



# **PensionsEurope comments on the Platform on Sustainable Finance's paper about Minimum Safeguards**

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**1. PensionsEurope comments on the Platform on Sustainable Finance paper about Minimum Safeguards**

*General remarks*

PensionsEurope welcomes the opportunity to comment on the Platform on Sustainable Finance's paper about Minimum Safeguards (MS). The Report proposes two sets of criteria for the establishment of non-compliance with MS: one related to adequate due diligence processes implemented in companies (i.e. relying on corporate reporting and disclosure) and the other related to the actual outcome of these processes or the company's performance (i.e. relying on external checks on companies). PensionsEurope acknowledges that the Report tries to be as clear and thorough as possible, however minimum safeguards definitions could lead to differences in interpretation. Therefore, clarity and consistency should remain key elements during the development of MS. You can find below our specific answers to the key questions of the Platform's paper.

*Answers to the key questions and relevant comments:*

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**Question 1. Do you agree with this two-pronged approach?**

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- **Yes**
- No
- Don't know / no opinion / not applicable

PensionsEurope strongly supports this idea. The advice of the report includes the notion that companies covered in the future by the EU due diligence law (the [proposed CSDD Directive](#)) which is acting in compliance with the law, would be considered aligned with human rights as part of the minimum safeguards. As the requirements of these two sets of legislation overlap, we remain supportive, provided that the final scope and the requirements of CSDDD will indeed be aligned with the standards and norms of Taxonomy Regulation Article 18.

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**Question 2. Do you agree with this advice of the report?**

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- **Yes**
- No
- Don't know / no opinion / not applicable

The [UNGPs](#) require that due diligence processes implemented in a company result in human rights abuses being effectively prevented and mitigated. To check whether processes implemented in a company fulfil this requirement, PensionsEurope agrees with the report which suggests applying external checks based on a company

- a. having had a final conviction in court
- b. or not responding to complaints at OECD national contact points or allegations via [Business and Human Rights Resource Centre](#).

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**Question 3. Do you agree with this approach?**

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- **Yes**
  - No
  - Don't know / no opinion / not applicable
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**Question 3.1 Which type of court cases should be selected as criterion for non-compliance with minimum safeguards?**

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Reporting taxonomy-alignment is mandatory for many investors, including many pension funds. However, pension funds will not have the internal capacity to screen all investments on significant contributions, DNSH and minimum safeguards. Instead, they will rely on external data providers. It is crucial that these data providers come to the same conclusions about taxonomy-alignment. As such, it is desirable that the minimum safeguard check should be as objective as possible. Court convictions and refusal to cooperate in compliant procedures could therefore serve as part of the minimum safeguard check.

It will however be necessary to provide advice on:

- The severity of the case.
- How long a court conviction should lead to a disqualification under the taxonomy?

It could also be considered whether the court conviction needs to be related to the business unit involved in the taxonomy-aligned activity. For example, should a large multinational company be convicted in a class action suit for a single faulty product (e.g. for malfunctioning brakes of cars) should all of its economic activities (e.g. electric cars) be disqualified?

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**Question 3.2 Are there other types of external checks you would suggest (data for these checks should be publicly available and lead to the same result for a company)?**

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- **Yes**
- No
- Don't know / no opinion / not applicable

The advice given in the Report on corruption, taxation and fair competition is comparable to the advice on human rights. It requires that a company has implemented processes to avoid and address negative

impacts and that the company has not been finally convicted for violations in these fields. We are supportive of those suggestions

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**Question 4. Do you agree with this approach?**

- **Yes**
  - No
  - Don't know / no opinion / not applicable
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**Question 4.2 Are there other types of external checks you would suggest (data for these checks should be publicly available and lead to the same result for a company)?**

- **Yes**
  - No
  - Don't know / no opinion / not applicable
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Anti-competitive behavior is policed through administrative decisions (orders to end behavior) and fines. These are often challenged in court, but not always. Moreover, court procedures often take years, by which time the anti-competitive behavior has already ended. Competition authorities also tend to win most cases. As such it could be good to consider orders and fines by authorities in the field of competition law. Again, it would be necessary to consider how long a fine or court conviction would lead to disqualification under the taxonomy. A suggestion given in the Report on MS is to consider the human rights due diligence processes companies have implemented and do checks on their performance, rather than rely on controversial checks based on media coverage (as is done by some ESG rating agencies).

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**Question 5.2 What do you think these changes imply for investors?**

While PensionsEurope agrees that investors should consider the performance of corporate due diligence processes, currently information about these processes is lacking. Therefore, controversies are used as a proxy. It is therefore crucial that information on due diligence processes becomes available under the CSRD, with assurance by an external auditor. It is not possible for a pension fund to check the due diligence processes of all investee companies. As such, this element of minimum safeguards can only become operational once CSRD-reporting is fully in place.

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The [OECD guidelines for multinational enterprises](#) highlight the importance of good corporate governance. The Report takes this up by developing criteria for bribery/corruption, taxation and fair competition

**Question 6. Do you agree with this approach?**

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- **Yes**
  - No
  - Don't know / no opinion / not applicable
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**Question 7. Do you have further suggestions or comments on the Report?**

We would like to make the following additional comments:

- Although PensionsEurope feels the Report aims to be as clear and thorough as possible, minimum safeguards will most likely continue to be defined in a manner that could lead to differences in interpretation. We urge the Platform and the European Commission to closely monitor how data providers are applying the MS screen and to what extent the MS assessments diverge. Moreover, it could be good to investigate to what extent the MS screen disqualifies economic activities. Currently, only 1% to 2% of the EU equity market is taxonomy aligned. We support the Taxonomy as an ambitious framework, but the threshold should not become too high.
- Chapter 3 omits reference to the due diligence requirements in AIFMD and MiFID. These could be included for the sake of completeness.
- We strongly support the conclusion that compliance with the CSDDD leads to a positive MS assessment.
- It could be helpful to clarify the relationship between the social Taxonomy and the MS under the environmental Taxonomy. It may well be that the relationship is limited, as the Taxonomy is concerned with a minimum level of protection and the social Taxonomy with a significant contribution, but it would be helpful for investors to be aware of this.
- The title of chapter six is confusing, as the chapter related to more than banks and insurers. More substantively, the proposals relating to the issuers of green bonds are still very brief. It is not clear what is understood with "green bonds": bonds that qualify under the EUGBS or also non-EUGBS green bonds.
- It could be useful to discuss the relationship between the good governance requirements in the SFDR for Art. 8 and Art. 9 products and the MS requirements. The SFDR requires that companies that Art. 8 and Art. 9 products invest in, follow good governance practices with reference to "employee relations" and "tax compliance".

**PensionsEurope** represents national associations of pension funds and similar institutions for workplace and other funded pensions. Some members operate purely individual pension schemes. PensionsEurope has **25 member associations** in 18 EU Member States and 4 other European countries<sup>1</sup>.

PensionsEurope member organisations cover different types of workplace pensions for over **110 million people**. Through its Member Associations PensionsEurope represents **€ 7 trillion of assets** managed for future pension payments. In addition, many members of PensionsEurope also cover personal pensions, which are connected with an employment relation.

PensionsEurope also has **19 Corporate and Supporter Members** which are various service providers and stakeholders that work with IORPs.

PensionsEurope has established a **Central & Eastern European Countries Forum (CEEC Forum)** to discuss issues common to pension systems in that region.

PensionsEurope has established a **Multinational Advisory Group (MAG)** which delivers advice on pension issues to PensionsEurope. It provides a collective voice and information sharing for the expertise and opinions of multinationals.

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- Ensure that more and more Europeans can benefit from an adequate income in retirement;
- Policies which will enable sufficient contributions and good returns.

#### **Our members offer**

- Economies of scale in governance, administration and asset management;
- Risk pooling and often intergenerational risk-sharing;
- Often “not-for-profit” and some/all of the costs are borne by the employer;
- Members of workplace pension schemes often benefit from a contribution paid by the employer;
- Wide-scale coverage due to mandatory participation, sector-wide participation based on collective agreements and soft-compulsion elements such as auto-enrolment;
- Good governance and alignment of interest due to participation of the main stakeholders.

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<sup>1</sup> EU Member States: Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal, Romania, Spain, Sweden. Non-EU Member States: Iceland, Norway, Switzerland, UK.

