



POTENTIAL EXTENSION OF THE TAXONOMY REGULATION TO SOCIAL ASPECTS

Context

1. The taxonomy regulation (EU 2020/852), in article 26, mandates the Commission to publish a report **describing the provisions that would be necessary to extend the Taxonomy's scope to social objectives**. This is expected by the end of this year. It also states that "further guidance on activities that contribute to other sustainability objectives, including social objectives, might be developed at a later stage."
2. This was part of a **delicate compromise** found in the adoption of the taxonomy regulation, which clearly **does not oblige development of a social taxonomy**, including through extension of the current taxonomy to social objectives.
3. The Commission's **Sustainable Finance Platform**, as laid down in the taxonomy regulation, has a role in advising the commission on this. It has organised a first public workshop on social taxonomy on 26 February and others will be held in 2021. The Platform's final report is expected by end of May.
4. Debates so far have been primarily to detail the social objectives that should be included in a possible extension of the taxonomy regulation or in a social taxonomy, i.e. considering the question of how the taxonomy would look. **However, there have not been sufficient discussions on whether such an extension would be possible and appropriate** and the analysis of what would be necessary for such an extension.
5. An analysis is necessary on whether such an extension is technically and legally feasible, as well as whether it is appropriate given the specific nature of social objectives and the strict division of competences between the EU, national levels and social partners.
6. Furthermore, the discussions have not adequately taken account of the **broad contribution of business to society, not least in terms of growth, jobs and productivity**, as well as clearly distinguishing between societal and social issues, including in particular the investment companies make in their workers. These are essential issues in ensuring the sustainability of enterprises and investment should contribute to this, in particular to help companies rebuild resilience following the COVID-19 crisis.
7. The taxonomy regulation also includes social safeguards. Throughout the legislative process, we raised concerns regarding these (see later in this paper), which remain and are likely to become even more apparent during the implementation process. When assessing implementation of the regulation in the future, it will be important to see objectively whether these aspects are appropriate and whether it has actually been possible to implement them.

General remarks

8. **Social objectives are inherent in company practices**, by way of the jobs they provide and their investment in workers, which both provide important benefits to society as a whole. Also, companies are already covered by many social requirements through legislation. Companies also **understand well and take action to mitigate any negative impacts of their activities on society**, including on the communities in which they operate and on human rights. That is why many companies have already integrated different global social standards or social aspects of sustainability frameworks into their business strategies. Investment certainly can and should support sustainability, including in social, but we are not convinced that an extension of the taxonomy regulation to social objectives is the right approach.
9. Furthermore, BusinessEurope believes that **the extension of the current taxonomy to social issues or a stand-alone EU social taxonomy would not be appropriate or feasible**, for the following reasons of principle:
 - **Social aspects differ from environmental ones** as the EU treaty only allows for minimum standards in the area of social affairs rather than harmonisation¹. This is for good reasons, as it safeguards the delicate balance between EU, national and social partner competences. Therefore, there are more limitations to what can be included in EU legislation covering social aspects. In fact, a significant part of the issues relating to social investments (pay, skills, training, social provisions and benefits) are among the clearly defined areas of national competence in the Treaty, which would therefore make it difficult to include such aspects in an EU harmonising regulation, in particular the inclusion of common EU social performance criteria.
 - Specifying in an EU regulation, i.e. a maximum harmonisation instrument, criteria that companies need to adhere to, to be considered as socially sustainable, is likely to go against the treaty-based minimum standards approach to social policy. It is also likely to disrespect diverse national industrial relations systems and social partner autonomy, including to implement EU legislation. This is likely to be even more the case if the existing structure of the taxonomy regulation, i.e. reflecting contribution or substantial contribution were applied in social affairs, as it would be very complex to come with criteria on these aspects, without going too far into national/social partner competences.
 - Given that EU social legislation provides for minimum standards, **what determines companies' compliance is adherence to the national transposing legislation**

¹ See TFEU Article 153, para 2. "To this end, the European Parliament and the Council: (a) may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States; (b) may adopt, in the fields referred to in paragraph 1(a) to (i), by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States." And TFEU Article 151. "To this end the Union and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union economy."

and/or collective agreements. In those member states with a tradition of social dialogue, a lot of EU directives are implemented through collective agreements. To respect their autonomy, it is for social partners alone to decide which requirements a collective agreement should include and to apply, interpret and enforce them - this is their responsibility, rather than that of their member companies. Having criteria for company/economic activities to be classified as socially sustainable could run counter to this.

- We note that a social taxonomy would not regulate social affairs, but rather determine criteria to provide access to investment. Despite this, we still have concerns that it would not be possible to define activities as either socially positive or negative, as it depends on the context, which in the area of social affairs, is predominantly about the national level, including the industrial relations system. For example, it would not make sense to evaluate whether a company, under German labour/social law is performing better from a social point of view than a company operating under Danish or Spanish labour/social law, as the contexts are different.
- Depending on the approach, we are concerned that this could target investment only to certain companies, potentially creating obstacles for some companies that make a positive social contribution to access important investment.

10. We also believe that it would **not be feasible** and would create too much **administrative burden for companies wishing to access sustainable finance:**

- Using the approach in the existing regulation which covers “economic activities” would not be possible in relation to social issues, as **a good part of social investments by employers is related to the way that the business or industrial relations systems functions or is governed (e.g. collective bargaining), rather than to a specific economic activity.**
- Social impact issues are more homogeneous across sectors compared to **environmental impacts, which depend largely on the type of economic activities.** Moreover, social investments are usually a mix of public and private financing with a strong role for public investments. It is also important to bear in mind that social protection expenditures in the EU stand at a high level compared to other world regions (26,7% of EU GDP in 2018). A large part of these resources are mobilised through social contributions of employers and workers or employment taxes, and is being spent via public budgets.
- It would be **much more complex, if not impossible, to quantify the contribution of a company on social aspects**, as the impact of, e.g. collective bargaining, investment in skills etc is more difficult to measure. Social investments are by and large investments in people and people are different. For example, government investments in the unemployed may yield very different results for different people. Likewise, employers’ skills investments may lead to diverse levels of productivity improvements depending on the level of engagement and motivation of workers. Therefore, a detailed, prescriptive approach as in the current regulation would not fit social aspects.
- In many countries there are numerous collective agreements (e.g. in Germany alone, 78,000 valid collective agreements exist, not to mention many employer/works council agreements at company or plant level). These are not always publicly available. Therefore, it would be impossible for third parties to evaluate exactly the specific labour and social conditions within a specific company.

- The reporting burden should also be seen in the light of adding to the requirements in the CSRD and due diligence legislation.

Specific remarks

11. With the **full caveats of our position above, in case of further discussions on a possible extension of the taxonomy regulation to social aspects, including identification of social objectives, or broader discussions on social aspects of sustainable finance**, the following points need to be taken into account:

- A **broad approach is necessary**, reflecting the broad contribution and value creation of business to society and its social impact. For example, the approach should **not focus on human rights and CSR only**. Social objectives would have to cover impacts such as employment creation, productivity growth (the basis of sustainable social outcomes), as well as human resources investments that companies make in their employees (e.g. pay, skills development, digital technology tools enhancing working conditions, well-being, occupational benefits, such as pensions, unemployment insurance). This is the **difference between social and societal objectives**. The **UN Sustainable Development Goals** are a useful reference here, in particular SDG 8, which combines decent work with economic growth. This is an example of the important interplay between economic and social. And to move out of the COVID crisis to recovery, the job creation potential of companies will not only be crucial for the economy, but also for social aspects and society.
- At the same time, this would have to be **done in a way which does not lead to criteria being set in EU legislation**, which allows (or prevents) companies accessing sustainable finance, based on their performance on issues that are purely national/company competence.
- **Governance aspects**, including related to tax, corporate governance etc, **are not social aspects as such**. They relate to functioning of a company. Therefore, we do not believe they should be part of any future approach.
- When looking at the aspect of human rights, since the **UN guiding principles** are the most broadly supported framework between different stakeholders, they are a good basis.
- It is also important to **focus on opportunities/positive impact/contribution of business, rather than a negative/punitive/no harm approach**. If there are aspects on avoiding harm, this should recognise that where companies are respecting EU and national labour laws, they are implicitly not violating workers' rights. Avoiding harm must be about companies' activities which are not compliant with the law, or are in the informal economy / undeclared work.

Social safeguards in the existing taxonomy regulation

12. As highlighted during the process of adoption of the current taxonomy regulation, the clause on social safeguards raises concerns. Firstly, ILO conventions are for compliance by states who have ratified them, rather than for compliance by companies. Even though some companies may make reference to ILO conventions, e.g. in their business strategies, obliging compliance of companies' activities with the eight fundamental ILO conventions, is not appropriate.

13. Secondly, making it obligatory for companies to comply with voluntary CSR frameworks, i.e. the OECD Guidelines for Multinational enterprises, is not acceptable, as these are not meant as compliance instruments. Also, it may be that companies use other frameworks, which is completely justifiable.
14. Whilst we have no problems with calling on companies to adhere to the UN guiding principles on business and human rights, this must be in line with the division of responsibilities between state and companies, as is clearly highlighted in the UNGPs – states duty to protect and business responsibility to respect.
15. It will be very difficult to assess compliance with the minimum social safeguards and we anticipate this being a major problem in implementation of the legislation. According to a [study](#) published by UNEP and the European Banking Federation, in some cases, relevant data on minimum social safeguards is not likely to be produced by or available to companies. It is difficult to find data on this overall. Therefore, it will be difficult to judge compliance.