

CERHA HEMPEL



EU Taxonomy

minimum social safeguards

Sustainable Transformation – Vol #3

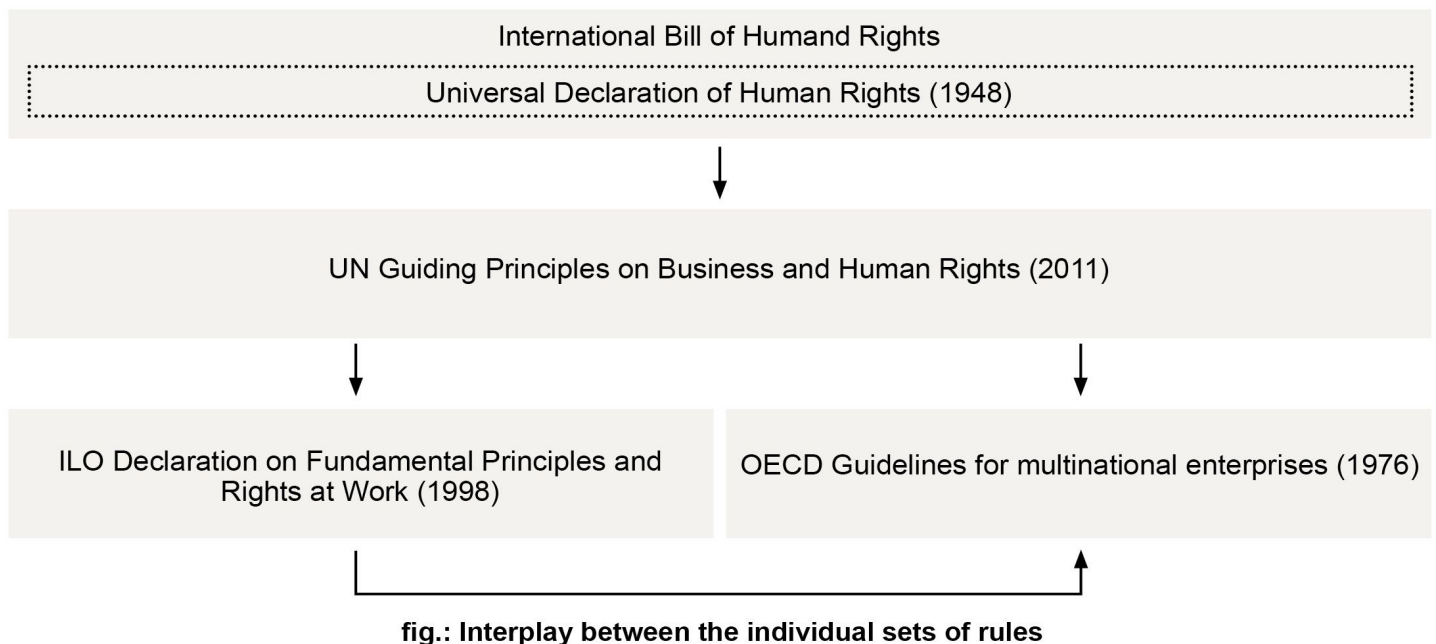
General

In the second edition of our Sustainable Transformation series, we presented the technical screening criteria of the EU Taxonomy Regulation (Regulation (EU) 2020/852). In this third edition, we focus on the minimum social safeguards in the sense of Article 3 in conjunction with Article 18 of the EU Taxonomy Regulation.

What do minimum social safeguards mean?

For an economic activity to be considered „environmentally sustainable“ in the sense of the Taxonomy Regulation, it must fulfil three requirements. The first two requirements, namely „the significant contribution to one of the environmental objectives“ and „the avoidance of significant harm to an environmental objective“, were discussed in the first two editions. The third requirement of Article 3 in conjunction with Article 18 of the EU Taxonomy Regulation is „compliance with minimum social safeguards“. But what does that mean?

The legal sources of „minimum social safeguards“ in the EU Taxonomy Regulation



The International Bill of Human Rights provides as the basis for the regulations mentioned in Article 18 EU Taxonomy Regulation. It includes, among others, the Universal Declaration of Human Rights, which is primarily addressed to governments and not to companies or institutions. The following three legal instruments were established in line with these fundamental rules:

- the UN Guiding Principles on Business and Human Rights (UNGPs)
- the ILO Fundamental Principles and Rights at Work
- the OECD Guidelines for Multinational Enterprises

These sets of rules have all become the international benchmark for responsible corporate behavior. They have been gradually harmonized and complement each other.

International Bill of Human Rights

The Universal Declaration of Human Rights (A/RES/217, UN Doc. 217/A-(III)) is a resolution of the United Nations General Assembly on human rights that is in principle not legally binding. It was proclaimed on 10 December 1948 at the Palais de Chaillot in Paris. It consists of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and its Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol.

UN Guiding Principles on Business and Human Rights

The UN Guiding Principles on Business and Human Rights (UN doc A/HRC/17/31) were unanimously adopted by the UN Human Rights Council in 2011 and consist of 31 guiding principles concerning the state obligation to protect human rights, the responsibility of companies to respect human rights and the obligation to provide appropriate remediation mechanisms. They provide recommendations to governments and businesses on how to implement them.

ILO Declaration on Fundamental Principles and Rights at Work

The International Labour Organisation adopted an ILO Declaration on Fundamental Principles and Rights at Work and its follow-up in Geneva on 18 June 1998. In the course of the amendment of the ILO Declaration in 2017, new labour standards were introduced to the framework. The fundamental principles and rights from the eight core conventions of the International Labour Organisation (ILO) now consist of forced labour, freedom of association and protection of the right to organize associations, right to collective bargaining, equality of remuneration, elimination of forced labour, discrimination, minimum age and prohibition and immediate action for the elimination of child labour. The International Labour Organisation is a specialised agency of the United Nations and is mandated to promote social justice as well as human and labour rights. This also includes combating human trafficking.

OECD Guidelines for multinational enterprises

The OECD Guidelines for Multinational Enterprises are a code of conduct for globally responsible business conduct and are recommendations from governments to businesses. The Guidelines have been adopted in 1976 and were updated in 2011 to include, among other topics, a chapter on human rights aligned with the UNGP. They cover in particular the areas of human rights, labour (including relations with social partners), environment, anti-corruption, consumer interests and taxation. The Guidelines are globally binding and are addressed to all transnational corporations whose headquarters are located in a signatory state. So far, the guidelines have been signed by the 36 OECD countries and by Egypt, Argentina, Brazil, Latvia, Lithuania, Peru and Romania.

Purpose of the minimum social safeguards

In addition to the primary focus on protecting the environment and mitigating climate change, the EU Taxonomy Regulation lays down in Article 18 a level of minimum social safeguards that companies must comply with in order for their activities to be classified as environmentally sustainable. The intention of the EU is evident: ecologically sustainable economic activities should also consider social aspects and should have a certain minimum protection.

A company's responsibility to respect human rights applies to its own business and to its business relationships (suppliers, customers, licensees, etc). This obligation exists independently of the ability or willingness of a state to fulfil its own human rights obligations. A company must avoid violating the human rights of others through its actions or omissions.

Due Diligence

Compliance with minimum social safeguards in the real estate sector

Beyond Article 18 of the EU Taxonomy Regulation, there are no official EU guidelines for the interpretation and/or compliance with minimum social safeguards. It is only stipulated that companies have to carry out procedures to ensure compliance with this minimum social safeguards. The final report of the Technical Expert Group (TEG) provides assistance in narrowing down the possible areas for a due diligence review. In this report, companies are recommended to focus on human rights, labour rights and the avoidance of corruption and bribery.

In addition to the question of extent, there is also the question of the concrete design of the required due diligence reviews. Core elements for this can ideally be drawn from the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, as the requirements for a due diligence review are essentially the same in both:

- a risk assessment to identify and evaluate negative impacts
- the implementation of appropriate preventive, mitigating and remedial measures
- a formal commitment to responsible business conduct
- respect for human rights, which is integrated with corporate policies and management systems
- effective complaints mechanisms
- appropriate monitoring measures

In implementation, it is not necessary to exclude all violations, but only to detect significant violations, which is why a risk-based approach can be chosen. The due diligence review is intended to take a closer look at those aspects of the economic activity where a greater risk of violations exists. If not all conceivable negative social impacts can be immediately mitigated or resolved, the impacts should be prioritized depending on their severity and likelihood of occurrence, and managed according to priority.

Accordingly, the following aspects are to be examined within the framework of a social due diligence audit in the real estate sector:

- Compliance with labour standards along the entire supply chain (especially no child labour, no forced labour)
- Compliance with work safety
- Fair conditions at work, equal opportunities, diversity, freedom of trade unionism and assembly
- Health protection and provision of safety standards in the workplace
- Active stakeholder management (e.g. communities)

In terms of the legal situation in Austria, the requirement of compliance with minimum social safeguards is currently fulfilled if the national labour law provisions are complied with for the company's own business area. Since there is no supply chain law in Austria as there is in Germany, for example, the standards of the UNGP, the ILO Fundamental Principles and Rights at Work and the OECD Guidelines for Multinational Enterprises must be applied to business relationships along the supply chain and examined within this framework.

Perspective

Social Taxonomy

On 28 February 2022, the responsible subgroup 4 of the Platform for Sustainable Finance (PNF) set up by the European Commission presented its report on the possible design of a social taxonomy. Following the Taxonomy Regulation, which classifies green, sustainable investments, the PNF proposes that the social taxonomy should serve as a benchmark for identifying socially sustainable investments and directing enhanced private capital flows to economic activities that are deemed to have social value.

Even if the introduction of a social taxonomy is currently still a vision for the future, it is expected that the following social objectives in particular will be established:

- **Fair working conditions** (labour rights, social dialogue, social protection rights)
- **Adequate living standards** (consumer protection, health, housing, education, food)
- **Inclusive and sustainable societies** (land rights, clean energy and water)

How the social taxonomy and the - then probably „ecological“ - taxonomy will interact is not yet foreseeable.

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