

**Nordic Financial Unions' (NFU's) suggestions for amendments
on the Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL on Corporate Sustainability Due Diligence and amending
Directive (EU) 2019/1937 COM (2022) 71 final 2022/0051 (COD)**

Introduction:

The Corporate Sustainability Due Diligence (CSDDD) proposal goes beyond many pre-existing due diligence rules on national level. For this reason, Nordic Financial Unions (NFU) as representative of Nordic financial trade unions strongly welcomes a homogenous legal framework and views the proposal as an opportunity to showcase that value creation and values are two sides of the same coin. Importantly, the CSDDD proposal includes companies that are economically active in Europe but do not have a registered office here. This will avoid putting companies registered in the EU and EEA area at a competitive disadvantage.

However, NFU calls on the European Parliament to extend the scope of the directive and include the finance sector in the scope of the directive to the same degree as other economic operators are included, also to do justice to the many good examples of due diligence measure imposed by financial institutions in the Nordic countries. Limiting the scope of application for financial institutions can otherwise undermine the effectiveness of due diligence obligations.

NFU considers that lowering the threshold within the scope of application could also be practicable, as a considerable number of financial institutions wield enormous influence without meeting the worldwide turnover criterion nor the size of the workforce criterion. NFU notes that the financial sector is uniquely placed to change the behaviour of companies by engaging with them and use capital leverage for them to institute changes to their corporate governance. Examples from the Nordic financial sectors have proven this hypothesis to be true in many instances. Skagen Fondene, for example a Norwegian fund management could in the aftermath of the Samsung corruption scandal, which included systematic labour rights abuses by subsidiaries, help the company to improve corporate governance by

implementing stronger anti-corruption policies. Skagen Fondene at first concluded Samsung from its funds, but proactively contributed to better corporate governance until Samsung's progress did allow to re-include them in the portfolio during the second quarter of 2020.

The financial and insurance sector have leverage to tackle actual and potential adverse impacts throughout the duration of business relationship. The Directive should avoid undermining the important role and responsibility of the financial sector in addressing human rights, environmental and climate related risks.

NFU believes due diligence obligations should also for the financial and insurance sector include the duty to assess, prevent and/or mitigate the risk of causing or contributing violations, also by divestments as foreseen also under the OECD guidelines. Building again on examples from the Nordic EU and EEA countries NFU argues for a legal basis for disengagement if corporate clients breach due diligence standards are unresponsive to engagement and do not improve their conduct, disengagement very much as for other economic sector operators. The Norwegian oil fund, the world's largest pension withdrew its funds and investments from Walmart due to violations of labor rights including union busting and employee harassment, Nordea withdrew its investment in the Brazilian slaughterhouse group JBS due to corruption and participation in widespread deforestation in the Amazon Forest and Danske Bank stopped investing in numerous companies for the same reasons. With socially irresponsible activities, KLP chose to disinvest from Core Civic and GEO Group due to human rights breaches at refugee detention centers and the Storebrand Group, did stop its contractual relationship with oil giants Exxon Mobil and Chevron for paying for lobbying against the UN Paris Agreement.

Further NFU welcomes the European Commission's ambition to integrate climate change in the proposal. However, NFU believes that climate considerations should be a mandatory component of any environmental due diligence process. This would be an important step to improve the corporate governance framework including a requirement to integrate climate sustainability into corporate strategies. Clear benchmarks and guidance are provided by the European Climate Law and should be utilised as reference framework for emission targets for specific sectors as well as the pre-existing definition of environmental harms as foreseen in regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment (EU Taxonomy Regulation).

NFU considers Article 15 of the CSDDD proposal as viable solution to actively involve companies to set their emission reduction targets in a plan which is compatible with their business model and strategy.

While Article 15 para. 3 of the CSDDD obliges companies to link variable parts of directors' remuneration to the achievement of this plan, directors are defined "as any member of the administrative, management or supervisory bodies of a company (...)". The effects of these two provisions in conjunction are problematic as wage determination relies solely on collective bargaining in the Nordic financial and insurance sector between employers and sector unions. The broad definition of directors in Article 3 lit. p of the CSDDD proposal does bare the danger that employers could use Article 15 para 3 to limit NFU affiliates to negotiate variable remuneration, such as bonuses freely. In order to preserve the freedom and effectiveness of negotiations NFU recommends including social partners in the negotiations of internal emission plans and advises to limit Article 15 to the board of directors, as defined in Article 3 lit. p to ensure that only those who carry overarching responsibility for violations of internally set emissions plans are being sanctioned and to avoid wider unintended effects of the provision on social partners' ability to negotiate remuneration.

I. NFU RECOMMENDATIONS FOR AMENDMENTS

1. Recommendations in relation to the scope of application in relation to the financial sector

Amendment 1

Recital 30

| <i>Text proposed by the Commission</i> | <i>NFU amendment</i> |
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| Under the due diligence obligations set out by this Directive, a company should identify actual or potential adverse human rights and environmental impacts. In order to allow for a comprehensive identification of adverse impacts, such identification should be based on quantitative and qualitative information. For instance, as regards | Under the due diligence obligations set out by this Directive, a company should identify actual or potential adverse human rights and environmental impacts. In order to allow for a comprehensive identification of adverse impacts, such identification should be based on quantitative and qualitative information. For instance, as regards |

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| <p>adverse environmental impacts, the company should obtain information about baseline conditions at higher risk sites or facilities in value chains. Identification of adverse impacts should include assessing the human rights, and environmental context in a dynamic way and in regular intervals: prior to a new activity or relationship, prior to major decisions or changes in the operation; in response to or anticipation of changes in the operating environment; and periodically, at least every 12 months, throughout the life of an activity or relationship. Regulated financial undertakings providing loan, credit, or other financial services should identify the adverse impacts only at the inception of the contract. When identifying adverse impacts, companies should also identify and assess the impact of a business relationship's business model and strategies, including trading, procurement and pricing practices. Where the company cannot prevent, bring to an end or minimize all its adverse impacts at the same time, it should be able to prioritize its action, provided it takes the measures reasonably available to the company, taking into account the specific circumstances.</p> | <p>adverse environmental impacts, the company should obtain information about baseline conditions at higher risk sites or facilities in value chains. Identification of adverse impacts should include assessing the human rights, and environmental context in a dynamic way and in regular intervals: prior to a new activity or relationship, prior to major decisions or changes in the operation; in response to or anticipation of changes in the operating environment; and periodically, at least every 12 months, throughout the life of an activity or relationship. Regulated financial undertakings providing loan, credit, or other financial services should identify the adverse impacts only at the inception of the contract. When identifying adverse impacts, companies should also identify and assess the impact of a business relationship's business model and strategies, including trading, procurement and pricing practices. Where the company cannot prevent, bring to an end or minimize all its adverse impacts at the same time, it should be able to prioritize its action, provided it takes the measures reasonably available to the company, taking into account the specific circumstances.</p> |
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Amendment 2

Article 6

| <i>Text proposed by the Commission</i> | <i>NFU amendment</i> |
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| <p>Identifying actual and potential adverse impacts</p> <p>3. When companies referred to in Article 3, point (a)(iv), provide credit, loan or other financial services, identification of actual and potential adverse human rights impacts and adverse environmental impacts shall be carried out only before providing that service.</p> | <p>Identifying actual and potential adverse impacts</p> <p>3. When companies referred to in Article 3, point (a)(iv), provide credit, loan or other financial services, identification of actual and potential adverse human rights impacts and adverse environmental impacts shall be carried out only before providing that service.</p> |

Amendment 3

Article 7 (6)

| <i>Text proposed by the Commission</i> | <i>NFU amendment</i> |
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| <p>Preventing potential adverse impacts</p> <p>6. By way of derogation from paragraph 5, point (b), when companies referred to in Article 3, point (a)(iv), provide credit, loan or other financial services, they shall not be required to terminate the credit, loan or other financial service contract when this can be reasonably expected to cause substantial prejudice to the entity to whom that service is being provided.</p> | <p>Preventing potential adverse impacts</p> <p>6. By way of derogation from paragraph 5, point (b), when companies referred to in Article 3, point (a)(iv), provide credit, loan or other financial services, they shall not be required to terminate the credit, loan or other financial service contract when this can be reasonably expected to cause substantial prejudice to the entity to whom that service is being provided.</p> |

Amendment 4

Article 8 (7)

| <i>Text proposed by the Commission</i> | <i>NFU amendment</i> |
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| <p>Bringing actual adverse impacts to an end</p> <p>7. By way of derogation from paragraph 6, point (b), when companies referred to in Article 3, point (a)(iv), provide credit, loan or</p> | <p>Bringing actual adverse impacts to an end</p> <p>7. By way of derogation from paragraph 6, point (b), when companies referred to in Article 3, point (a)(iv), provide credit,</p> |

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| <p>other financial services, they shall not be required to terminate the credit, loan or other financial service contract, when this can be reasonably expected to cause substantial prejudice to the entity to whom that service is being provided.</p> | <p><i>loan or other financial services, they shall not be required to terminate the credit, loan or other financial service contract, when this can be reasonably expected to cause substantial prejudice to the entity to whom that service is being provided.</i></p> |
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| <i>Reason</i> |
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| <p>According to Article 3 (a) (iv), the financial sector is broadly covered by the proposal and will be required to make assessments of whether a credit or an investment agreement through shares is to be regarded as an established business relationship. However, obligations are limited to the pre-contractual phase of relationships. NFU does not agree with this short-term perspective as only the longer-term horizon enables sustainable value creation. Not only is this restriction of the scope of application at odds with OECD Guidelines, but is also wilfully ignoring good practices already established in the financial sector not only during the inception phase, but also during already established business operations. Examples from Nordic financial services groups, such as DNB can illustrate these practices. Potential borrowers' commitment to sustainability in terms of environmental impact, labour and human rights is evaluated as part of the credit process and in accordance with internal, self-binding rules. The evaluation of these risk factors associated with a potential lack of due diligence is being applied continuously and particularly when additional project financing is required.</p> |

2. Recommendations with regard to environmental risks

Amendment 5

Recital 50

| <i>Text proposed by the Commission</i> | <i>NFU amendment</i> |
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| <p>In order to ensure that this Directive effectively contributes to combating climate change, companies should adopt a plan to ensure that the business model and</p> | <p>In order to ensure that this Directive effectively contributes to combating climate change, companies should adopt a plan to ensure that the business model and</p> |

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| <p>strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement. In case climate is or should have been identified as a principal risk for or a principal impact of the company's operations, the company should include emissions reduction objectives in its plan.</p> | <p>strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement. <i>In case climate is or should have been identified as a principal risk for or a principal impact of the company's operations, the company should include emissions reduction objectives in its plan.</i> <i>, and the objective of achieving climate neutrality by 2050 as established in Regulation (EU) 2021/1119 (European Climate Law).</i></p> |
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Amendment 6

| <i>Text proposed by the Commission</i> | <i>NFU amendment</i> |
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| <p>The Commission should assess and report whether new sectors should be added to the list of high-impact sectors covered by this Directive, in order to align it to guidance from the Organisation for Economic Cooperation and Development or in light of clear evidence on labour exploitation, human rights violations or newly emerging environmental threats, whether the list of relevant international conventions referred to in this Directive should be amended, in particular in the light of international developments, or whether the provisions on due diligence under this Directive should be extended to adverse climate impacts.</p> | <p>The Commission should assess and report whether new sectors should be added to the list of high-impact sectors covered by this Directive, in order to align it to guidance from the Organisation for Economic Cooperation and Development or in light of clear evidence on labour exploitation, human rights violations or newly emerging environmental threats, whether the list of relevant international conventions referred to in this Directive should be amended, in particular in the light of international developments, <i>or whether the provisions on due diligence under this Directive should be extended to adverse climate impacts.</i></p> |

Recital 70

Amendment 7

Article 3 (b)

| <i>Text proposed by the Commission</i> | <i>NFU amendment</i> |
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| <p style="text-align: center;">Definitions</p> <p>For the purpose of this Directive, the following definitions shall apply:</p> <p>(b) 'adverse environmental impact' means an adverse impact on the environment resulting from the violation of one of the prohibitions and obligations pursuant to the international environmental conventions listed in the Annex, Part II;</p> | <p style="text-align: center;">Definitions</p> <p>For the purpose of this Directive, the following definitions shall apply:</p> <p>(b)'adverse environmental impact' means <u><i>an adverse impact on the environment resulting from the violation of one of the prohibitions and obligations pursuant to the international environmental conventions listed in the Annex, Part II;</i></u></p> <p><u><i>aa) climate change mitigation, where that activity leads to significant greenhouse gas emissions;</i></u></p> <p><u><i>bb) climate change adaptation, where that activity leads to an increased adverse impact of the current climate and the expected future climate, on the activity itself or on people, nature or assets;</i></u></p> <p><u><i>cc) the sustainable use and protection of water and marine resources, where that activity is detrimental:</i></u></p> <p style="margin-left: 20px;"><u><i>i) the good status or the good ecological potential of bodies of water, including surface water and groundwater; or</i></u></p> <p style="margin-left: 20px;"><u><i>ii) to the good environmental status of marine waters</i></u></p> <p><u><i>d) the circular economy, including waste prevention and recycling, where the activity leads to significant inefficiencies in the use of materials or in the direct or</i></u></p> |

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| | <p><u>indirect use of natural resources such as non-renewable energy sources, raw materials, water and land at one or more stages of the life cycle of products, including in terms of durability, reparability, upgradability, reusability or recyclability of products</u></p> <p><u>e) pollution prevention and control, where that activity leads to a significant increase in the emissions of pollutants into air, water or land, as compared with the situation before the activity started; or</u></p> <p><u>f) the protection and restoration of biodiversity and ecosystems, where that activity is:</u></p> <ul style="list-style-type: none"> <u>i) significantly detrimental to the good condition and resilience of ecosystems; or</u> <u>ii) detrimental to the conservation status of habitats and species, including those of Union interest.</u> |
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| Reason |
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| <p>NFU suggests aligning the definition with the EU Taxonomy Regulation wording, which is already enacted in order to stay consistent and provide those who have to ensure compliance a reference framework.</p> <p>We find it problematic that the directive deals with variable remuneration, as pay/remuneration is a national issue to be regulated/agreed nationally as a general principle.</p> |

Amendment 8

Article 15

| Text proposed by the Commission | NFU amendment |
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| Combating climate change | Combating climate change |

1. Member States shall ensure that companies referred to in Article 2(1), point (a), and Article 2(2), point (a), shall adopt a plan to ensure that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement. This plan shall, in particular, identify, on the basis of information reasonably available to the company, the extent to which climate change is a risk for, or an impact of, the company's operations.

2. Member States shall ensure that, in case climate change is or should have been identified as a principal risk for, or a principal impact of, the company's operations, the company includes emission reduction objectives in its plan.

3. Member States shall ensure that companies duly take into account the fulfilment of the obligations referred to in paragraphs 1 and 2 when setting variable remuneration, if variable remuneration is linked to the contribution of a director to the company's business strategy and long-term interests and sustainability

1. Member States shall ensure that companies referred to in Article 2 ~~(1), point (a), and Article 2(2), point (a)~~, shall adopt a plan to ensure that the business model and strategy of the company are ***compatible aligned*** with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement, ***and the objective of achieving climate neutrality by 2050 as established in Regulation (EU) 2021/1119 (European Climate Law)***. This plan shall, ~~in particular, identify, on the basis of information reasonably available to the company, the extent to which climate change is a risk for, or an impact of, the company's operations;~~ ***take into account the entire value chain and include:***

(a) short-, medium- and long-term targets related to sustainability matters, including absolute greenhouse gas emission reduction targets for scope 1, 2 and 3 emissions for 2030 and reviewed every five years up to 2050, explaining their alignment with a 1.5°C climate scenario;

(b) implementing actions to achieve the targets, an explanation of decarbonisation levers identified.

~~2. Member States shall ensure that, in case climate change is or should have been identified as a principal risk for, or a principal impact of, the company's operations, the company includes emission reduction objectives in its plan.~~

~~3~~ **2.** Member States shall ensure that companies duly take into account the fulfilment of the obligations referred to in paragraphs ~~1 and 2~~ when setting variable remuneration, if variable remuneration is linked to the contribution of a director to

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| | the company's business strategy and long-term interests and sustainability |
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| <i>Reason</i> |
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| <p>The European Commission has taken a step in the right direction by integrating climate change explicitly in the proposal via Article 15 "Combating Climate Change". However, Article 15 is not properly integrated with the rest of the company's obligations with regards to due diligence. This creates loopholes and several alternatives for transposition. Also, the proposal does not define the content of the transition plan referred to. Without specific criteria for transition plans, there is a high risk of greenwashing and companies adopting plans that are merely cosmetic. The criteria should build on and be coherent with the criteria defined in the CSRD and the EU draft reporting standards.</p> |

3. Recommendations with relation to wage determination/ director remuneration

Amendment 9 Alternative 1

Article 15

| <i>Text proposed by the Commission</i> | <i>NFU amendment</i> |
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| <p style="text-align: center;">Combating climate change</p> <p>3. Member States shall ensure that companies duly take into account the fulfilment of the obligations referred to in paragraphs 1 and 2 when setting variable remuneration, if variable remuneration is linked to the contribution of a director to the company's business strategy and long-term interests and sustainability</p> | <p style="text-align: center;">Combating climate change</p> <p>3. <u>Member States shall ensure that companies duly take into account the fulfilment of the obligations referred to in paragraphs 1 and 2 when setting variable remuneration, if variable remuneration is linked to the contribution of a director of members of the board of directors to the company's business strategy and long-term interests and sustainability</u></p> |

Amendment 9 Alternative 2

Recital 50 a addition on variable remuneration

| <i>Text proposed by the Commission</i> | <i>NFU amendment</i> |
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| | <p><u>Recital 50 a (new) Emission reduction plans shall be complied in conjunction with national union or in the absence of union organisation with employees' representatives. Their consultation and involvement shall help companies to identify risks more precisely and to set up a more effective emission reduction strategy. Therefore, the consultation and involvement of stakeholders should be required in all stages of the due diligence process.</u></p> |
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| Reason |
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| <p>While NFU welcomes and supports emission reduction plans, the Nordic collective bargaining system requires that social partners do not lose the right to determine wages and remunerations in the financial sector, as this will affect the flexibility and adaptability of the sector – both with regard to the companies and union members. The sector's competitiveness is dependent on its singular right to negotiate all aspects of compensatory systems and thus NFU suggests to limit para 3 of Article 15 in such a way that only the board of directors are affected and not “directors”, which according to the proposal's definition could encompass members of our affiliates. This amendment aims to protect the powers of trade unions to negotiate the right to determine wages and remunerations.</p> |