Bundesverband der Deutschen Volksbanken und Raiffeisenbanken e. V.
Bundesverband deutscher Banken e. V.
Bundesverband Öffentlicher Banken Deutschlands e. V.
Deutscher Sparkassen- und Giroverband e. V.
Verband deutscher Pfandbriefbanken e. V.

Die Deutsche Kreditwirtschaft

Comments

on Minimum Safeguards Consultation

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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.

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Comments on **on Minimum Safeguards Consultation**

Questions 1 (two-pronged approach)

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).

Q1 Do you agree with the proposed three options?

☐ Yes ☒ No ☐ No opinion / Not applicable

If no, please explain why you do not agree with this two-pronged approach:

The question whether a company complies with the due diligence processes (i.e. step 1) should alternatively, instead of relying only on external checks, also be answered in the following ways, particularly if the company at hand is a SMEs:

1. By providing that the applicable national legislation provides for sufficient guarantees concerning the specific topic, or
2. Through self-declarations made by the client concerning a specific topics (already being used e.g. by the European Investment Bank)

Moreover, it will be difficult for financial institutions to obtain information on companies not covered by the Corporate Sustainability Reporting Directive (CSRD) for their internal due diligence processes in a cost-effective manner.

External checks are viable only for larger companies, e.g. those subject to the CSRD. This necessitates a closer relation of Articles 3 and 18 of the Taxonomy Regulation with the CSRD (e.g. ESRS 2-GOV-5).

Question 2 (minimum safeguards & CSDD Directive)

The advice of the report is that companies covered in the future by the EU due diligence law (the proposed CSDD Directive) which are acting in compliance with the law would be considered aligned with the human rights part of the minimum safeguards as the demands of these two legislations overlap (provided that the final scope and the requirements of CSDDD will indeed be aligned with the standards and norms of Taxonomy Regulation Article 18).

Q2 Do you agree with this advice of the report?

☒ Yes ☐ No ☐ No opinion / Not applicable

If no, please explain why you do not agree with this advice of the report:

Klicken oder tippen Sie hier, um Text einzugeben.

Question 3 (UNGPs)

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, the report suggests applying external checks based on a company

a) having had a final conviction at court
b) or not responding to complaints at OECD national contact points or allegations via Business and Human Rights Resources Centre

Q3.1 Do you agree with this approach?

☐ Yes ☒ No ☐ No opinion / Not applicable

Please explain your answer:

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It is vital that a differentiation between serious violations and only minor cases is introduced. Treating minor breaches of e.g. tax or labour law in the same manner as serious violations would pose substantial risks for companies and could harm the ambitions around the taxonomy in its entirety. Particularly larger companies with diverse activities may be unable to prevent minor breaches in their entirety. Thus, we agree that a differentiation should be introduced between cases involving a large number of people from an organisation and minor cases. Further, we suggest the introduction of clear criteria for the removal of non-compliance with the MS by, e.g. an external audit, as to ensure auditors and other parties feel confident with the process and to avoid a situation, where it could appear impossible to return to a status of compliance with the MS, following a conviction in court.

Q3.2 Which type of court cases should be selected as criterion for non-compliance with minimum safeguards?

This must be limited to final court decisions or judgments against which no ordinary legal appeal whatsoever may be filed.

Q3.3 Are there other types of external checks you would suggest (data for theses checks should be publicly available and lead to the same result for a company)?

☒ Yes ☐ No ☐ No opinion / Not applicable

Please specify and explain the other types of external checks you would suggest:
Proof that applicable national legislation could alternatively provide sufficient guarantees concerning the topic at hand (e.g. national corporate supply chain due diligence obligations). Reporting under the CSRD should also be sufficient for the checks. It is important that corporate can keep the flexibility to decide which form of external check they want to apply. This could be an ESG rating or CSRD compliance. With regard to companies outside the scope of the CSRD and CSDDD, flexibility needs to be provided.

Question 4 (corruption, taxation and fair competition)

The advice given in the Report on corruption, taxation and fair competition is comparable to the advice on human rights in that it requires that a company has implemented processes to avoid and address negative impacts and that the company has not been finally convicted for violations in these fields.

Q4.1 Do you agree with this approach?

☐ Yes ☒ No ☐ No opinion / Not applicable

Please explain your answer:
Our member banks have for many years implemented processes - and hereby developed comprehensive databases - to avoid and address negative impacts in the area of corruption, taxation and fair competition based on the UNGPs, the OECD Guidelines for Multinational Enterprises and most importantly national regulation (social legislation). The application of the national law including its required burden of proof should therefore be considered as a proxy for compliance with the MS. As most public banks, cooperative and savings banks and regional promotional banks provide financing mostly to German and EU customers, compliance with the comprehensive set of national social legislation should be seen as a proxy for compliance with MS for those clients as well. Given the already existing practices and experience in our member banks, we further advocate that a company's processes should only be examined if a breach or a conviction for violations in these fields has been stated. At the same time, criteria need to be developed for measuring the severity of these violations.

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Q4.2 Which type of court cases should be selected as criterion for non-compliance with minimum safeguards?

This must be limited to final court decisions or judgements against which no ordinary legal appeal whatsoever may be filed.

Q4.3 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 ☐ No opinion / Not applicable

Please specify and explain the other types of external checks you would suggest:
Klicken oder tippen Sie hier, um Text einzugeben.

Question 5 (controversy checks)

A suggestion given in the Report on MS is to consider the human rights due diligence processes companies have implemented and do checks on their performance, rather than rely on controversy checks based on media coverage (as is done by some ESG rating agencies).

Q5.1 What do you think these changes imply for companies?

We agree with the report that the sheer existence of controversies does not mean that the due diligence process does not function. Said differently: the fact that no controversies are known does not necessarily imply that the processes are effective. The most important factor should be whether a due diligence statement exists. Nevertheless, controversy screening carry some weight, as the work of journalists and ESG rating agencies as controlling entities should not be underestimated. The auditor should be responsible for checking whether the controversies were taken into consideration adequately and whether the external view was used to improve existing processes. This follows the logic of UNGPs 11 and 15.

Financial institutions are already dealing with the implementation of several highly complex sustainable finance initiatives, such as SFDR, MiFID 2, CSRD, the EU Taxonomy as well as national supply chain due diligence acts. While we support the respect for human rights in the context of the EU taxonomy, the implementation of MS will lead to additional administrative costs if the criteria are too complex.
SMEs may not have a human rights due diligence system in place and should not be overburdened. They need more flexibility and should be subject to a less strict approach to due diligence processes (compare with the CSDDD, which is limited to larger corporates).
At the same time, the growth in the sustainable finance market might be endangered, if the criteria for the MS become too strict. Highly complex MS may e.g. reduce green bond issuances, as issuances would become even more complex and as issuers may want to avoid litigation risks.

Q5.2 What do you think these changes imply for investors?

It will significantly increase the difficulty to evaluate a company's performance as investors generally rely on ESG rating agencies. Evaluation on the suitability of the implemented processes is not straightforward and media coverage may thus serve as an indicator. It should be related to the PIAs whenever possible. The administrative cost derived from performing the analysis directly is too burdensome and would impair the financial activity. Documented internet research should be considered sufficient to fulfil the requirement.

Question 6 (OECD guidelines for multinational enterprises)

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.

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Q6.1 Do you agree with this approach?

☐ Yes ☐ No ☐ No opinion / Not applicable

Q6.2 If no, which other aspects of good corporate governance matters do you believe the advice should cover or refer?

See our answer to Q4.1. Concerning corruption/bribery, taxation and competition, banks are already highly regulated.

Question 7 (further suggestions)

Q7 Do you have any further suggestions or comments on the Report?

- The draft report provides no clarification on the frequency of the minimum social safeguards analysis. Do banks have to assess a counterparty's compliance with the minimum social safeguards only at the inception of the contract or regularly in order to assess taxonomy-alignment of a taxonomy-eligible loan? Banks cannot audit their customers' compliance annually, particularly in light of the long-term nature of many transactions and the involvement of SMEs. The efforts necessitated by a full annual re-analysis, the inconsistencies with the perimeters of the CSRD and the challenging data availability would result in a disproportionate burden for banks. One option would be to introduce a reactionary system that requires re-analysis in case of certain events, such as the opening of a production site outside the EU. Moreover, in case the re-analysis concerns a company that exhibits low risk of not fulfilling the minimum safeguards, a client self-declaration that clarifies that no major changes occurred since the last review should suffice.
- On scope: loans may involve guarantors or similar entities. While such entities form part of a loan agreement, they should not be subject to the minimum social safeguards. Otherwise, their conduct may impact existing transactions in which they have no active part.
- On level: The report recognises that the data required by the template for Article 8 disclosures should be considered at the level of the undertaking, even though the table asks the company to state compliance with the minimum safeguards on the basis of individual activities. Does this mean that any exposure to a company that is active in sectors that by definition do not fulfil the minimum safeguards is not taxonomy-eligible or -aligned, even if the specific transaction finances activities that fulfil all requirements? Furthermore, it should be questioned whether the criteria of the draft make any sense at all at funding level.
- The draft report states that EU companies in scope of the CSRD should be considered non-compliant, if they fail one minimum safeguard criteria. There is a need for an explicit clarification that companies which have to follow CSRD only according to the national laws are not subject to the Taxonomy Regulation and therefore not subject to the minimum safeguard delegated acts (cf. answers of the EU-Commission on Article 8 Taxonomy Regulation). Voluntary implementation should be possible.
- Regarding sovereigns (chapter 7), the KPIs and different indicators should be as universal and complete as possible. The Global Alliance of National Human Rights Institutions appears to be an incomplete index, as not all relevant countries/issuers are included. While countries like Qatar or Sierra Leone are covered, certain European countries, such as Italy or Switzerland, are not. Moreover, the Corruption Perception Index appears to be rather subjective and thus not particularly useful.
- On removing the status of non-compliance with minimum safeguards: the report outlines that the status should be upheld until the company has proven (e.g. through an external audit) that its human rights and labour rights processes have been improved in a way that makes a repeat of violations unlikely. In its current state, this may pose uncertainty to auditors, as there are no strict criteria which have to be fulfilled in order to assess the 'unlikeliness' of a repeated violation. Generally, a corresponding

acknowledgement by the client that describes how the processes were improved should be considered sufficient. More guidance on this matter would be helpful.

- Future non-compliance status assessment should be more precise. Particularly, it should be clarified what happens after a company has been sanctioned.
- On timeline: Under the CSRD, corporates newly subject to the sustainability reporting requirements will publish their first reports in 2026. Until that point, the MS should follow a "country logic", i.e. banks evaluate the country the company is based in (no use of proceeds rules) or the place where the financed economic activity takes place (with use of proceeds rules) or banks can use controversy-data (e.g. via KYC-process).
- The requirements for SMEs must be developed further. They should be drafted in a proportionate manner that avoids administrative burdens. Particularly, self-declarations made by an SME client concerning specific topics should be an option for the due diligence process instead of only external checks.
- The checks should also be applied to SPVs. Insofar as one entity holds a majority stake in the SPV (> 50 %), the due diligence check could be applied to either the SPV or the majority stakeholder.
- Further research should be undertaken on available and reliable sources of information for banks and investors to establish compliance, including between the minimum social safeguards and available data from ESG ratings.
- In light of the associated costs, additional transition time should be considered after the CSRD becomes applicable in order to allow for the development of data systems.
- When looking at the Draft Report on Minimum Safeguards of the Platform on Sustainable Finance we see a highly critical point regarding SMEs. As mentioned in the report on the pages 52 and 53 SMEs can voluntarily report on taxonomy alignment but are not required to do so. We do not support the proposal of the platform in the report that financial market participants which finance an SME which carries out EU Taxonomy activities to meet minimum standards should take steps to verify that these points are ensured. Furthermore, we do not support the proposal in the report that banks should verify violations and if relevant verify with the SME the steps taken to remediate the harm caused are sufficient.
- The draft report states that SPV projects are often huge and require large sums of financing. Their impacts on human rights, corruption and taxation might therefore be considerable as they often operate in sensitive geographic regions or sectors. The report concludes that SPVs should meet the minimum safeguards for CSRD companies or non-EU companies and not the lighter requirements for SMEs, if there is no majority stakeholder. If an SPV is not within the scope of the CSRD, the taxonomy regulation does not apply (see Article 8). In case of an optional reporting of the SPV's activities according to the EU-Taxonomy, the SPV will comply with all of the requirements of Article 3 Taxonomy Regulation, including the minimum safeguards. Besides, not all SPVs finance large-volume projects (e.g. individual citizens' initiative wind farms structured as SPV that finance only one wind turbine), so that the proposed global extension to all SPV structures would not be appropriate.
- Further, we would like to emphasise that rules on the minimum safeguards directly influence other regulations and labels that apply the taxonomy e.g. to specific financial products. This includes EU Green Bonds. It is currently unclear what consequences follow from a (minor) breach of the MS for products that are marketed specifically on the basis of their taxonomy-alignment. We consider this situation to be a considerable burden for the development of the market for sustainable finance products and particularly European Green Bonds. It could also result in considerable litigation risks.