.3. Substantive topics covered by Article 18

The OECD guidelines for multinational enterprises (MNEs)

On a general level, the OECD guidelines recommend that enterprises apply good governance practices as set out in the Principles of Corporate Governance. These principles were first issued in 1999 before being endorsed by G20 Leaders in 2015, and are currently being reviewed, with revised Principles to be issued in 2023. The principles call for the protection and facilitation of the exercise of shareholder rights, including the equitable treatment of shareholders. Enterprise should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation with stakeholders in creating wealth, jobs and the sustainability of financially sound enterprises. The OECD guidelines for MNEs also specify corporate governance-related disclosures in a chapter dedicated to this topic, and which constitute one of the building blocks of the guidelines, in addition to the substantive topics below.[7]

The substantive topics identified in the OECD MNE Guidelines referenced in Article 18 are:

1. Human rights
2. Employment and Industrial relations
3. Environment
4. Bribery, bribe solicitation, and extortion
5. Consumer interests
6. Science and technology
7. Fair competition
8. Taxation

In light of interpreting compliance with the minimum safeguards, it is important to note that the chapter on science and technology is unique to the OECD MNE Guidelines. This is due to the fact that it focuses almost entirely on the positive contributions a business can make to sustainable development through science and technology, as opposed to the potential harm caused by these technologies. To date, it does not include considerations on digital rights, which are mostly covered in the human rights chapter.

Further, it is also important to note that chapters on science and technology, fair competition, and taxation are not covered by due diligence recommendations laid out in the OECD Due Diligence Guidance for Responsible Business Conduct (RBC). This means that companies are not expected to avoid and address impacts on topics from these chapters in their business relationships and supply chains – they are, however, relevant in the context of their own activities.

The UN Guiding Principles on Business and Human Rights (UNGPs)

Pillar two of the UNGPs specifies a standard of conduct for entities to implement respect for human rights. In terms of defining human rights, the UNGPs refer to the International Bill of Human Rights (IBHR) and the ILO Declaration of Fundamental Principles and Rights at Work, both of which are also explicitly listed

[7] https://www.oecd.org/corporate/mne/ncps.htm

in Article 18. The UNGPs clarify that to know and show that they respect human rights, including labour rights, entities are expected to:

1. Commit to respect human rights and embed this commitment in activities and business relationships
2. Identify and assess negative human rights risks and their impact, including by engaging with potentially affected stakeholders
3. Systematically avoid and address human rights risks and impacts
4. Track effectiveness of their due diligence approach
5. Communicate externally (formally report on severe human rights risks)
6. Establish operational level grievance mechanisms and provide remedy when causing or contributing to actual negative human rights impacts

ILO core conventions

1. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
2. Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
3. Forced Labour Convention, 1930 (No. 29) (and its 2014 Protocol)
4. Abolition of Forced Labour Convention, 1957 (No. 105)
5. Minimum Age Convention, 1973 (No. 138)
6. Worst Forms of Child Labour Convention, 1999 (No. 182)
7. Equal Remuneration Convention, 1951 (No. 100)
8. Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

International Bill of Human Rights

- Universal Declaration of Human Rights (1948)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)

2.4. Overlapping topics covered by Article 18

The UNGPs play an overarching role regarding implementation of the minimum safeguards. They define responsibilities for private and public businesses to ensure that they respect human rights.

Similar is true for the OECD MNE Guidelines: Three of the eight topics covered are also covered by the UNGPs. These are human rights, labour rights, and consumer interests, which in the context of the minimum safeguards are interpreted as “consumers rights” as they are aimed to prevent harm to stakeholders rather than promoting their interests.

This leaves five substantive topics stemming from Article 18 which are covered by the OECD Guidelines but not covered by the UNGPs. These are:

1. Environment
2. Bribery, bribe solicitation and extortion
3. Science and technology
4. Fair competition
5. Taxation

From this list, “environment” and “science and technology” are not considered relevant in the context of the alignment with Article 18. Given that MS have the function to establish social and governance criteria for the entity which carries out an environmentally beneficial activity as defined by technical screening criteria, additional environmental criteria are not considered relevant in the context of Article 18. The topic of science and technology in the OECD Guidelines focuses on the swift transfer of science and technology to developing countries and encourages the development of R&D facilities in host countries. As explained above, this topic is not aimed to safeguard against harm, but to promote technological transfer to certain countries and regions. For this reason, it is not relevant for MS.

Given this reading, the substantive topics which remain pertinent to minimum safeguards are:

1. Human rights (including labour and consumer rights)
2. Bribery, bribe solicitation and extortion
3. Taxation
4. Fair competition

This report therefore addresses these four substantive topics and gives advice as to how undertakings could ensure compliance with Article 18.

2.5. Types of undertakings addressed by the minimum safeguards

Three of the four Article 18 standards contain explicit expectations to businesses. These are the UNGPs, the ILO core labour standards and rights at work, and the OECD MNE guidelines.

The fourth, the International Bill of Human Rights, lists our human rights. It is legally binding on ratifying states rather than companies. The UNGPs clarify that the responsibility of businesses in relation to the International Bill of Human Rights is to avoid and address negative impacts on the rights contained therein.

In light of the fact that the MS are aimed at business entities, the main part of the report covers advice for investments in private and public entities incorporated as companies. For these entities, it is understood that the UNGPs, OECD guidelines, International Bill of Human Rights, and ILO norms provide the framework for their responsibilities with regards to respecting human rights and labour rights, the prevention of bribery, tax evasion and unfair competition. This includes financing of public companies such as waterworks or waste management companies owned by public entities, because these publicly owned companies are considered to be “the undertaking carrying out the activity” in Article 18, and the OECD guidelines and UNGPs apply here as for private and listed companies.

However, guidance for the financing of public entities such as municipalities and regional governments (sub sovereigns) is also needed, given that they for example issue green bonds and receive loans from banks which calculate their green asset ratio. Advice for investments in sub-sovereigns (not companies owned by them) is given in chapter 7.

Households are not considered to be covered by the Article 18 standards, which are explicitly focusing on businesses or sovereigns. Banks do not have to enquire households on minimum safeguards when providing mortgages or other types of financing. This does not, however, exempt construction or renovation companies from their duties with respect to minimum safeguards when conducting their activities.

3. Understanding Article 18 as part of a broader regulatory landscape

3.1. Sustainable Finance Disclosure Regulation (SFDR) and its links to minimum safeguards

The Sustainable Finance Disclosure Regulation (EU) 2019/2088, or SFDR, obliges financial market participants (FMPs) to disclose social and environmental aspects on both entity (for example, asset manager) and financial product (for example, fund level). More concretely, requirements under SFDR relate to three key concepts: a) sustainable investment, b) sustainability risk, and c) sustainability factors.

For **sustainable investments,** SFRD creates three product categories. Two of these have either sustainable investment as its objective (referred to as Article 9 products) or promote, among other characteristics, environmental or social characteristics, or a combination of both (referred to as Article 8 products). It also introduces the concept of **sustainability risks** (defined as environmental, social or governance events or a condition that, if it occurs, could cause an actual or a potential material negative impact on the value of the investment), and **principal adverse impacts** of investment decisions on sustainability factors, meaning environmental, social and employee matters, respect for human rights, anti-corruption, and anti-bribery matters.

Financial market participants (FMPs need to disclose sustainability-related information, including that relating to the integration of sustainability risks in investment decisions, and on whether, and if so how, the FMP and product considers principal adverse impacts. The content, methodologies and presentation of the sustainability-related disclosures required under SFDR at both entity and product level are further specified by Regulatory Technical Standards (RTS), adopted by the European Commission in April 2022, which relate to two kinds of disclosures:

I. **On entity level** (for FMPs with more than 500 employees): The principal adverse impact (PAI) that investment decisions have on sustainability factors, including social and employee matters, respect for human rights, anti-corruption, and anti-bribery aspects.
II. **On product level**:
    i. Information to show how a product with ESG/sustainable characteristics or with sustainable investment objectives meets those characteristics or objectives, as well as why sustainable investments do not harm environmental or social objectives (DNSH).
    ii. Wherever FMPs consider PAIs on investment decisions at the entity level, they shall also provide a clear and reasoned explanation of whether, and if so how, a financial product considers principal adverse impacts on sustainability factors in their product disclosures (Art. 7 of SFRD).
    iii. In addition, for products with the objective of 'sustainable investment', investee companies will have to "follow good governance practices, in particular with respect to sound management structures, employee relations, remuneration of staff, and tax compliance."

According to the SFDR Regulatory Technical Standards (RTS) mentioned above, FMPs will have to assess investments in investee companies against 18 mandatory environmental and social PAI. In addition, they will need to disclose related information in periodic statements, with 13 mandatory environmental PAI and five mandatory social PAI.

Mandatory PAI on employee, respect for human rights, anti-corruption, and anti-bribery matters:

Adverse sustainability indicator	Metric
Violations of UN Global Compact principles and Organisation for Economic Cooperation and Development (OECD) guidelines for Multinational Enterprises.	Share of investments in investee companies that have been involved in violations of the UNGC principles or OECD Guidelines for Multinational Enterprises.
Lack of processes and compliance mechanisms to monitor compliance with UN Global Compact principles and OECD Guidelines for Multinational Enterprises.	Share of investments in investee companies without policies to monitor compliance with the UNGC principles, OECD Guidelines for Multinational Enterprises, grievance/complaints handling mechanisms to address violations of the UNGC principles, or OECD Guidelines for Multinational Enterprises.
Unadjusted gender pay gap	Average unadjusted gender pay gap of investee companies
Board gender diversity	Average ratio of female to male board members in investee companies
Exposure to controversial weapons (anti-personnel mines, cluster munitions, chemical weapons, and biological weapons).	Share of investments in investee companies involved in the manufacture or selling of controversial weapons

The first two indicators in this list cover all of the topics identified as relevant for Article 18 in this report. It is noteworthy that these indicators address both violations of these principles and guidelines, as well as the implementation of processes to monitor compliance with them. This can be interpreted to imply that they cover the performance of a company (its impacts), as well as processes implemented to avoid and address human rights and governance risks and impacts (for example, corruption, taxation, and fair competition).

Link to the Taxonomy Regulation Article 18.2 and SFDR (2019/2088)

Article 18.2 introduces a direct link between the minimum safeguards and the SFDR. It states:

"When implementing the procedures referred to in paragraph 1 of this Article, undertakings shall adhere to the principle of '**do no significant harm**' referred to in point (17) of Article 2 of Regulation (EU) 2019/2088".

EU Regulation 2019/2088 Article 2 point (17) defines sustainable investment by stating:

Sustainable investment means an investment in an economic activity that contributes to an environmental objective, as measured, for example, by key resource efficiency indicators on the use of energy, renewable energy, raw materials, water and land, the production of waste, and greenhouse gas

emissions. It is also measured through its impact on biodiversity and the circular economy, or an investment in an economic activity that contributes to a social objective, in particular, an investment that contributes to tackling inequality or that fosters social cohesion, social integration and labour relations, or an investment in human capital or economically or socially disadvantaged communities. **This is provided that such investments do not significantly harm any of those objectives,** and that the investee companies follow good governance practices, in particular with respect to sound management structures, employee relations, remuneration of staff, and tax compliance".

The SFDR definition of a sustainable investment as such is a bit broader than Article 3 TR in that it mentions social objectives. So far, these are not directly part of the Taxonomy Regulation and are neither further defined in the SFDR. Therefore, the suggestion when interpreting Article 18.2. is to focus on the mandatory social indicators in the PAI table above and take these as DNSH criteria as defined by the SFDR.

Of these five indicators, four are already covered in the four topics which have been filtered out from the Article 18.1 documents, as shown above. This is because PAI 1 and 2 reference the same topics as those filtered out from the TR Article 18 documents. The PAI on gender pay gap and on gender board diversity can be understood as indicators on discrimination, which is addressed by the UNGP and the ILO core labour norms. The only topic that is not covered is the PAI indicators on controversial weapons. The recommendations suggested here would be the following:

Controversial weapons are not covered in Article 18 documents and advice is given on this topic:

Recommendation: Companies with exposure to controversial weapons, as defined in the SFDR regulatory technical standards as anti-personnel mines, cluster munitions, chemical weapons, and biological weapons, are not able to count their activities as Taxonomy-aligned because of their non-compliance with the DNSH principle under the SFDR.

This would be in accordance with the Benchmark Regulation which states in Article 12:

"Administrators of EU Paris-aligned benchmarks shall exclude all of the following companies from those benchmarks: Companies involved in any activities related to controversial weapons." [8]

Taxonomy Regulation (Article 18) and SFDR: Similarities and Differences

Similarities are:

- For sustainable financial products, the SFDR and MS of the Taxonomy Regulation both reference the OECD MNE Guidelines. These include the UNGP, so they can be understood as being covered by the SFDR.

Differences are:

- The topics of gender pay gap and board gender diversity weapons are not explicitly mentioned in Article 18 of the Taxonomy Regulation but are covered by the UNGP and the ILO core labour norms which cover gender discrimination.

[8] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R1818&rid=1

3.2. CSRD: links to MS (as in the CSRD proposal from April 2021)

The CSRD will amend the Non-financial Reporting Directive (NFRD or Directive 2014/95/EU which had amended the Accounting Directive 2013/34/EU). It will also amend provisions of the Transparency Directive, the Audit Directive, and the Audit Regulation.

The CSRD lays out what and how companies which meet two of the following three characteristics have to disclose on sustainability matters: More than 250 employees, a turnover of over EUR 40 million and a balance sheet of more than EUR 20 million. For SMEs (not micro enterprises) with securities listed on EU Regulated Markets lighter disclosure requirements will apply.

Just as with the SFDR, the CSRD incorporates the concept of "double materiality". This means it addresses both risks and opportunities for the companies, as well as for people and the environment. Companies within the scope of the CSRD do not only have to publish certain sustainability information, but this information will also be audited and presented in a digital, machine-readable format.

The ESRS disclosure requirements are expected to result in an improved comparability, availability, and quality of corporate sustainability-related information. This creates a more reliable basis of data for the assessment of the sustainability of companies, which also allows to draw more reliable comparisons between companies.

The technical standards are presently worked out by EFRAG, a private association providing technical advice to the European Commission in the form of fully prepared draft EU Sustainability Reporting Standards, along with draft amendments to these standards. Its member organisations are European stakeholders, national organisations, and civil society organisations.

The sustainability reporting standard-setting work by EFRAG is carried out on a project basis by the Project Task Force on European Sustainability Reporting Standards (PTF-ESRS). The PTF-ESRS entered into cooperation agreements with the Global Reporting Initiative (GRI), the organisation "Shift" which is the centre of expertise on the UNGP and WICI – the world´s business reporting network. Working groups with topical experts from stakeholder groups worked out ESRS Exposure Drafts (EDs), which are under consultation until the 8th of August.[9]

Concerning the topics stemming from Article 18, the CSRD makes some explicit statements on the scope of required disclosure on human rights, anti-bribery, and corruption. The Draft ESRS Exposure Drafts on the topical European Sustainability Reporting Standard (ESRS) G3 also covers anti-competitive behaviour. However, taxation is not explicitly mentioned so far in the EFRAG work. It is, however, expected that the ESRS will provide investors with information to evaluate the adequacy of tax strategies and risk processes of a company. This is due to the stipulation in the OECD MNE guidelines that tax matters are to be considered "important matters of board oversight and risk management". Tax matters are also addressed in other EU regulations, and in the definition of 'sustainable investment' in the SFDR (see above).

Concerning human and labour rights, the CSRD highlights the steps and scope of human rights due diligence as it is laid out in the UN guiding principles. CSRD Recital (27) mirrors the most essential points of these principles. It states the following:

[9] https://www.efrag.org/News/Public-350/EFRAG-launches-a-public-consultation-on-the-Draft-ESRS-EDs-

"To ensure consistency with international instruments such as the UN Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance for Responsible Business Conduct, the due diligence disclosure requirements should be specified in greater detail than is the case in Article 19a(1), point (b), and Article 29a(1), point (b) of Directive 2013/34/EU. Due diligence is the process that undertakings carry out to identify, prevent, mitigate, and remediate the principal actual and potential adverse impacts connected with their activities, and identifies how they address those adverse impacts. Impacts connected with an undertaking's activities include impacts directly caused by the undertaking, impacts to which the undertaking contributes, and impacts which are otherwise linked to the undertaking's value chain. The due diligence process concerns the whole value chain of the undertaking, including its own operations, products and services, business relationships, and supply chains. In alignment with the UN Guiding Principles on Business and Human Rights, an actual or potential adverse impact is to be considered principal where it measures among the greatest impacts connected with the undertaking's activities based on: the gravity of the impact on people or the environment; the number of individuals that are or could be affected, or the scale of damage to the environment; and the ease with which the harm could be remediated, restoring the environment or affected people to their prior state."

CSRD recital (43) highlights the topic of impacts on human health, of forced labour in value chains, the principle of the EU pillar on social rights, and in particular on equal opportunities and working conditions. In addition, it references the International Bill of Human Rights, the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work, the fundamental conventions of the International Labour Organisation, and the Charter of Fundamental Rights of the European Union. Other topics highlighted are anti-corruption and anti-bribery, lobbying, and the quality of relationships with business partners, including payment practices.

Article 19a of the CSRD proposal lays out social sustainability disclosure requirements in more detail. Reporting items of particular importance to human rights including labour rights mentioned in this article are:

- The principal, actual, or potential adverse impacts connected with the undertaking's value chain, including its own operations, products and services, business relationships, and supply chain.

Article 19b under 2b requires "to further specify the information that undertakings are to disclose about social factors, including information about":

- Equal opportunity for all
- Secure and adaptable employment
- Wages
- Social dialogue
- Collective bargaining and the involvement of workers
- Work-life balance
- A healthy, safe, and well-adapted work environment
- Respect for the human rights, fundamental freedoms, democratic principles and standards established in the International Bill of Human Rights and other core UN human rights conventions, the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work, the ILO fundamental conventions, and the Charter of Fundamental Rights of the European Union.

- Anti-corruption and anti-bribery
- Lobbying activities
- Payment practices

The European sustainability reporting standards (ESRS) Exposure Drafts show that the concepts and steps outlined by the UNGP are followed closely in the development of the disclosure requirements. Given the preliminary character of these requirements it is, however, not yet clear that mandatory and audited disclosures by EU companies stemming from the CSRD would provide the necessary information to assess alignment with the MS. In the interest of clarity, and to avoid unnecessary administrative burdens, it is highly desirable that mandatory disclosures under the CSRD provide the necessary information on human rights, including labour rights, corruption, taxation, and fair competition.

Assuming that reporting under CSRD will be crucial for assessing compliance with the MS, and given the fact that CSRD will not be finalised before the report on MS will be published, this report works with the now consulted (ESRS) Exposure Drafts.[10]

So far, the following can be said about the differences and similarities between the work on criteria for compliance with Article 18 documents and mandatory disclosures under CSRD:

Similarities are:

- The emphasis on the UNGPs, its steps and scope across the entire value chain.
- The requirement to report on anti-bribery and corruption, as well as fair competition.

Differences are:

- The CSRD covers lobbying and relationship to business partners including payment which is not covered by the Article 18 documents.
- It is yet unclear how taxation is covered by the CSRD but is part of the Article 18 documents.

It is to be expected that CSRD companies assess their compliance with MS as part of their disclosures under Article 8 of the Taxonomy Regulation, and that this assessment is verified by auditors on, among other things, the companies´ ESRS disclosures.

3.3. Corporate Sustainability Due Diligence Directive Proposal

On February 23rd 2022, the Commission adopted a proposal for a Directive on Corporate Sustainability Due Diligence (CSDD). According to the Commission: "The aim of this Directive is to foster sustainable and responsible corporate behaviour and to anchor human rights and environmental considerations in companies' operations and corporate governance. The new rules will ensure that businesses address adverse impacts of their actions, including in their value chains inside and outside Europe."[11]

The proposal applies to EU companies with more than 500 employees, and companies with more than 250 employees if they are active in high impact sectors such as mining. In addition, companies in both categories would have to have a turnover of at least EUR 150 million to fall under the CSDDD.

[10] https://www.efrag.org/News/Public-350/EFRAG-launches-a-public-consultation-on-the-Draft-ESRS-EDs-
[11] https://ec.europa.eu/info/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en

This Directive also covers non-EU companies. For non-EU companies, only the net turnover threshold is applied. Non-EU companies with a net turnover of more than 150 million in the EU and non-EU companies in risk sectors with a turnover of more than 40 million Euro in the EU are covered.

In the explanatory memorandum, the Commission notes the similarities between the CSDD proposal and the Taxonomy Regulation and relates specifically to reporting on minimum safeguards compliance: "Similarly, this Directive will complement the recent Taxonomy Regulation […] by providing a categorisation of environmentally sustainable investments in economic activities that also meet a minimum social safeguard. The reporting also covers minimum safeguards established in Article 18 of the Taxonomy Regulation […] By requiring companies to identify their adverse risks in all their operations and value chains, this Directive may help in providing more detailed information to the investors."[12]

The proposal aims to reinforce the UNGPs and OECD MNE Guidelines by introducing due diligence obligations on select companies. Concretely, the proposal introduces a duty for companies to conduct human rights and environmental due diligence by "(a) integrating due diligence into their policies in accordance with Article 5; (b) identifying actual or potential adverse impacts in accordance with Article 6; (c) preventing and mitigating potential adverse impacts, and bringing actual adverse impacts to an end and minimising their extent in accordance with Articles 7 and 8; (d) establishing and maintaining a complaints procedure in accordance with Article 9; (e) monitoring the effectiveness of their due diligence policy and measures in accordance with Article 10; (f) publicly communicating on due diligence in accordance with Article 11".[13]

The proposal envisages corporate due diligence to encompass impacts generated throughout the lifecycle of production, use, and disposal of product or provision of services, at the level of own operations, subsidiaries and in value chains. Importantly, the proposal defers the reporting obligations to the CSRD, except in the case of companies not required to report under that directive, which instead will be required to prepare an annual statement published on their website – the content of which will be specified in delegated acts.

Due diligence processes, which do not introduce any specific performance requirements related to human rights or environmental impacts, are at the heart of this initiative. In Recital 15, the proposal emphasises its focus on processes by stating that: "This Directive should not require companies to guarantee, in all circumstances, that adverse impacts will never occur or that they will be stopped. […] Therefore, the main obligations in this Directive should be 'obligations of means'".

The proposal does, however, introduce a pathway to civil liability for human rights or environmental harms occurring as a result of due diligence failures. Article 22(1) specifies that a company will be liable if it failed to comply with the due diligence obligations in Articles 7 and 8, as a result of an adverse impact that should have been identified, prevented, mitigated, ended, or minimised through appropriate measures.

Given the significant overlap of Article 18 and the material scope of the proposed CSDD Directive on human rights, including labour rights, the CSDDD could be interpreted as making compliance with Article 18 binding law for companies covered in this respect. This is a hardening of the current requirements as the Taxonomy Regulation including Article 18 does not impose substantive duties on companies other

[12] resource.html (europa.eu) page 5
[13] resource.html (europa.eu) article 4

than the associated public reporting requirements. **If the CSDD proposal becomes law and a significant overlap and alignment with Article 18 is maintained, compliance with the law would in the future serve as a proxy for Article 18 alignment on human rights, including labour rights by companies.**

Which companies are covered by CSDDD and CSRD?		
	CSRD	CSDD [14]Directive
Coverage inside EU	Companies which meet two of the following three characteristics: more than 250 employees, a turnover of over EUR 40 million and a balance sheet of more than EUR 20 million.	At least 500 employees and EUR 150 million turnover. Or: operating in high risk sectors and at least 250 employees and EUR 40 million turnover.
SME	Lighter reporting requirement apply to SME (not micro enterprises) listed on an EU stock exchange	
Coverage outside EU	-	At least EUR150 million turnover in the EU or operation in high risk sectors and at least EUR 40 million turnover in the EU.
Companies covered by the CSDDD but not by the CSRD will be required to prepare an annual statement published on their website, the content of which will be specified in delegated acts. This means that companies covered by the CSRD **and/or** the CSDDD will be required to disclose on human rights due diligence, including non-EU companies which are above the threshold for the CSDDD. There will also be companies which are covered by the CSRD but not the CSDDD. These will be companies with less than 500 employees (all sectors) or less than 250 (including from risk sectors) which have a turnover above EUR40 million and a balance sheet above EUR20 million. These companies will have to report on their HRDD, and this report will be audited. SPV carrying out infrastructure projects will often fall under this category.		

3.3.1. National due diligence laws

Linked to the CSDD proposal are similar developments at the national and Member State level.

At the time of writing this report, four European countries: France, Germany, the Netherlands, and Norway, have adopted national level mandatory human rights and environmental due diligence (mHREDD) legislation. All four laws draw on the UNGPs and OECD MNE Guidelines by setting out requirements for corporate due diligence and hence generate potential overlap with the Article 18 requirements. Governmental commitments or parliamentary proposals are appearing in several other EU countries, including Austria, Belgium, Finland, and Spain.[15]

The existing laws all put legislative requirements on corporates to implement responsible business conduct standards, including by carrying out due diligence to avoid and address risks and impacts. From that perspective, such laws could, in principle, provide useful frameworks for alignment with Article 18 by companies covered by these laws. In an ideal scenario, companies covered by these laws and meeting the legal requirements could be considered *a priori* in alignment with Article 18. From a usability perspective,

[14] This directive is still under negotiation. The report worked on the proposed directive from February 2022

[15] For an updated overview of MHREED developments please see European Coalition of Corporate Justice MHREDD map https://corporatejustice.org/wp-content/uploads/2022/01/ECCJ-mHREDD-map-January-2022.pdf (accessed 27 January

this could mean that when assessing Taxonomy alignment of companies with MS under Article 18, compliance could be assumed in the case of companies based in jurisdictions with mHREDD laws in place.

However, when looking closer at the different laws, differences in how closely the laws align with UNGPs and OECD MNE Guidelines impact their usability as a proxy for Article 18 compliance. For example, the scope of the due diligence obligations included under the various laws differ significantly. This, in turn, has an impact on how useful they can be as a tool to assess Article 18 compliance. The Dutch law[16], for example, focuses only on the issue of child labour, whereas the substantive scope of Article 18 is much wider, covering the full range of human rights in addition to other responsible business conduct topics.

In addition, the Dutch law only requires the exercise of a "one off" due diligence exercise. This does not align with the expectation in the UNGPs and OECD MNE Guidelines that due diligence be an iterative, ongoing process to identify and address risks. Similarly, under the German law the scope of the due diligence obligation is delimited by reference to tiers of the supply chain, whereas Article 18 alignment necessitates implementation of due diligence throughout business operations and with business relationships across the full value chain.

The French law builds upon the UNGPs in turn, requiring companies to annually publish and implement a "vigilance plan" on human rights, H&S and environment, and specifies processes a company must implement. It covers its own operations and business relationships, which include directly or indirectly controlled companies; subcontractors and suppliers with an "established commercial relationship". While the requirements are closer to the requirements of the UNGPs, it only covers companies with more than 5,000 employees in France or 10,000 employees in France or abroad.

From a Taxonomy usability perspective, the existing measures also differ in how useful they are for generating data useful for alignment with Article 18. Firstly, the laws differ in relation to the number of companies covered, and hence whether they cover all companies under the Taxonomy Regulation. Most of the existing laws take the approach of addressing 'larger companies', although the definitions for setting such threshold differ. The Dutch law takes a different approach again, covering all Dutch companies as well as (some) companies selling goods and services in the Netherlands.

Secondly, the laws also differ in terms of their disclosure requirements, which could be key to documenting and assuring compliance with Article 18. Whereas most of the laws require periodic disclosures, for example in the form of annual reports on the implementation of due diligence, the Dutch law instead requires a one-time statement declaring that they "have investigated" risks of child labour within their own activities and supply chains.

Finally, several of the laws are quite recent, only coming into force over the course of 2022-2024, with reporting obligations to follow. As a result, there are limitations on the availability of data which may be used as a basis for assessing Article 18 alignment.

This situation highlights the need for a comprehensive European due diligence law. The divergence of national laws on crucial features such as topics, size of companies covered, and disclosure requirements makes it a difficult task for investors to find out whether a company is covered by a national law, whether this coverage means that it is aligned with MS or not, and if not, which elements are missing and have to

[16] Available here in Dutch: Staatsblad 2019, 401 | Overheid.nl > Officiële bekendmakingen (officielebekendmakingen.nl)

be attained from an external source. A European due diligence law which built on all steps and requirements of the UNGPs and OECD guidelines would ensure a smooth implementation, not only of MS but also of the SFDR which, as shown above, bases its disclosure requirement for FMPs and funds on similar documents.

Similarities are:

National mHREDD laws build on UNGPs and OECD MNE Guidelines.

Differences are:

National mHREDD laws cover only part of the companies of relevance to taxonomy alignment and/or are often not fully compliant with Article 18 instruments, for instance:

- Scope of human rights topics addressed is too small
- Scope of value chain elements covered is too small
- Remediation not covered

3.4. Legal environment on taxation, corruption, bribery, and fair competition

3.4.1. Taxation

The EU takes a more general approach towards competence on taxation remaining at member-state level, by establishing some standards and guidelines, for example on VAT.

Additionally, EU companies will have to disclose publicly on their tax payments in the future. Specifically, multinational enterprises or standalone undertakings with a total consolidated revenue of more than EUR750 million, whether headquartered in the EU or outside, must disclose publicly income tax information in each Member State, as well as in each third country listed on a list of countries which do not cooperate with European tax authorities – so called country by country reporting. (Directive 2016/0107). The first time companies will have to report will be in 2025 on the fiscal year of 2024.

Recently, and following the international suggestion of a global minimum corporate tax level[17], the European Commission has proposed a Directive ensuring a minimum effective tax rate for the global activities of large multinational groups. The proposal follows closely the international agreement and sets out how the principle of the 15% effective tax rate – agreed by 137 countries – will be applied in practice within the EU. It includes a common set of rules on how to calculate this effective tax rate so that it is properly and consistently applied across the EU.

While the EU follows a general approach to taxes, the OECD guidelines explain that companies should comply with the letter and the spirit of tax laws and regulations in which they operate. Therefore, in the context of discussing the MS, it makes sense to reference the guidance of the OECD MNE Guidelines:

“Enterprises should treat tax governance and tax compliance as important elements of their oversight and broader risk management systems. In particular, corporate boards should adopt tax risk management strategies to ensure that the financial, regulatory, and reputational risks associated with taxation are fully identified and evaluated.” (OECD MNE Guidelines 2011, page 60)

[17] at the time of writing, it was still under negotiation

The OECD MNE guidelines also give companies explicit and detailed guidance on transfer pricing through the "arm's length principle". The arm's length principle says that the price agreed in a transaction between two related parties must be the same as the price agreed in a comparable transaction between two unrelated parties. By applying this principle, tax payments are not manipulated by inadequate prices in transaction within a company.

In 2019, the Global Reporting Initiative (GRI) published its Tax Standard GRI 207: 2019 Tax in an attempt to increase tax transparency. The standard references the OECD MNE Guidelines.

3.4.2. Corruption and bribery

Article 83 of the Treaty on the Functioning of the European Union gives the EU legislating powers to regulate money laundering and corruption. Specific anti-corruption legislation includes the Convention on fighting corruption and the Framework Decision on combating corruption in the private sector. The later mandates Member States to establish jurisdiction over corruption cases in its territory, by one of its nationals or by a legal person with head offices in its territory. Regarding nationals and legal persons with head offices, however, both jurisdictions are explicitly optional.

In addition, the Commission has been given a political mandate to measure efforts in the fight against corruption and to develop a comprehensive EU anti-corruption policy. This has so far most extensively been used to fight fraud and corruption in relation to the implementation of EU funds.

A cornerstone of this strategy is the Whistleblowing Directive (EU) 2019/1937. This directive provides that Member States shall ensure that legal entities in the private and public sector establish channels and procedures for internal reporting on misconduct and breaches of law in a manner that ensures the confidentiality of the identity of the reporting person. Besides, companies and public entities have to commission an impartial person or department for following up on the reports.

Apart from this, the (ESRS) Exposure Drafts explicitly mention anti-corruption and anti-bribery measurements as an area where companies will have to report on in the future.

"Users also need information about undertakings' corporate culture and approach to business ethics, including anti-corruption and anti-bribery" (Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU Directive 2013/34).

Finally, anti-corruption and anti-bribery matters are mentioned as additional optional indicators for disclosure of principal adverse impacts under SFDR, namely the "share of investments in entities without policies on anti-corruption and anti-bribery consistent with the United Nations Convention against Corruption", and the "share of investments in investee companies with identified insufficiencies in actions taken to address breaches in procedures and standards of anti-corruption and anti-bribery".

3.4.3. Fair competition

European competition law derives mostly from the Treaty on the Functioning of the European Union, as well as a series of Regulations and Directives. These cover cartels and other anti-competitive practices, abuse of firms' dominant market positions, mergers, proposed mergers, acquisitions, and joint ventures involving companies that have a certain, defined amount of turnover in the EU.

Once more, OECD MNE Guidelines are explicit on the requirement for undertakings to "carry out their activities in a manner consistent with all applicable competition laws and regulations, taking into account

the competition laws of all jurisdictions in which the activities may have anti-competitive effects(…)", and to refrain from fixing prices, bid-rigging, establishing output restrictions, and dividing markets.

The (ESRS) Exposure Drafts proposal is explicit in requiring undertakings to "provide information on any confirmed incidents of anti-competitive behaviour it is facing during the reporting period." (ESRS G3, DR 9)

4. Present Application of EU Taxonomy Regulation Article 18 by Investors, ESG Ratings and Non-Financial Companies

4.1. How Investors apply the minimum safeguards today

Studies providing insides into market practice show that the financial market is struggling to understand how MS should be implemented, (reference UNPRI and UNEPFI) with data availability being at the centre of their concerns[18][19]. Missing further guidance proxies for MS compliance were developed in response, such as membership of the UN Global Compact (UNGC), NGO reports, or controversy screening.

The lack of data was especially prominent for companies from non-EU countries. This is understood as a lack of evidence as to whether a company meets the UNGP and OECD guidelines for MNE. An overview of case studies (UNEP FI reference) shows that compliance with MS is often based on an assumption derived from external data resources.

However, these findings reflect a misunderstanding in regard to what MS compliance actually means. The UNGPs provides a system which requires companies to implement actively and to report on processes.

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. The lack of data on MS, therefore, is not only a sign that there is not enough data available, but that implementation of the UNGP, and herewith alignment with MS, is low.

This also explains the difficult situation banks find themselves in when collecting data on MS from their clients. To be compliant with MS, in addition to asking them for data, they may need to also implement a human rights due diligence system.

On the background of the MS requirement for companies to report on human rights due diligence processes controversy screening takes on a new meaning. Up to now, this process was carried out to understand whether a company violates certain standards. Given that implementing and reporting on human right due diligence (HRDD) is the essential criteria for compliance with MS, controversy screening has a new role.

Controversy screening might still serve as an additional indicator for gaps in a company's human rights due diligence process. Controversies would then indicate that a company's processes fail to bring about the desired outcomes. However, a company should not be considered as compliant with MS only on the basis of the fact that there is no controversy because the company must also have implemented adequate HRDD. On the other hand, the company could still be compliant with MS even if there is a controversy

[18] https://www.unpri.org/download?ac=11662

[19] https://www.unepfi.org/wordpress/wp-content/uploads/2021/01/Testing-the-application-of-the-EU-Taxonomy-to-core-banking-products-Final-v2.pdf

provided that it has implemented a HRDD process, is remediating the case, and uses the controversy as an opportunity to improve its HR processes.

ESG rating agencies are, in particular, struggling with this situation.

4.2. ESG Rating agencies

In a situation of a lack of sustainability disclosures by companies and guidelines, and how to judge existing information on the one hand and a growing demand for sustainable investments on the other, financial market participants and asset owners turned to the services of ESG rating agencies. These agencies collect data from companies as well as external sources globally including media, reports from NGOs, and government agencies. They then evaluate their credibility, relevance and make among other things an assessment on the severity of sustainability controversies (controversy screening), as well as on the performance of a company (best in class). With the introduction of reporting on Taxonomy alignment in 2023, these agencies have already developed special services for the taxonomy requirements, including assessing compliance with MS.

Respective services by four ESG rating agencies have been scrutinised for the purpose of this report. Three of these were focused on investors, for example, informing investors whether a company is adhering to the minimum safeguards or not. A fourth offer was directed to companies exploring the circumstances they could call themselves Taxonomy-aligned, for example when they are issuing green bonds.

The MS services offered were analysed according to the topics covered, and the how a companies' performance on these topics are assessed.

The four ESG rating agencies considered for this report define the scope of topics covered by the minimum safeguards slightly differently. Two of them cover human rights, labour rights, and corruption/bribery in their minimum safeguard services. One covers human and labour rights, while a fourth covers human and labour rights, corruption/bribery, taxation, and fair competition.

As to the extent ESG rating agencies assess compliance with MS, it became clear that two different paths are taken. On the one hand, ESG rating agencies employ controversy screening techniques to find out whether there are allegations on human rights abuses on the company and, if this is the case, make a judgement on how severe they are. The second path employed is to analyse whether and how a company implemented human rights due diligence processes. With the second step, it became apparent that only few companies have yet implemented the steps outlined by the UNGP.

This means that agencies which emphasise implementation of due diligence processes on human rights and labour rights in their assessment report that the number of MS compliant companies shrinks considerably when doing so. It became obvious that in this situation, ESG rating agencies find themselves in a dilemma. On the one hand, they understood the requirements of the MS as demanding the implementation of the UNGP process, yet on the other they realised that following this requirement would leave only very few companies compliant.

This finding shows that the Taxonomy Regulation is initiating a change, both in sustainable investing and ESG rating in regard to assessing the human rights and governance performance of a company. It is obvious that the market needs some time to adapt to this change, and that in the EU this change goes hand in hand with new requirements on human rights due diligence, as well as on overall improvement of sustainability reporting among companies.

This means that, based on available data, there are many more companies which have not implemented a human rights due diligence system aligned with UNGPs than there are companies which have controversies. If controversies were the benchmark against which MS compliance was measured, many companies would be MS compliant without implementing human right due diligence (HRDD) processes. This approach would however be against the meaning of Article 18 TR.

Aside from this fact, assessing the human rights due diligence of a company through controversies raises some questions. The judgement that certain controversies are considered more severe or important than others is based on a value judgement and is sometimes difficult to justify. The UNGPs, on the other hand, require the company itself to act on its risks and adverse impacts. This implies an iterative process which involves potentially affected stakeholders. It does not concentrate on punishing companies for singular incidents but encourages them to improve. If taken seriously, this iterative process has the potential to reduce human rights abuses by companies. It is therefore rightly at the centre of MS requirements.

It also became apparent that when focusing on companies as potential issuers of green bonds, the due diligence processes implemented by the issuer already play a more prominent role in assessing its ESG qualities.

In summary, the Taxonomy Regulation seems to have initiated a focus on the assessment of the human rights performance of companies. By emphasising the OECD and UNGP in Article 18, the human rights due diligence processes implemented within companies will play a much more prominent role in sustainable investing in the future than they presently do, both within companies and, by consequence, in ESG ratings.

4.3. NCP on OECD guidelines

Since 2000, National Contact Points (NCPs) for Responsible Business Conduct (RBC) have had the mandate to act as non-judicial grievance mechanisms under the OECD Guidelines for Multinational Enterprises (the MNE Guidelines). To date, there are NCPs in 50 countries that have collectively handled over 500 cases[20] related to RBC issues in more than 100 countries.

Better understanding of how NCPs have actively facilitated concrete remedies for the persons affected by alleged breaches of the implementation of the MNE Guidelines can shed light on both the possible functioning of the Taxonomy minimum safeguards, and what alignment with the minimum safeguard requirements could mean in practice.

Through their mandate as non-judicial grievance mechanisms under the Guidelines, NCPs seek to ensure that a person(s) affected by negative corporate impacts can obtain some form of redress for their harm. These adverse impacts are understood within the scope of the MNE Guidelines, which cover all key areas of business responsibility, including due diligence, disclosure, human rights, employment and industrial relations, environment[21], anti-corruption, consumer interests, science and technology, competition, and taxation.

Business responsibility under the MNE Guidelines is further understood as an expectation that companies should “contribute to economic, environmental and social progress with a view to achieving sustainable

[20] Cases are technically known as ‘specific instances’

[21] Chapter VI on Environment will not be discussed in this section given that this is not considered in the scope of the minimum safeguards.

development"[22] and in that regard "avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur".[23]

The number of NCP cases is gradually growing each year, including in countries where mandatory due diligence laws have been enacted. The MNE Guidelines are addressed to all companies operating in all countries and sectors of the economy, as long as they are headquartered in a country adherent to the MNE Guidelines. As a result, NCPs have been handling cases from a wide variety of sectors and involving a wide variety of business structures (for example, multinational enterprises, SMEs, publicly listed companies, state-owned enterprises, or NGOs).

The MNE Guidelines' broad scope enables NCPs to handle multiple themes stemming from the impacts of company operations. In fact, since 2011, over two-thirds of cases have concerned more than one chapter of the MNE Guidelines. The majority of cases since 2011 deal with human rights (57%), followed by general policies, which include expectations related to due diligence (53%), followed by employment and worker issues (40%), and the environment (21%).

NCP cases can thus stem from thematic chapters of the MNE Guidelines (for example, human rights, environment, employment, and industrial relations) but also from 'process-oriented' chapters of the MNE Guidelines (for example, Concept and Principles, General Policies). These chapters set out the nature of the MNE Guidelines, their potential scope of application, and their relationship to domestic law.

Chapter II contains specific recommendations to businesses, including that they should carry out due diligence, with respect to their own activities and business relationships, and engage with relevant stakeholders in a meaningful manner. This is the second most raised Chapter in NCP cases – in part due to the fact that due diligence has become the key process for operationalising the expectations of the MNE Guidelines towards businesses. As an illustration, when Chapter II is raised in an NCP case, it is often – if not always – associated with another thematic chapter – to highlight that lack of – or insufficient – due diligence practice which resulted in the adverse impact.

Chapter III includes recommendations on disclosure and has been referenced in 24% of cases. It deals predominantly with issues related to Transparency with respect to business relationships, reporting on environmental/climate impacts, good practice in consultation with stakeholders, failure to provide financial, and shareholder information.

Chapter IV and V, relating to Human Rights and Employment and Industrial Relations respectively, are both aligned with other international standards of responsible business conduct referenced in Article 18 of the Taxonomy Regulation – namely the UN Guiding Principles on Business and Human Rights and the Declaration of the International Labour Organisation on Fundamental Principles and Rights at Work. The Human Right Chapter is the most raised chapter (58%) of all cases. It deals with issues such as indigenous peoples' rights and land rights, gender, diversity and inclusion, and LGBTQI rights, children's rights, the rights to healthy environment, and human rights abuses in conflict setting or forced displacement. The chapter is well-adapted to the fact that enterprises can impact the entire spectrum of internationally recognised human rights. It has also been increasingly used to raise issues pertaining to corporate infringements on digital rights. A number of NCP cases have addressed different aspects of Chapter V, including health and safety in the workplace, forced labour and child labour, living wage, migrant workers,

[22] OECD Guidelines for Multinational Enterprises, Chapter I, General Policies, para. 1
[23] OECD Guidelines for Multinational Enterprises, Chapter I, General Policies, para. 11

collective bargaining, and informal working conditions. More recently, it was also raised regarding issues related to gig economy workers.

Other thematic chapters of the MNE Guidelines have been raised significantly less, such as combating bribery (8%), consumer interests (8%), science and technology (<2%), competition (<1%), and taxation (3%). One explanation is that well-enforced and established legal frameworks already exist in these fields, along with other effective judicial channels and/or independent authorities. Their main requirements are to call on enterprises to comply with letter and spirit of laws and regulations pertaining to these issues in the different countries in which they operate.

Box: Recent NCP cases referring to the taxation chapter of the Guidelines

The below cases are among the first in which the NCP engaged with the substance of the taxation chapter (XI) of the Guidelines. The French NCP clarifies (i) the roles of NCPs and tax administrations in cases involving international tax law (ii) the relationship between Chapter III (disclosure), VIII (consumers) and XI (iii) the link between Chapter XI, BEPs, and other recent OECD tax standards, which are not reflected in the 2011 iteration of the MNE Guidelines.

- **Starbucks Coffee France & I Buycott (2019**): I Buycott, the French consumer association, alleged that Starbucks Coffee France, a French company affiliated to an American and subsequently to a Mexican group, had not observed the MNE Guidelines regarding information disclosure, consumer interests, and taxation. Taxation issues related to intra-group transfer pricing and a license agreement. The NCP found breaches of the Guidelines Chapter III regarding publication of information and disclosure of information on its ownership and related party transactions, notably its license agreement with Starbucks, and Chapter VIII, as the related information disclosed does not allow consumers to make an informed decision. Based on a tax certification issued to the company by the French Directorate-General for Public Finance, the NCP was able to conclude that the Company did observe Chapter XI of the Guidelines by complying 'with the letter and spirit of France's tax laws and regulations' and clarified that this includes the standards established by the OECD concerning transfer pricing. The NCP recommended that the company:
    1. Improve its disclosure of financial information, group structure and governance, tax information, and related party transactions, in accordance with Chapters III and VIII.
    2. Disclose its tax information covered by Chapter XI, suggesting in this regard that this includes 'a commitment to take into account the OECD's recommendations and benchmarks on international taxation, for example in the form of a code of good conduct'.
    3. Continue to comply with the letter and spirit of France's tax laws and regulations by paying the taxes for which it is liable. (Ch. XI art. 1)

    Starbucks Coffee France provided the NCP and submitter with information certifying its current tax status with French tax authorities.

- **AIRBNB France & AHTOP (2020)**: AHTOP, the French hospitality sector business association, alleged that AIRBNB France had not observed the Guidelines in relation to transfer pricing between AIRBNB France and AIRBNB Ireland. Reference is made to the OECD Transfer Pricing Guidelines. The NCP offered its services, but AIRBNB France declined to participate,

and therefore its tax practices could not be discussed in this context. The NCP noted that controlling the legality of the company's transfer pricing practices is the exclusive responsibility of the French tax authorities, and therefore transferred the case to it. The NCP recommended that AIRBNB France:

1. Comply with the letter and spirit of the tax laws and regulations applicable in France. The NCP clarifies that this includes taking account of the standards and good practices promoted by the OECD, including conforming its transfer pricing practices to the arm's length principle.
2. Provide information on its tax practices. The NCP clarifies that such information falls under the disclosure requirements of Guidelines Chapter III. The Company responded positively and will consider making public the information regarding AIRBNBs taxation, in accordance with Chapter III of the Guidelines.

4.4. Examples from companies

There is as yet little information on how companies prepare for alignment with the minimum safeguards. A survey from 2020 comes to the conclusion that: "Many companies are unsure about the level of due diligence expected to meet DNSH and Minimal Social Safeguards (MSS) criteria, as well as what information investors will request, and whether audits will be expected."[24][

In the absence of specific information regarding how companies plan to report on MS, this section provides examples of the existing evidence on the implementation of human rights/UNGPs by companies which can be a good proxy to assess the level of preparedness to report against some of the MS expectations.

With increasing scrutiny of businesses' human rights performance by their shareholders, employees, customers, and activists, many companies have already begun to identify, assess, and manage potential and/or actual human rights impacts resulting from their operations which run the risks of legal costs, damage to reputation and relationships resulting in disinvestment, a loss of revenue and social license-to-operate. However, the uptake of due diligence procedures as required by the UNGPs and OECD MNE Guidelines is far from accomplished. A survey carried out on behalf of the European Commission in 2020 concluded that only 37.14% of businesses are currently undertaking due diligence on all human rights and environmental impacts in the supply chain, and a further 33.71% are undertaking due diligence on only some issues. A majority of those who are undertaking due diligence only do so on first tier.[25]

The World Benchmarks Alliance scored 1,000 companies globally on its 12 HRDD core indicators. It found that while 55% of them publicly commit to respecting human rights, less than half "demonstrate that respect through tangible actions like HRDD".[26] The report also registered 225 human rights violations, yet only 4% of the associated companies demonstrate that they've addressed these human rights infringements.[27]

[24] https://ec.europa.eu/finance/docs/level-2-measures/taxonomy-regulation-delegated-act-2021-4987_en.pdf
[25] https://op.europa.eu/de/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1
[26]https://www.worldbenchmarkingalliance.org/research/2022-social-transformation-baseline-assessment/
[27] https://www.ohchr.org/Documents/Issues/Business/Slides.pdf

An overview of existing practices, however, shows that some forms of human rights risks are well understood and managed by companies today. For example, there are noteworthy improvements in safety standards and accident reduction, such as in fire risk and road safety. However, even this progress is not yet adequate. According to ILO estimates, over 2.3 million people still die at work from occupational injuries or diseases every year. Over 350,000 deaths are due to fatal accidents, whole almost two million deaths are due to fatal work-related diseases. The overall costs of occupational accidents and diseases are often much greater than immediately perceived.[28]

In this situation, looking for best practice examples seems to be the most sensible way forward.

Business and Human rights issues – value generated by best practices

Some of the best performing companies today are those that, applying the principle of double materiality, address both risks to people (an inside-out perspective) and risks to the business (an outside-in perspective), and do not treat them as separate agendas. In order to be effective, they work both with the risk systems and protocols that have already proven to be effective, as well as understanding and addressing risk to people. Many of them build their current approaches based on the past lessons learned.

In this way, companies with complex global value chains and manufacturing operations across the globe have aligned their approach with UNGPs. They conduct human rights due diligence and integrate the responses into policies and internal systems, acting on the findings, tracking their actions, and communicating with their stakeholders. These companies operate efficient operational level grievance mechanisms and in case of actual adverse impacts participate or provide for remediation. They follow reporting frameworks such as the UN Guiding Principles Reporting Framework and publish annual Human Rights Reports. Sometimes, the human rights work is overseen by the CEO and supported by the Leadership Executive, including the Chief Supply Chain Officer or other C-Suite Officers of relevance to the company's human rights impacts.

For example, in response to the deadly Rana Plaza tragedy, some apparel companies have strengthened their human rights due diligence to identify risks across their business, in alignment with the UNGPs and the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector.[29] They have prioritised workers' rights through the restructuring of their auditing process, application of meaningful due diligence, and emphasis on rights-holders consultation and workers' engagement. This has been largely successful in addressing supply chain human rights abuses, particularly where workers have been personally engaged to provide testimony about working conditions.[30]

There are also the first examples from companies explaining how they implement procedures of alignment with the MS. This is most interesting if done by companies with a high share of taxonomy eligible activities, such as electricity suppliers.

Examples show that companies take up a risk-based approach – stressing risks to people. For alignment with MS, they acknowledge their responsibility to identify human rights risk and to prioritise them on the basis of the severity and likelihood of occurrence, and then address them in order of priority. Specifically,

[28] fs_st_1-ILO_5_en.pdf
[29] For example Our Standards | Primark Cares (UK)
[30] For example primark-case-study-new-template.pdf (abhi.org.uk)

these companies use a standardised screening process, in which potential new suppliers must answer questions about their commitment and respect for international human rights. In cases where the company has identified high risks, as for example in certain major wind turbine projects, due diligence procedures are intensified.[31]

5. Reasoning and recommendations on alignment with Article 18 standards

5.1. Introduction

Recommendations on minimum safeguards can, and should, be worked out to be consistent and closely aligned with existing and upcoming EU legislation in the field of human rights due diligence. This includes labour rights, corruption, taxation, fair competition, and above all the alignment with upcoming legislation on sustainability disclosure. This means that whenever there is a legislation which wholly or partly implements Article 18 standards, or introduces disclosure requirements related to these standards, they should be taken as a reference for alignment with minimum safeguards.

For non-EU companies and EU companies not currently covered by these regulations, a solution should be found which matches the requirements of EU regulations as consistently as possible. For these situations, it helps to consider that the UNGPs are a global framework adopted in 2011 by the UN which applies to companies in all countries, even if it is not legally binding on companies in its own right.

For non-EU companies it must also be considered that the level of ambition should avoid signalling that compliance standards outside the EU could be lower than those required from EU companies. This is to avoid MS alignment becoming more burdensome for EU companies than for those outside the EU. For SMEs it should be considered that the requirements are proportionate to their risk profile and size, and that they do not place unnecessary burden on them.

5.2. Implications from legal context

From this starting point, EU and member state regulation on human rights, good governance, corruption, taxation, and fair competition are at the core of MS recommendations. In practice, this means two things: First of all, companies need to implement adequate processes to ensure that these laws are complied with. Secondly, the performance of companies has to be monitored. Once it is finally endorsed, the CSRD will provide information on both these aspects.

As mentioned above, this also means that EU companies which comply with the CSDDD as it is proposed today would meet the human rights requirements under the minimum safeguards of the Taxonomy Regulation, as the CSDDD requires the respective processes, and the reporting on them, through the CSRD.

For the topics of corruption, taxation and fair competition, different solutions have to be found as there is no EU regulation requiring respective processes, such as fair competition, and/or legislation takes place largely on a national level (for example, taxation and bribery/corruption). The solution suggested here focusses on disclosures on processes within companies, and final convictions in court, as a performance criterion on these topics.

[31] https://www.enbw.com/media/bericht/bericht_2020/downloads/broschuere_eu_taxonomie.pdf

It has been shown above that requirements deriving from TR Article 18.2., which points to regulation 2019/2088 Article 2 point 17, largely overlap with Article 18.1 documents. So, apart from the fact that companies involved in the manufacturing or selling of controversial weapons should not be considered as compliant with MS, and thus not be able to count activities as environmentally sustainable, no further amendments are necessary.

5.3. Implications from implementation state of play

There is a great uncertainty in the market surrounding how to implement MS. Present implementation by financial market participants seems to rely heavily on ESG ratings. As shown above, implementing HRDD processes and not being involved with human rights abuses is at the core of MS alignment. Controversy screening, however, mostly does not cover the implementation of due diligence processes as demanded by the UNGP and the OECD guidelines for MNE. Present ESG rating practice can therefore be considered as sometimes insufficient in scope and ambition. It can, however, be observed that companies are increasingly implementing HRDD processes, especially in preparing for due diligence laws, be it on a national or European level. This means that an increasing number of companies, especially in the EU, will most likely meet the requirements of MS in the future.

5.4. Human Rights Due Diligence at the core of minimum safeguards

Due diligence processes are at the heart of MS, with TR Article 18 stating that MS "shall be procedures implemented by an undertaking". With the further reference in TR Article 18 to the UNGP and OECD guidelines for MNE, the Article points to standards which provide a clear definition of what an adequate due diligence process for human rights (UNGP and OECD) consists of.

In order to identify which procedures are relevant and adequate for establishing compliance with the MS as required by Article 3 and 18, a closer analysis of the UNGPs and OECD MNE Guidelines is necessary.

Importantly, there are two key expectations for undertakings under these standards:

(a) Undertakings should respect human rights, that is, they should avoid infringing on human rights and address adverse human rights with which the undertaking is involved. (UNGP 11)

(b) In order to meet the expectations set out in (a), companies should establish a due diligence process to continuously identify, prevent, mitigate, track, and account for actual and potential adverse impacts on human rights in their own operations, supply chains, and other business relationships. (UNGP 15)

Although these expectations are closely interrelated, the first is focused on the end-goal or performance of an undertaking, such as avoiding and addressing negative human rights impacts. The second focuses on the means to achieve that end, such as policies and processes to embed human rights due diligence throughout an undertaking.

The actual and potential adverse impacts that are in the scope of Article 18 include impacts on the human rights of people affected by an undertaking's activities, such as workers, communities, and consumers,

The process of human rights due diligence (HRDD) required by Article 18 includes several steps (see also Figure 1):

1. Adopting and embedding a commitment to HRDD into policies and procedures (UNGPs 16 & OECD RBD DD Guide step 1)

2. Identification and assessment of adverse impacts, including through stakeholder engagement (UNGP 17, 18 & OECD RBD DD Guide step 2)
3. Taking actions to cease, prevent, mitigate, and remediate adverse impacts (UNGP 17, 19 & OECD RBD DD Guide step 3)
4. Tracking the implementation of these actions and its results (UNGP 17, 20 & OECD RBD DD Guide step 4)
5. Communicating publicly on the approach to HRDD, and actions taken to avoid and address adverse impacts (UNGP 17, 21 & OECD RBD DD Guide step 5)
6. Providing or cooperating in remediation, including establishing or participating in grievance mechanisms where individuals and groups can raise concerns about adverse impacts (UNGP 22, 29, 31 & OECD RBD DD Guide step 6)

FIGURE 1. DUE DILIGENCE PROCESS & SUPPORTING MEASURES

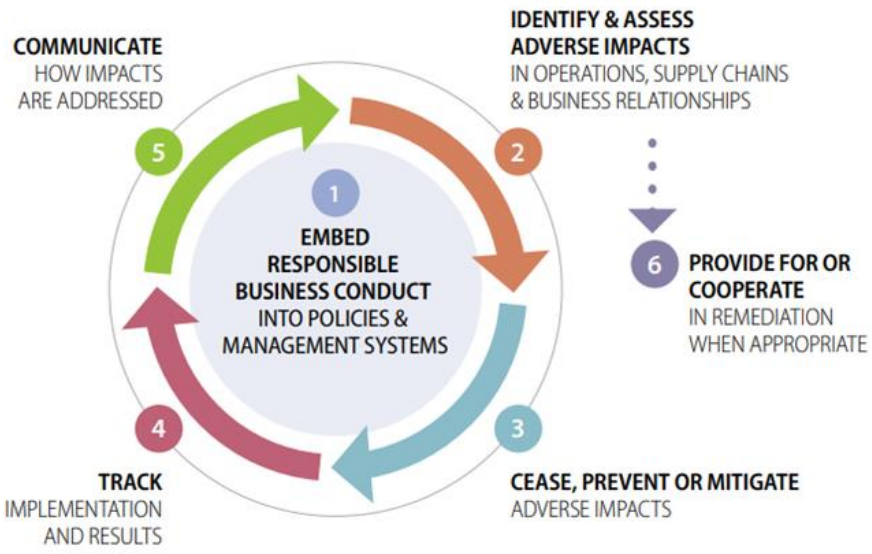

Figure 1 OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE BUSINESS CONDUCT, p 6

Based on the two expectations above (a and b), compliance with MS is a twofold endeavour. It should cover both HRDD processes and companies' human rights performance.

- An assessment of whether an undertaking respects human rights, for example, it avoids and addresses negative impacts, and
- An assessment of whether the undertaking has the due diligence procedures that span all of the six steps mentioned above.

The due diligence process is meaningful only insofar as the undertaking can effectively demonstrate respect for human rights. This does not mean that compliance with Article 18 means an undertaking can have no negative impact. It is recognised that there will be instances where – despite their best and prudent efforts at prevention – undertakings might have a negative impact. However, it is important that a company can demonstrate progress towards avoiding and addressing any negative impact.

In other words, the due diligence process required by Article 18 is to be understood as a means to an end, rather than an end in and of itself. As a result, documenting or assessing compliance with MS should combine considerations of processes (for example, evidence of the implementation of the due diligence steps) and outcomes (for example, evidence that the due diligence avoids and addresses adverse impacts). For undertakings, this means communicating on both due diligence processes AND their outcomes. For financial market participants (FMPs), auditors, and other stakeholders needing to assess MS alignment of an undertaking, this should involve looking at information reported by the undertaking in question, as well as third-party information about the undertaking's human rights performance.

As the CSDDD and CSRD legislations which incorporate Article 18 standards and detailed disclosure requirements for non-financial companies are presently being developed, no detailed criteria for non-compliance with MS are worked out at present. Once the legislation enters into force and companies, auditors, and investors have gained experience in the new disclosures, the need for more detailed criteria assessing non-compliance with MS might be considered.

5.5. Minimum safeguards - alignment criteria

In light of the above two-dimensional assessment of MS alignment, this section proposes two criteria for non-compliance with minimum safeguards. In combination, these two criteria are meant to reflect both the procedural and outcome dimension of the Article 18 assessment presented above.

The two recommended criteria indicating non-compliance with minimum safeguards are:

1. The company has not established adequate human rights due diligence processes, as outlined in the UNGPs and OECD Guidelines for MNE.
2. There are clear indications that the company does not adequately implement HRDD resulting in human rights abuses. Data on breaches should be generated from sources with a high level of independence and impartiality. The suggestion is that:

    a) The company has finally been convicted in certain types of court cases on labour law or on human rights. More work on identifying these cases needs to be done.
    b) The following two indicators signal that the company does not engage with stakeholders, although this is an integral part of the UNGPs:
        - A National Contact Point has accepted a case, however the company refuses to engage with the party which has initiated it, or the company has been found non-compliant with the OECD guidelines by an NCP. http://mneguidelines.oecd.org/database/
        - The Business and Human Rights Resource Centre (BHRRC) has taken up an allegation against the company, and the company has not answered to it within three months. Not answering an allegation would signal non-compliance for two years. https://www.business-humanrights.org/en/companies/?company_name=&sector=&headquarters=&has_dashboard=on&letter=#company_index_form

If one of the two criteria applies to an undertaking, it should be considered not compliant with MS. The status of non-compliance should be upheld until the company has proven, for example through an external audit, that its human rights and labour rights processes have been improved in a way that a repeat of violations is unlikely.

While there are different ways through which these criteria could be implemented for CSRD companies, SMEs, and non-EU companies, the suggestion is that these two criteria apply alike to private, listed, and public companies. This implies that any kind of investment in, or financing of, companies can only be counted as Taxonomy-aligned if none of these criteria applies to the company.

5.6. Explaining the two criteria

The first criterion is a positive assessment in that it requires certain processes to be in place. The second criterion is negative in that it requires certain impacts or events not to have occurred. The first criterion addresses both the procedural and outcome dimensions of the Article 18 assessment above, in that it not only requires the existence of due diligence processes, but that these are adequate. This involves a level of qualitative assessment regarding their effectiveness in resulting in avoidance and, where appropriate, addressing negative impacts. The second criterion is focused on the outcome of due diligence processes.

Further guidance for applying these two criteria for different types of companies are included below, along with examples of non-alignment.

5.7. Criterion 1: Existence of adequate due diligence processes for EU companies covered by the CSRD

As explained above, the EU commission currently develops two major regulations directly linked to MS. The CSDD Directive will make human rights due diligence mandatory for larger EU companies, while the CSRD will require disclosures on human rights due diligence by EU companies which are not SMEs.

In the context of the MS, and for the purpose of explaining the two MS criteria above, this chapter focuses on the CSRD. This is because a) the scope of the CSRD is wider and currently covers all companies with the exception of SMEs and b) the CSRD will require certain disclosures on HRDD from companies. These disclosures will then result in a disclosure on MS compliance, as required under Article 8 of the Taxonomy Regulation. This is because they mirror the requirements of Article 18 (MS) documents (UNGP and OECD guidelines for MNE), as the below table shows.

More concretely, the following ESRS disclosure requirements will provide an understanding as to whether a company has implemented an adequate HRDD. As shown below, the disclosure requirements under the CSRD mirror the OECD/UNGP requirements:

	OECD/UNGP requirements	**European Sustainability Reporting Standard (ESRS) 1 general provisions**
1	Embedding a commitment to RBC into policies and procedures	ESRS 1 84: (a) embedding due diligence in governance and organisation, ESRS 1 4.2 on policy
2	Identification and assessment of adverse impacts, including through stakeholder engagement	ESRS 1 84: (b) stakeholder engagement, ESRS 1 84 (c) identifying and assessing adverse impacts
3	Taking actions to cease, prevent, and mitigate adverse impacts	ESRS 1 84 (d) taking actions to address those adverse impacts
4	Track implementation effectiveness	ESRS 1 84 (e) tracking the effectiveness of these efforts
5	Communicate	ESRS 1 84 (e) communication

6	Remediation, including the establishment of a grievance mechanism	Included in topical standards of ESRS Social

It must, however, be mentioned that the table in the Annex to Article 8 Disclosure delegated regulation (Commission Delegated Regulation (EU) 2021/2178) asks the company to state compliance with MS on the basis of individual activities, whereas the data required by the template should be considered at the level of the undertaking. In light of this recommendation, it might be considered amending the table to (i) clarify that MS reporting takes place at the level of the undertaking (and not economic activity) and (ii) to allow undertakings to provide a link to their CSRD report which should contain the disclosures relevant for MS assessment. A very first, and yet incomplete, guidance as to how to conclude that an adequate DD system has been implemented through CSRD disclosures is given in the examples below.

For EU companies, the external verification of MS compliance should rest with the auditor. It is important that this audit will provide assurance that the six steps of the HRDD process have been adequately implemented. For this to take place, the auditors should have relevant expertise in the social/human rights field, the audit should cover, among other things, the commitment of senior management and board, the adequacy of risk identification and assessment, adequate assignation of responsibilities within the company and allocation of resources, the functioning of the complaint mechanism, the adequate involvement of affected stakeholders, and the correctness of external communication on HRDD.

For the CSRD, it is also deemed important that there is a complaint mechanism for employees in case disclosures seem to be incorrect, and it is suggested that such a complaint mechanism is also established for external stakeholders.

The CSDDD may later serve as a guarantee that EU companies covered by the CSDDD will be considered as MS compliant on the basis of this law, unless they are convicted for breaches. The condition for this is that the CSDDD is, as it is proposed now, aligned with the UNGPs and OECD MNE guidelines.

5.8. Criterion 2: No final conviction in court on human rights including labour rights and refusal to engage in certain stakeholder dialogue mechanisms

Criterion 2 requires that:

1. The company or its top management, including the top management of its subsidiaries, has been finally convicted on a breach of human rights due diligence laws such as the CSDDD, labour laws, consumer protection laws, data protection laws, humanitarian law, and criminal law. In practice, it might be necessary to differentiate between court proceedings involving serious violations and violations involving a large number of people from minor cases. Further work on this differentiation is necessary in the future. For this, implementing a disclosure requirement on respective court cases under CSRD might be considered.

   There are several sources of information on court cases against companies. In some countries, including non-EU, companies themselves have to report if a case has been filed against them. The CSRD requires companies to publish court cases and fines for breaches of labour law if they are, or could become, material for the company – for example, when violating labour laws on health and safety requirements.

For non-CSRD companies, there are other sources of information which yield data on lawsuits, such as:

Business and Human Rights Resource Centre Lawsuit database, Allegations database and Human Rights Defenders database, https://www.business-humanrights.org/en/from-us/lawsuits-database/

or

If a company refuses to enter in a dialogue with an OECD NCP, it should be considered not aligned with MS, as this shows that the company is not properly engaging with stakeholders, which is required by the UNGPs.
The process to file a complaint at an OECD NCP works like this: An individual or organisation has filed a case at a national contact point of the OECD. This can be done for any company headquartered anywhere except in the respective OECD country, or any company headquartered in the respective OECD country even if the breach takes place in any other country, including non-OECD countries. The NCP first analyses whether the case merits further examination. If it concludes that it does, the NCP facilitates the dialogue between the two sides.

If the company engages in the dialogue, this will either lead to a final statement or a report by the NCP. Some NCPs make an explicit statement as to whether the company has observed the guidelines or not. If an NCP makes the statement that a company has not observed the guidelines, the company could be considered not aligned with MS. The data on NCP cases can be found here: https://mneguidelines.oecd.org/database/

or

Not responding to concerns taken up by the BHRRC within three months would be a sign of not adequately engaging with stakeholders, and therefore would be considered as non-compliant with MS. This indication of non-compliance as a result of not responding would last for two years The Business and Human Rights Resource Centre works like this: The (BHRRC) digital platform stores news and allegations relating to the human rights impact of over 20,000 companies. In certain instances when an allegation of misconduct has been raised against a company, and the center has found no evidence of a public response to the concerns, it may invite the company to respond as part of its company response mechanism. In this case, any response from the company will be displayed in full on the website. Respective data can be found on: https://www.business-humanrights.org/en/companies/?company_name=&sector=&headquarters=&has_dashboard=on&letter=#company_index_formars.

5.9. Suggestion for implementation of criteria for large non-EU companies and large EU companies until CSRD is implemented

The following guidance is proposed for large non-EU companies and large EU companies until the CSRD is implemented:

Criterion 1.

The company has not implemented an adequate HRDD which follows the six steps of the UNGPs. The HRDD of a company should be scrutinised and assessed as to whether it follows and implements the six

steps of the UNGP. This includes the reporting on the implementation of the six steps of the UNGPs. As audit/assurance of these disclosures will be voluntary for non-EU companies, an additional check on implementation is necessary. To do this, investors might consider data resources such as the World Benchmark Alliance (WBA) assessment of more than 1,000 companies on the basis of their reporting.

https://www.worldbenchmarkingalliance.org/research/2022-social-transformation-baseline-assessment/

Companies not yet assessed by the WBA can be assessed by investors using the WBA core UNGPs methodology. This employs 12 core indicators which are aligned with the UNGPs. Details relating to the methodology can be found here:

https://www.worldbenchmarkingalliance.org/research/corporate-human-rights-benchmark-core-ungp-indicators/

The UNGP core indicators of the WBA mirrors the requirements of the UNGPs as shown in the following table:

	OECD/UNGP requirements	**World Benchmark Alliance Core UNGP indicators**
1	Embedding a commitment to respect human rights into policies and procedures.	A.1.1 Commitment to respect human rights A.1.2.a Commitment to respect the human rights of workers: ILO Declaration on Fundamental Principles and Rights at Work[32] B.1.1 Responsibility and resources for day-to-day human rights functions (Embedding)
2	Identification and assessment of adverse impacts including through stakeholder engagement	B.2.1 Identifying human rights risks and impacts B.2.2 Assessing human rights risks and impacts
3	Taking actions to cease, prevent, and mitigate adverse impacts	B.2.3 Integrating and acting on human rights risks and impact assessments
4	Track implementation effectiveness	B.2.4 Tracking the effectiveness of actions to respond to human rights risks and impacts
5	Communicate	B 2.5 Communication on human rights impacts
6.	Remediation, including the establishment of a grievance mechanism	C1. Grievance ;Mechanisms for workers C.2 Grievance mechanisms for external individuals and communities C.7 Remedying adverse impacts

[32] Core WBA indicator A.1.2.a (Commitment to respect the human rights of workers: ILO Declaration on Fundamental Principles and Rights at Work) needs to be read together with A.1.1 (Commitment to respect human rights). Human rights of workers go beyond ILO fundamental principles and rights at work; they in particular also cover working conditions such as fair wages and safe and healthy workplaces as outline in the International Covenant on Economic, Social and Cultural Rights.

Criterion 2

The assessment of criterion 2 on the outcomes of the HRDD would follow the guidelines given above for CSRD companies. In addition, further independent resources to check the outcomes can be employed to assess alignment with MS.

5.10. Suggestions for assessing adequate DD processes with the help of disclosure requirement of CSRD disclosure requirements, as published in the draft ESRS

In future, the following disclosure requirements might assist in assessing whether a company has implemented an adequate HRDD processes:

1. Adequacy of due diligence system

The due diligence system of a company should be adequate to the risks of the business model, the countries risks it operates in and the sector risk.

The following sample of draft ESRS disclosure requirement shows that information on these risks are likely to be forthcoming

1. Draft ESRS on workers, value chain workers, communities, and consumers: DR 1: Impacts originating from business model and strategy

2. Draft ESRS 1 [Disclosure requirement 3] – Sector(s) of activity

148 The undertaking shall provide a description of its significant activities, headcount, and revenue.

149 The principle to be followed under this disclosure requirement is to allow an understanding of the distribution of the undertaking's activities by reference to a common sector definition.

150 The disclosure shall include the following information:

(a) An illustration of the significant sector(s) the undertaking is active in, including in which significant country.

(b) A description of the groups of significant products or services the undertaking offers and to whom, providing information on:

(i) Significant group of products and services offered,

(ii) Significant markets the undertaking operates in,

(iii) Significant customer groups targeted by the undertaking.

(c) The total number of headcount and its breakdown by significant country, and,

(d) A breakdown of the total revenue, as included in its financial statement, by significant sector and by significant country.

[Draft] European Sustainability Reporting Standard SEC1 Sector classification standard. In appendix C this standard identifies specific sector risks which will help auditors and investors to identify risks associated

with certain sectors, and hence which risks companies working in these sectors have to address in their DD processes.

2. The company reacts adequately to controversies it is facing on human rights violations

The reaction of the company should be adequate to the risks and controversies it faces. The following sample of draft ESRS disclosure requirements will give an insight in whether a company's reaction on HR risks and controversies is adequate

[Draft] ESRS S3 Equal Opportunities Disclosure requirement 6: Violation of equal opportunity rights where it is financially material to the undertaking.

[Draft] ESRS S2 Work European Sustainability Reporting Standard S2 Working Conditions:

DR 5 31: 31 The undertaking shall disclose information associated with work-related injuries, ill health, accidents and fatalities of employees and all non-employee workers.

[Draft] ESRS S1 Own Workforce General Standard:

AG 79: In the case of worker privacy and surveillance, the undertaking shall explain the steps the company has taken to identify and eliminate actual and potential violations of workers' right to privacy in its own workforce.

[Draft] ESRS S4 Other work-related rights

[Disclosure Requirement 8] Violations of workers´ other work-related rights:

AG24. The undertaking shall report whether actual negative and positive impacts on workers' other work-related rights have materially altered the financial position of the undertaking during the reporting period.

AG25. If the undertaking has suffered penalties as a result of such violations, the undertaking shall report on the total amount of monetary losses suffered.

[Draft] ESRS S4 Other work-related rights

[Disclosure Requirement 8] Violations of workers´ other work-related rights

28. The undertaking shall report on the violation of workers' other work-related rights in cases where it is financially material to the undertaking.

5.11. Non-alignment examples related to criterion 1

Below are some examples of criterion 1 in practice:

Non-existence of adequate due diligence processes

> There are specific human rights risk inherent to the business model of the undertaking, but these risks are not adequately addressed by the undertaking's due diligence processes

1. A haulage company employs more than 50% self-employed drivers but, despite trade union reports of abuses, does not address the risk that these workers might not be adequately covered by social security, and are forced to work longer than allowed under labour law in the countries of operation to earn the minimum wage.

2. A textile company sources a double-digit percentage of its products from a country in which, according to the 2019 ITUC report[33] there is no guarantee of workers´ rights. However, the company does not explain how it is addressing this risk.

The company has operations in countries with systematic human rights violations, but these risks are not addressed in respective due diligence processes

3. A company imports and re-sells solar panels produced in a country known for forced labour issues. The company has in place HRDD commitments and processes, but these do not address these issues in its risk assessment.

4. A food producer processes cocoa sourced in West Africa. Recent studies show that more than two million children are working on cocoa farms in this region. However, the company does not mention child labour in cocoa producing countries in its risk assessment.

5. The company builds wind parks in a country with land disputes due to the installation of wind power parks. There have been land rights conflicts regarding the construction of wind parks in this area. This risk has not been addressed in the companies´ risk assessment.

6. A building company is involved in large infrastructure projects in a country with a high risk of illegal evictions, violations of workers´ rights and corruption. However, none of these risks are mentioned in its risk assessment.

There are known controversies on human rights related to the sector the undertaking is working in, such as the mining sector. However, the undertaking is not demonstrating due diligence processes that address these issues.

7. A steel company sources its ore from countries associated with violations of human rights in mining communities However, these risks are not mentioned in the countries' risk assessments.
8. A steel company uses scrap metal from deep-sea vessels in geographies, where ships are dismantled on the beaches under precarious health and safety conditions. However, this is not addressed in the risk assessment of the company.

[33] https://www.ituc-csi.org/IMG/pdf/2019-06-ituc-global-rights-index-2019-report-en-2.pdf

Box 1: Example regarding consumers´ rights

A car manufacturer develops connected cars. Connected cars collect an immense amount of data. Some of this data is non-personal, while some is personal and could potentially lead to the profiling and even tracking of the driver(s) of the car. This data can be used for a great variety of purposes, such as sharing data with insurance companies to define your risk profile (potentially leading to higher insurance premiums), but also with other companies and stakeholders, to geolocalise the driver (with many possible outcomes, among which is a more focused exploitation of the driver's biases).

In order for a car manufacturer to be allowed to claim they have set in place minimum social safeguards to protect the drivers' and owners' of connected cars data, they should be able to demonstrate compliance with data protection rules and principles. In particular, this would require:

The existence of a company privacy policy that respects and puts in practice fundamental data protection principles, such as fairness and transparency of processing, data minimisation, purpose limitation, security of processing, and data protection by design and default.

Clear, accessible, and easy to understand information provided to the car owner/driver regarding the processing of the data produced by the car, the purposes for which it is used, and who has access to such data. This ensures the car owner/driver can effectively exercise their data protection rights, for example the right to object to the sharing of data with third parties on the basis of the car owners' legitimate interest.

A clear, effective, and easy mechanism to request consent from the driver/owner to use their data for any commercial purposes which are not directly related to the core functioning of the car, particularly any commercial purposes that require data sharing with third parties. Refusing or withdrawing consent should be as easy as giving it. Consent should be specific, informed, unambiguous, and freely given. Requests for consent should not combine multiple purposes.

The fulfilment of these requirements is similar to General Data Protection Regulation (GDPR) in principle and function. However, the minimum safeguard would not be violated by any circumstance outside the company's governance control. Such issues may be sovereign security demands in the country of operation conflicting with data protection – in which case, compliance with local laws would not constitute a violation of minimum safeguards. For example, even though it may violate GDPR.

Box 2: Example regarding workers' rights

The ITUC's Global Rights Index provides data on risks to workers in specific countries. Companies can use this data when developing their human rights due diligence to ensure respect for labour rights, including workers in value chains. If a company is seeking to prevent its workforce from organising and bargaining collectively, this would be evidence of an inadequate human rights due diligence system.

Although clearly highly dependent on the accuracy of corporate reporting, the current draft CSRD disclosure requirements could provide several useful reference points for assessing whether a company is implementing an adequate HR due diligence system in relation to respect for labour rights. For example, Disclosure Requirement 2 Collective bargaining coverage under ESRS S2 Own workforce

working conditions requires: "*The undertaking shall disclose information on the extent to which the working conditions and terms of employment of its own workforce are determined or influenced by collective bargaining agreements."* ESRS S5 Value Chain Workers Disclosure requirement 5 which covers *Processes for engaging with value chain workers about impacts* can also be helpful here.

Other relevant disclosure requirements which could provide evidence on the effectiveness of due diligence processes in relation to labour rights include ESRS S2 Disclosure Requirement 5 Performance of the health and safety management system, which requires: "*Disclosure of the number of incidents associated with work-related injuries, ill health and fatalities of its own workforce and rate,"* and Disclosure Requirement 8 Fair renumeration. This indicator includes: "*What % of own workers are earning less than a fair wage (disaggregated by gender and employee/non-employee status)*?"

ESRS S4 Disclosure Requirement 6 Working Hours requires: "*The undertaking shall disclose the percentage of its own workers that exceed 48 hours per week over the applicable reference period*." Disclosure Requirement 8 Violations of workers' other work-related rights includes an indicator on "*the total amount of fines, penalties, and compensation for damages as a result of violations regarding workers' other work-related rights as specified under the objectives section."*

5.12. Further guidance on applying non-alignment criteria on the topics of corruption, taxation, and fair competition

5.12.1. Corruption

Corruption and bribery are topics covered by MS standards. Corruption is not explicitly mentioned under the CSDDD, so companies covered by the CSDDD do not automatically comply with the OECD guidelines on corruption. However, the CSRD requires disclosures on measures implemented within the company to prevent corruption. The OECD guidelines require the following statements and measures from companies on corruption:

A) Corporate undertakings "should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Enterprises should also resist the solicitation of bribes and extortion." (OECD MNE Guidelines, VII.)

B) In order to meet the expectation in (a), undertakings should "develop and adopt adequate internal controls, ethics and compliance programmes, or measures for preventing and detecting bribery, developed on the basis of a risk assessment addressing the individual circumstances of an enterprise, in particular the bribery risks facing the enterprise (such as its geographical and industrial sector of operation)" (OECD MNE Guidelines, VII.2). The text goes on to require enhancement of transparency of the undertakings activities as well, as ethics and compliance programmes to enhance employee awareness and compliance. (OECD MNE Guidelines, VII.5. and 6.)

Processes implemented to prevent corruption and bribery in a company is to be understood as a means to an end, rather than as an end in and of itself. As a result, assessing compliance with MS should combine considerations of processes and outcomes.

For undertakings, this means communicating on process development AND on actual occurrence of corruption and bribery.

Based on these two dimensions, two recommended criteria for alignment with minimum safeguards can be formulated:

1. The company has not developed and adopted adequate internal controls, ethics and compliance programmes, or measures for preventing and detecting bribery.
2. The undertaking or senior management, including the senior management of its subsidiaries, has been finally convicted on corruption or bribery.

If one of the two criteria applies to an undertaking, it should be considered not compliant with MS. The status of non-compliance should be upheld until the company has proved that its processes have been improved in a way that a repetition of breaches is unlikely.

When applying the criteria, it should be considered that in some authoritarian states the government initiates legal actions on issues of bribery corruption or tax evasion against NGO and companies to silence critical voices and civil society.

Disclosure Requirements under the CSRD will provide the necessary information to assess whether a company meets the two criteria above:

	OECD requirements	**ESRS G2: Business conduct**
1	Develop and adopt adequate internal controls, ethics and compliance programmes, or measures for preventing and detecting bribery.	ESRS G2 28: The undertaking shall provide information about its system to track, investigate, and respond to allegations or incidents relating to corruption. ESRS G2 30: 1. An overview of the system in place to detect and address corruption 2. Whether the investigators or investigating committee are separate from the chain of management involved in the matter 3. The actions or remediation plans to manage the confirmed incidents 4. The system to report outcomes to senior management and the highest governing body(s) where relevant 5. How the highest governing body(s) exercise oversight on the actions to detect, prevent and respond to corruption related allegations or incidents 6. Whether the entity has taken a public commitment to determining root causes of the allegations or incidents, and the

		actions to prevent them from occurring in the future. ESRS G2 35: The undertaking shall provide information about any anti-corruption training programmes offered 1. Identification or definition of the persons within the organisation who are most at risk in respect of corruption 2. The nature and scope (including location and staff included) of anti-corruption training programmes offered or required by the undertaking 3. The scope and depth covered by the training programmes provided 4. The percentage of persons who are most at risk covered by training programmes 5. The assessment methodology to ascertain whether the target audience acquired the necessary knowledge. ERSRS G3 38 The disclosures required by paragraph 35 shall include information about how the undertaking shares this anticorruption policy within its value chain or with business partners.
2	The undertaking or senior management has not been convicted of bribery.	ESRS G2 41 The undertaking shall provide information on any confirmed corruption incidents that came to its attention during the reporting period. ESRS G2 43 1. Sanctions brought against the undertaking or its employees during the reporting period regarding corruption 2. The number of reported allegations of corruption received through whistleblowing channels 3. the number of investigations launched internally, and the number of confirmed incidents of corruption 4. The number of confirmed incidents in which employees were dismissed or disciplined for corruption-related incidents

		5. The number of confirmed incidents when contracts with business partners that were terminated or not renewed due to violations related to corruption 6. Legal cases regarding corruption brought against the organisation or its employees during the reporting period, and the outcomes of such cases.

Disclosures Required for non-European companies

Information equivalent to disclosures on anti-corruption measures and on incidents of corruption required under CSRD should be provided to consider the company MS compliant. A company or its senior management, including the senior management of its subsidiaries, which/who has been finally convicted in court on bribery or corruption should be considered not compliant with MS.

SME information on anti-corruption measurements adequate to the size and risk profile of the company must be disclosed to consider the company MS compliant. An SME is not compliant if it has been finally convicted of corruption.

Example of non-compliance with MS:

1. The company has been finally convicted for systematically using bribery with knowledge of senior management
2. An undertaking fails to report on its anti-corruption strategies and processes in its sustainability reporting

If one of the two criteria applies to an undertaking, it should be considered not compliant with MS. The status of non-compliance should be upheld until the company has proved that its processes have been improved in a way that a repetition of breaches is unlikely.

5.12.2. Taxation

The topic of tax compliance as an element of MS stands out, in that is neither considered by CSDDD nor by CSRD. Nevertheless, the identification of procedures that are relevant and adequate for establishing compliance with the MS can follow the analytical process proposed for human rights and corruption, by considering OECD MNE Guidelines, which holds two key expectations for undertakings:

(a) Undertakings should comply with the letter and the spirit of tax laws and regulations of the countries in which they operate. Complying with the spirit of the law is defined as “discerning and following the intention of the legislature”, which in turn is supposed to guide the determination of the tax amount legally required. (OECD MNE Guidelines, XI.1.)

(b) In order to meet the expectation set out in (a), undertakings should “treat tax governance and tax compliance as important elements of their oversight and broader risk management systems and “(…) adopt tax risk management strategies to ensure that the financial, regulatory and reputational risks associated with taxation are fully identified and evaluated.” (OECD MNE Guidelines, XI.2.)

The first expectation is focused on the end-goal or performance of undertaking, for example avoiding and addressing negative impacts on society. The second focuses on the means to achieve that end, for example policies and processes to embed tax compliance throughout an undertaking.

Tax strategies implemented by a company and tax risk management systems are to be understood as a means to an end, rather than as an end in and of itself. As a result, assessing compliance with MS should combine considerations of processes and outcomes.

For undertakings, this means communicating on processes and systems AND on compliance with the law.

This two-dimensional assessment of MS alignment directly flows through to the proposed two recommended criteria for alignment with minimum safeguards:

1. The company does not treat tax governance and compliance as important elements of oversight, and there exists no adequate tax risk management strategies and processes as outlined in OECD MNE Guidelines covering tax.
2. The company has been finally convicted of tax evasion. In the future it might be necessary to further qualify the kind of court cases.

If one of the two criteria applies to an undertaking, it should be considered not compliant with MS. The status of non-compliance should be upheld until the company has proved that its processes have been improved in a way that a repetition of breaches is unlikely.

An undertaking that fails to meet one or more of the criteria should not be considered compliant or in compliance with MS.

It should be mentioned here that the emerging understanding of tax compliance is no longer limited to tax evasion, but also includes tax avoidance through aggressive tax planning. This understanding requires, beyond a focus on the spirit of the law, that tax planning follows economic realities to ensure fairness to the countries involved.

However, as the OECD MNE Guidelines are now more than a decade old, such emerging understanding cannot strictly be derived from the text and will require an update of the Guidelines in order to establish more stringent criteria for MS criteria 2. Nevertheless, endorsement of standard GRI 207: Tax 2019 is recommended as an indicator of und undertaking's more ambitious understanding of tax fairness.

Despite the fact that tax isn't explicitly managed in CSRD, it is expected that the ESRS will provide investors with information to evaluate the adequacy of tax strategies and risk processes of a company. This is due to the stipulation in OECD MNE guidelines that tax matters are to be considered "important matters of board oversight and risk management". Together with the fact that the OECD MNE Guidelines stress the importance "that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities", it can reasonably be concluded that tax matters are to fall under "sustainability impacts, risks and opportunities", which makes them reportable under ESRS and will allow investors to form a view on an undertaking's self-assessment of MS-alignment. What is more, it follows that tax oversight is to be prioritised by undertakings' boards.

OECD requirements	**ESRS 2: Strategy and business model, and ESRS 2: Sustainability material impacts, risks and opportunities**

1	Treatment of tax governance and compliance as important elements of oversight.	ESRS 2 31 (a): A summary of the undertaking's material sustainability risks and opportunities affecting its activities that due to their importance are prioritised and monitored directly by the highest governing bodies with the appropriate cross-reference to actual and potential material risks and opportunities on sustainability matters as identified under ESRS 2 Sustainability material impacts, risks, and opportunities.
2	Existence of tax risk management strategies to ensure full identification and evaluation.	ESRS 2 7: Provide information (i) on how the undertaking is organising its identification and assessment and (ii) what is in the scope of its identification and assessment of sustainability matters that result in material sustainability-related impacts, risks, and opportunities.

Non-CSRD Companies

Non-CSRD companies should provide equivalent information on treating tax compliance as important elements of oversight to be considered MS compatible and must not have been convicted at court on tax fraud or tax evasion.

When applying the criteria, it should be considered that in some authoritarian states, governments initiate legal actions on issues of bribery corruption, or tax evasion, against NGO and companies to silence critical voices and civil society.

5.12.3. Fair competition

Competitive behaviour is covered by CSRD, but not CSDD. It therefore warrants additional considerations. However, procedures required by the OECD Guideline for MNEs that are relevant and adequate for establishing compliance with the MS are equivalent to that on taxation:

a) Undertakings should "carry out their activities in a manner consistent with all applicable competition laws and regulations, taking into account the competition laws of all jurisdictions in which the activities may have anticompetitive effects (…)" and "refrain from entering into or carrying out anti-competitive agreements among competitors." (OECD MNE Guidelines, X.1. and 2.)
b) In order to meet the expectation in (a), undertakings should "regularly promote employee awareness of the importance of compliance with all applicable competition laws and regulations, and, in particular, train senior management of the enterprise in relation to competition issues." (OECD MNE Guidelines, X.4.)

The first expectation is focused on the end-goal or performance of undertaking, for example, avoiding and addressing negative impacts on society. The second focuses on the means to achieve that end, for example, sensitisation and training throughout an undertaking.

(b) is to be understood as a means to an end, rather than as an end in and of itself. As a result, assessing compliance with MS should combine considerations of processes and outcomes.

For undertakings this means communicating on training efforts AND on actual occurrence of anti-competitive behaviour.

Based on these two dimensions, two recommended criteria for alignment with minimum safeguards can be formulated:

1. The company does not promote employee awareness of the importance of compliance with all applicable competition laws and regulations and does not train senior management in relation to competition issues.
2. The company or its senior management, including the senior management of its subsidiaries, has been finally convicted for breaking competition laws.

If one of the two criteria applies to an undertaking, it should be considered non-compliant with MS. The status of non-compliance should be upheld until the company has proved that its processes have been improved in a way that a repetition of breaches is unlikely.

Requirements under proposed CSRD can be directly mapped to these two criteria:

	OECD requirements	**ESRS G2: Business conduct**
1	Promotion of employee awareness and training of senior management in relation to competition issues.	ESRS G3 40 The undertaking shall provide information about the approach followed to cultivate and promote risk awareness within the organisation. ESRS G2 42 This disclosure required by paragraph 40 shall include information on the processes in place and the relevant training and other initiatives that promote risk culture throughout the undertaking's organisation, from its highest governance body to its executive and operational levels, to encourage better understanding, communication, and practices related to risk management.
2	No conviction of anti-competitive behaviour.	ESRS G2 45 The undertaking shall provide information on any confirmed incidents of anti-competitive behaviour it is facing during the reporting period. ESRS G3 47 (a) Violations of anti-trust and monopoly legislation where the undertaking or its subsidiaries was named as a participant by a legal authority. (b) Number of new, continuing, or finalised legal action (separately) during the reporting period regarding anti-competitive behaviour.

		(c) Main outcome of legal proceedings against the undertaking concluded during the reporting period, including sanctions and fines.

Non CSRD Companies

Non-CSRD companies should be providing equivalent information on risk awareness and training on anti-competitive behaviour.

If the company or its senior management, including the senior management of subsidiaries, has been finally convicted for breaching competition law, the company should be considered non-compliant with MS.

Information can be sought here:
Compliance with EU competition laws is monitored by the commission. Cases and breaches can be found on Competition Policy (europa.eu): https://ec.europa.eu/competition/elojade/isef/index.cfm

6. Banks and Insurance companies

Some banking and insurance activities are eligible activities under the TR. Financing green transport is considered an environmental activity if the substantial contribution criteria, DNSH criteria, and MS are met. The same is true for the underwriting of climate related perils of insurance companies. In principle, the criteria for MS compliance for banks and insurers do not differ in content from those for companies, however there is some special guidance for banks´ and insurers´ HR processes which is reflected in the following section.

6.1. Banks as an undertaking carrying out a Taxonomy activity

The link between MS and banks is established in the Taxonomy Regulation. The financing of green transport is included in the taxonomy Climate Delegated Act as an eligible activity. For this activity, the bank would be the “undertaking carrying out the activity”, the activity being in this case lending or investing in green transport. Banks carrying out this activity would have to meet MS to be able to count these activities as Taxonomy-aligned.

For banks, in principle, the same two criteria for MS compliance worked out and explained in this report on human rights, corruption/bribery, taxation, and fair competition would apply. EU Banks will be obliged to report under the CSRD and are covered by the CSDDD. However, the current proposal of the CSDDD requires banks to “identify adverse impact only at the inception of the contract” only, which is not aligned with the UNGP and OECD MNE guidelines. Depending on the outcome of this discussion, and the final CSDDD, it is possible that compliance with the CSDDD for banks does not overlap with compliance with the MS.

Just as with non-financial companies a bank could cause, contribute, or be linked with human rights adverse impacts. Causing a human rights adverse impact would mean that the bank itself is directly responsible for it by, for example, discriminating against certain employees. A bank may contribute to or be directly linked to adverse human rights impacts through its client relationships. To prevent this, the

bank should implement the six steps of the UNGP. These should include ex ante due diligence processes to avoid providing financing or securities underwriting services to client activities that cause, contribute to, or are linked to significant adverse human rights impacts.

This may be done through the screening of clients based on risk factors. A relationship between a bank and a client is considered a "business relationship". As a result, banks are expected to consider and act on human rights throughout their corporate lending and securities underwriting activities and, where relevant, to use their leverage with their clients to influence them to prevent or mitigate adverse impacts. Where the bank is directly linked to an adverse impact through a client, but does not cause or contribute to it, the bank will not be responsible for remedying the impact. Further guidance on the responsibility of banks is given in:

http://mneguidelines.oecd.org/due-diligence-for-responsible-corporate-lending-and-securities-underwriting.pdf

http://www.ohchr.org/Documents/Issues/Business/InterpretationGuidingPrinciples.pdf.

6.2. Insurance companies

The following insurance services related to the underwriting of specific climate related perils are part of the Taxonomy Climate Delegated Act: accident and fire insurance, health insurance, travel insurance, and property insurance. Motor, marine, aviation, and transport insurance are eligible under the Taxonomy Regulation if linked to climate-related perils. To meet the Taxonomy criteria, these activities have to meet the respective SC and DNSH criteria. On top of this, the insurance company as a whole has to comply with MS. In principle, for insurers the same criteria for MS compliance worked out and explained in this report on human rights, corruption/bribery, taxation, and fair competition apply. EU insurers will be obliged to report under the CSRD and are covered by the CSDDD.

This means that as underwriters and asset owners they can cause, contribute to, or be linked with human rights abuses. To prevent this, the insurer should implement the six steps of the UNGPs. These should include putting ex ante due diligence processes in place in order to avoid insuring client activities that cause, contribute to, or are linked to significant adverse human rights impacts. This may be done through the screening of clients based on risk factors. A relationship between an insurer and a client is considered a "business relationship". As a result, insurers are expected to consider and act on human rights where relevant, and to use their leverage with their clients to influence them to prevent or mitigate adverse impacts.

As asset owners, insurers are typically far removed from the individuals and communities most severely affected by the activities of portfolio companies. Being in this situation, they should seek to engage with human rights organisations, experts, and credible representatives of rights-holders, such as global trade unions. This will meaningfully inform an institutional understanding of human rights risks and impacts involved with investment activities, gaps in business practice around human rights, and recommended actions to address those gaps.

Further information on HRDD and insures as asset owner is given in: https://investorsforhumanrights.org/investor-toolkit-human-rights

6.3. Special Case 1: Project finance

For any investment (loan or equity or mezzanine) in a potentially Taxonomy-aligned activity carried out by a listed, private, or public company, it is proposed that MS should be assessed on the basis of the recommendations for companies made in this report.

For investments in projects, the undertaking which has to be compliant with MS would be the undertaking which is implementing the project. This can be a project company which has been set up for the only purpose to carry out the project, meaning a special purpose vehicle (SPV). This SPV might be owned by one or several companies. If a company holds more than 50% of the SPV, the owner of the majority should comply with MS as described in this report. If there is no majority shareholder the SPV is considered the undertaking which is carrying out the activity and should comply with MS as suggested in this report.

If an SPV employs only a limited number of employees, they might easily fall under the category of SME, and would therefore be treated as such. However, projects are often huge and require large sums of financing. The impacts on human rights, corruption, and taxation, might therefore be considerable as they often operate in sensitive geographies and sectors. That is why SPVs should meet the MS requirements for CSRD companies or non-EU companies as outlined in this report, and not the lighter requirements for SME. Equator principles or the IFC performance standards might be a help to assess MS alignment of SPVs, however the criteria in this report should always apply as the IFC PS and Equator Principles are not fully aligned with the UNGPs. OECD Guidelines and additional measures to close those gaps would be expected of SPVs. [34] [35]

6.4. Special Case 2: Green Bonds

How to consider MS for green bonds and other use-of-proceeds instruments	
Type of issuer	Criteria
Public, private, or listed company under CSRD	The company is the "undertaking carrying out the activity", therefore criteria for large CSRD companies apply to the issuer of the green bond and other use-of-proceeds instruments. (In the case that an SME issues a green bond, the respective criteria apply).
Non-CSRD company	The company is the "undertaking carrying out the activity", therefore criteria for large non-CSRD companies apply to the issuer of the green bond and other use-

[34] Note that IFC PS and Equator Principles are not fully aligned with the UNGPs and OECD Guidelines and additional measures to close those gaps would be expected of SPVs

[35] OHCHR, Benchmarking Study of Development Finance Institutions' Safeguards and Due Diligence Frameworks against the UN Guiding Principles on Business and Human Rights, 2019. Note that in the summer of 2022 this study will be supplemented by an Annex explicitly looking at the human rights gaps in IFC PS https://www.ohchr.org/sites/default/files/Documents/Issues/Development/DFI/OHCHR_Benchmarking_Study_HRDD.pdf

DIHR, Ensuring a stronger focus on human rights in the Equator Principles, 2019, https://www.humanrights.dk/publications/ensuring-stronger-focus-human-rights-equator-principles

	of-proceeds instruments (in the case that an SME issues a green bond, the respective criteria apply).
Sovereigns and Sub-sovereigns	The sub-sovereign is the "undertaking carrying out the activity", therefore criteria for sub-sovereigns (yet to be fully developed) apply to the issuer.
Bank	The bank is not the undertaking carrying out the activity, but the entity receiving the loan or other form of financing is the "undertaking carrying out the activity" and should meet the respective criteria for companies or for sub-sovereigns. The exception are households as Article 18 documents only refer to businesses. MS are not applicable to households.

6.5. SME

Small-to-medium sized enterprises (SMEs) are businesses with up to 250 employees, with 93.3% of all enterprises in the EU-27 being micro SMEs with less than 10 employees.[36] This means that these companies will most likely not be covered under the CSDD Directive and will not have to report under the CSRD unless they have a turnover of more than EUR 40 million and a balance sheet of EUR 20 million (see also special criteria for project finance and SPVs). However, there is a need for an understanding of whether an SME might want to voluntarily report on taxonomy alignment. It is also possible that as part of a supply chain, clients will ask them about their compliance with the UNGPs and MS. In general terms, requirements on SME for MS compliance must be proportionate to their risk, leverage, and size.

SMEs based in Europe which comply with applicable law do a lot already to comply with the UNGPs. However, risks remain, for example in the supply chain and in fields such as discrimination. For these, the "Guide to human rights for small and medium sized businesses"[1] gives the following guidance, suggested to be taken as a proxy for MS compliance:

- SMEs commit to respect human rights. Depending on the size of the business, this could be done on its homepage or in its statutes. If there are none, it can be done in other forms, such as self-declaration. For an SME, like any other enterprise, it is important that respect of human rights is an attitude reflected in the way it does business.
- SMEs identify their risks in their own business, for example discriminating in recruitment processes or risks in their supply chain. This can be done by amending existing processes, for example on health and safety, or by using management system certifications which also consider the supply chain.
- SMEs act on human rights risks by designating someone in charge of acting on HR risks. Risks in the supply chain might be met by considering the leverage the company has on certain suppliers.
- In the case of a breach, depending on its severity, there are several options to react, starting with an apology to financial compensation.
- The SME should communicate the steps taken on HRDD.

[36] See EU definition of SME: https://www.eu2020.de/eu2020-en/news/article/looking-back-looking-ahead-sme/2416916

- SMEs should consider giving the opportunity to facilitate complaints by employees, clients, or the community by point to an anonymous complaint mechanism, because this is a tool to understand problems at an early stage.

It is important for an SME to communicate its commitments and take steps to affected, or potentially affected, stakeholders. When financing an SME which carries out EU Taxonomy activities to meet MS, financial market participants should take steps to verify that these points are ensured, for example via a self-declaration. Banks can also engage with the SME to help it meet the necessary requirements.

If an SME has been finally convicted for a breach in human rights or labour rights, it would be considered as non-compliant until human rights processes have been improved.

Banks and investors should verify violations, such as using external databases on adverse media checks, and if relevant, verify with the SME the steps taken to remediate the harm caused.

7. Sovereigns and Sub-sovereigns

Where banks are lending to public authorities such as regional and local governments, they might want to count an economic activity carried out by the sub-sovereign as Taxonomy-aligned and consequentially consider it in their green asset ratios. This means that the economic activity of the regional or local public administration has to meet the MS. Green bonds issued by sub-sovereigns might also finance Taxonomy-aligned activities so that some guidance on them is needed as well. At the same time the UNGPs and the OECD MNE Guidelines do not address lending to public authorities or issuance of bonds by sub-sovereigns, which makes it difficult to base advise on any authoritative interpretation of the implications of these standards in the case of sovereign or sub-sovereign debt.

There are multiple ways to assess the human rights situation in a country. Depending on which human rights are considered, and which policy area is focused on, the outcomes will vary. If freedom of press is focused on, the result is different from when freedom of association or physical integrity or access to shelter is considered. Some kind of human rights violations can be found in every country. In face of this situation, it is suggested to measure instead the human rights commitment of the state concerned. This can be done by considering the mechanisms and channels made available to monitor the human rights situation in a given country. One relevant global criterion in this regard is the availability of a National Human Rights Institution (NHRI). NHRIs are state-mandated bodies, independent of government, with a broad constitutional or legal mandate to protect and promote human rights at national level.

NHRIs are accredited based on a globally agreed UN standard, namely the Paris Principles. They set out minimum standards for NHRIs to be considered credible and independent institutions. These principles require NHRIs to be independent in law, membership, operations, policy, and control of resources. They also require that NHRIs have a broad mandate; pluralism in membership; broad functions; adequate powers; adequate resources; cooperative methods; and engage with international bodies. The accreditation is carried out periodically by the Sub-Committee on Accreditation (SCA) of the Global Alliance of NHRIs (GANHRI).

The assessment of compliance with the Paris Principles is based on accreditation by a peer review system, under the auspices of the UN Human Rights Office, under which the GANHRI SCA is composed of one A-status NHRI from each of the four 'GANHRI regions' (Africa, the Americas, Europe, and Asia-Pacific). Each regional group appoints an NHRI to serve for a three-year, renewable term. A state that has an A-status

accredited NHRI can be considered as taking a visible and measurable effort to take its human rights obligations seriously. That said, human rights violations occur in all countries, including those with A status NHRIs. As of 2022, GANHRI accredited 130 institutions, with 90 NHRIs being accredited with "A" status (fully compliant), 30 with "B" status (partially compliant) and 10 with "no status".

For the local and regional levels of government, a comparable indicator is missing. However, some local governments and cities take comparable efforts to render their commitment to human rights obligations efficient and visible. Inspiration can be drawn from the work of the EU Agency for fundamental Rights (FRA). By the end of 2021, and after sharing experiences between various EU cities, FRA published guidance on how cities can efficiently implement a human rights framework. This framework is explicitly not only applicable in cities but also in other sub-sovereigns: "The proposed framework refers to 'cities' – but can be applied to towns and other forms of local government. These include municipalities and metropolitan areas, as well as forms of regional government, such as counties, provinces, or regions". It basically translates the six steps of the UNGP to sub-sovereigns by taking their particular structure and purpose into consideration.

The proposed FRA framework compiles the elements necessary for becoming a human rights city in the EU. The framework is a flexible tool acknowledging the diversity of local contexts, the different powers of local governments, the size of the city, and its resources. The framework is a 'living document' to review and customise. It has three strands (foundations, structures, and tools) and proposes for each of these three dimensions concrete measures to be taken. These steps (altogether 20) include the adoption of a formal declaration of the city's commitment to human rights at the highest political level; the nomination of an elected representative in the city council on human rights; an annual reporting mechanism on the human rights performance of the city; mainstreaming of human rights in all policy areas and processes of the city administration, adopting a 'whole-of government' approach to human rights, rather than seeing it as the responsibility of one department only; human rights budgeting (and procurement); putting in place procedures for scrutinising the compatibility of local policies and regulations with human rights, and assessing their impact on human rights, for example through a committee in the local council; proactive championing of human rights through communication initiatives and public awareness raising in the form of campaigns, awards or prizes, public debates, cultural or sports events with a human rights label, etc.

In contrast to the NHRI framework the framework for cities is new and does not yet have an official standing. Only a few cities have worked with it or have implemented it. In this situation, it cannot be made mandatory as an indicator of MS compliance for sub-sovereigns but cities which have implemented it display a clear sign of MS compliance.

Given this situation, it is suggested as general guidance that sub-sovereigns in a country with A or B status under the GANHR could be considered as compliant with MS. The list is regularly updated on a yearly basis and available on this website:

https://ganhri.org/membership/

This should not preclude investors from using their leverage to incentive further protection, respect and promotion of human rights by sovereigns and sub-sovereigns. Further guidance can be taken from the FRA framework for cities. The uptake of this guidance by sub-sovereigns should be monitored in the future to understand its application for assessing MS alignment for sub-sovereigns. If further clarity around the interpretation of UNGPs in the case of sovereigns and sub-sovereigns would arise, for example through

the UN Working Group on Business and Human Rights, it is advisable to re-evaluate the functioning of MS in the case of sovereigns and sub-sovereigns.

References:

Human rights cities in the European Union (europa.eu) (page 15)

Human rights cities in the EU: a framework for reinforcing rights locally (europa.eu) (page 19)

https://ganhri.org/accreditation/Strong and effective national human rights institutions – challenges, promising practices, and opportunities

The corruption perception index (CPI) of Transparency International is a widely recognised and applied tool to identify the prevalence of corruption in a country. It is therefore recommended that it is used to test compliance with MS. As the CPI tests the prevalence in a whole country, it is to be assumed that if there is high level of corruption this is true for the central government as well as for regional governments and municipalities. Therefore, a high level of corruption would also signal that sub-sovereigns are not aligned with MS.

8. Usability consideration on human rights due diligence processes

This advice on minimum safeguards was developed in the midst of ongoing drafting of major legislation in this area. In February 2022, the proposal for the EU due diligence law was published, its final version probably being adopted later in 2022 and implementation will not likely take place before 2025, while work on the disclosure requirements under the CSRD is ongoing. Apart from this there is as yet very little experience in how HRDD processes are audited as they are supposed to be under the CSRD.

In view of these uncertainties it is recommended that once human rights legislation and disclosure hereon are finalised, and some experience on practical implantation, auditing and court rulings is accumulated, this advice should be revised.

9. Gaps

The two criteria signaling compliance with MS in the report will have the effect that companies without adequate human rights due diligence systems and companies with final conviction in court on human rights and labour rights, corruption, tax evasion, fair competition, insufficient engagement in cases brought before OECD NCP, or which refuse to answer to allegations from the BHRRC, would not be considered compliant with MS. In practice this will leave some gaps. For example, human rights violations take place in countries where human rights violations are not prosecuted or where workers are exposed to state violence. In these countries, it is very difficult, impossible, or even dangerous to address human rights violations and to bring them for court.

There is a necessity to address these kinds of situations with MS because they pose reputational risks to the Taxonomy. However, it is presently difficult to identify these cases to offer clear cut advice and manageable sources of information.

Apart from reputational risks, it must also be considered that victims of severe human rights abuses who have no access to courts, OECD NCP or the BHRRC often are members of the most vulnerable groups in these countries. They are more likely to suffer these abuses because they do not have access to the law,

and their voices are not likely to be heard. So, apart from usability issues, there is no justification to ignore the situation of these people when applying MS.

Further work needs to be undertaken regarding how to cover these situations that are not addressed by the three channels worked out in this report (courts, OECD NCP and BHRRC). Research is required to identify these kinds of situations and try to understand, among other things, whether certain countries where these situations are more likely to happen can be singled out. This will help to identify a company's responsibilities in countries with a weak implementation of human rights and labour laws, as well as possible channels to address abuses.

Summary of Criteria for MS alignment

Overview of MS criteria				
	Human Rights	**Corruption**	**Taxation**	**Fair Competition**
EU companies in scope of CSRD should be considered non-compliant if one of the two criteria apply	1. The company has not established an adequate human rights due diligence process as outlined in the UNGPs and OECD Guidelines for MNEs. 2. There are signals that the company did not adequately implement HRDD and/or did violate HR. these are: a) The company has finally been convicted in certain types of court cases on labour law or on human rights. b) The following two indicators signal that the company does not engage with stakeholders although this is an integral part of the UNGPs. • An OECD National Contact Point has accepted a case, however the company refuses to engage with the party which has initiated it, or the company has been found non-compliant with the OECD guidelines by the NCP. • The Business and Human Rights Resource Centre (BHRRC) has taken up an allegation against the company, and the company has not answered to it within three months. Not answering an allegation would signal non-compliance for two years.	1.The company has no anti-corruption processes in place. 2. The company or its senior management, including the senior management of its subsidiaries, has finally been convicted in court on corruption.	1. The company does not treat tax governance and compliance as important elements of oversight, and there are no adequate tax risk management strategies and processes in place. 2. The company or its subsidiaries has been finally convicted on violating tax laws.	1. The company does not promote employee awareness of the importance of compliance with all applicable competition laws and regulations. 2. The company or its senior management, including the senior management of its subsidiaries, has been finally convicted on violating competition laws.
Non-EU companies and EU companies until CSRD is fully implemented are considered	1. The company has not implemented an adequate HRDD which follows the six steps of the UNGPs. As audit/assurance of these disclosures will be voluntary, an additional check on implementation is necessary. To do this, investors might consider data resources such as the World benchmark alliance (WBA) for an assessment.	1. The company has no anti-corruption processes in place 2. The company or its senior management including the senior management of its	1.The company does not treat tax governance and compliance as important elements of oversight, and there is no adequate tax risk management	1. The company does not promote employee awareness of the importance of compliance with all applicable competition laws and regulations. 2. The company or its senior management including the

non-compliant if one of the two criteria apply	2. See second criterion above.	subsidiaries has finally been convicted in court on corruption.	strategies and processes in place. 2. The company or its subsidiaries has finally convicted on violating tax laws.	senior management of its subsidiaries has finally convicted on violating competition laws.
SME should be considered non-compliant if one of the two criteria apply	1. The company has not established HRDD proportionate to its size and leverage, and to its HR risks. 2. The company has been finally convicted in court cases on human rights, labour rights, or consumer rights.	The company has been finally convicted of corruption in court.	The company has been finally convicted of tax evasion in court.	The company has been finally convicted of breaches of competition law in court.
Sub-sovereigns	The existence of an accredited National Human Rights Institution (NHRI) in the country is a sign of alignment with MS documents. Sub-sovereigns which have implemented the guidance on UNGPs for sub-sovereigns should be considered compliant with MS.	A high level of corruption according to the corruption perception index of Transparency International is a sign of non-alignment.	n.a.	n.a.
Project finance/Special purpose vehicles (SPVs)	For SPVs, the criteria for large EU and non-EU companies apply respectively. The equator principles might give guidance on compliance.	For SPVs, the criteria for large EU and non-EU companies apply respectively.	For SPVs, the criteria for large EU and non-EU companies apply respectively.	For SPVs, the criteria for large EU and non-EU companies apply respectively.
Banks and insurers	The criteria EU and non-EU companies apply respectively.	The criteria for EU and non-EU companies apply respectively.	The criteria for EU and non-EU companies apply respectively.	The criteria for EU and non-EU companies apply respectively.
Households	MS are not applicable to households.			
Additional criteria on companies with exposure to controversial weapons	Companies with exposure to controversial weapons, as defined in the SFDR regulatory technical standards as anti-personnel mines, cluster munitions, chemical weapons, and biological weapons, should not be able to count their activities as Taxonomy-aligned because of their non-compliance with the DNSH principle under the SFDR.			

Composition of the Subgroup

All members, observers and sherpas in this group have worked in their personal capacity for this report which does not necessarily reflect the position of their organisations.

Members and Observers of the Platform on Sustainable Finance are listed below. Members of Subgroup 4 on Social Taxonomy are in bold.

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