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NFU Response to Consultation on the Single Market Act

About NFU

Nordic Financial Unions (NFU) is an organisation for co-operation between trade unions that organise employees in the banking, finance and insurance sectors in the five Nordic countries. At present, eight trade unions are affiliated to the NFU; two in Denmark, two in Finland, two in Sweden, and one in each Iceland and Norway. Through these trade unions, NFU represents 160 000 employees in the Nordic financial market.

Proposal No 16: The Commission will explore measures with the potential to encourage private investment – particularly in the long term – to make a more active contribution towards achieving the objectives of the Europe 2020 strategy. These measures might concern the reform of corporate governance and create incentives for the long-term, sustainable and responsible investment required by smart, green and inclusive growth. Moreover, by 2012 the Commission will ensure that venture capital funds set up in any Member State can operate and invest freely in the European Union (if necessary by adopting a new legislative framework). It will endeavour to eliminate any tax treatment that disadvantages cross-border activities.

It is important that any new legislative framework regarding venture capital funds must not provide loopholes for hedge funds and private equity companies to get around current legislation.

NFU also urges the Commission to consider how to define long-term, sustainable and responsible investment, and how to monitor it. Any new measures must aim for what can be truly deemed long-term, and not necessarily defined as a fixed number of years. In this perspective, the involvement of employees is of the utmost importance, since employees represent an independent, long-term interest in a company.

Proposal No 29: Pursuant to its new strategy for the effective implementation of the Charter of Fundamental Rights by the European Union, the Commission will ensure that the rights guaranteed in the Charter, including the right to take collective

action, are taken into account. The Commission will first of all conduct an in-depth analysis of the social impact of all proposed legislation concerning the single market.

NFU strongly supports this approach, and is delighted to see that these issues are taken seriously. All rights guaranteed in the Charter must be taken into account in all legislation, including the right to negotiate and conclude collective agreements as well as the right to take collective action.

Proposal No 33: In 2012 the Commission will propose a legislative initiative to reform the systems for the recognition of professional qualifications, based on an evaluation of the acquis in 2011, in order to facilitate the mobility of workers and adapt training to current labour market requirements. As part of this proposal, the possibility of a professional card will be evaluated.

From the finance sector perspective, the training of employees to better be able to meet the needs of consumers is something that was highlighted in the Commission Staff Working Document on the Follow Up in Retail Financial Services to the Consumer Markets Scoreboard, where it is acknowledged that "... in-depth training on the advantages and disadvantages of the products on offer should form a key part of their profession."

In this context NFU proposes the establishment of a certification or authorisation for financial advisors with a view to ensuring that products are only sold by staff that are properly trained and have a thorough understanding of the products including their long term implications for customers.

Such a certification exists in some countries, but there is no legislation of that kind on European level. A certification would lead to a more foreseeable working situation for the employees in the finance sector, since it will be clear what is expected of them and on what grounds.

Such a certification would need to entail the development of competence policies and training schemes, which acknowledge every individual employee's rights to continuous development through regular training and support to achieve the professional qualifications required to uphold a position as financial advisor. A high degree of education and training would provide the advisors with the proper tools and knowledge for providing good customer service.

A certification, taken together with empowered and well-informed consumers, would also be positive for the stability of the financial system itself, leading to a stronger industry and more employment opportunities.

Proposal No 37: For several reasons relating mainly to the nature of its financing and the preference of shareholders or stakeholders who support projects with a strong

element of social, economic and sometimes technological innovation, the market economy is structured around a variety of different types of legal status (foundations, cooperatives, mutual associations, etc.). The Commission will propose measures enabling the quality of the legal structures concerned to be improved in order to optimize their functioning and facilitate their development within the single market.

Regarding any measures concerning the different structures, NFU urges the Commission to ensure that employee participation rules are an integral part of the legislation. Foundations, cooperatives, mutual associations, etc. must never become loopholes in this respect.

NFU would like to see European principles accompanying European strategies. In particular we call for principles on how to tackle short-term and medium-term social and employment effects. We want one regulatory model that will cover any type of action and any type of resulting company; to have separate rules for European Companies, companies' resulting from cross-border mergers and then again the above mentioned structures makes the assessment of a restructuring process harder and less foreseeable for every part involved. NFU's position is that the participation structure from the SE-Directive is preferable since it provides for a clear and stable framework for information and consultation, as well as safeguarding national provisions concerning participation rights. However, any such legislation must also take into account, and remedy, the uncertainties that currently exists in the SE-Directive regarding the creation of "shelf SEs". The lack of clear rules on this issue makes the legal framework less foreseeable since such regulations makes it possible to circumvent the employees' guaranteed right to exert influence.

Corporate governance and corporate social responsibility must not be seen as isolated issues. This has, for example, also been pointed out in the European Parliament's resolution on further consolidation in the financial services industry, where it is stated that market participants should take into account their social responsibility during M&A and restructuring activity. Good governance is also about developing the inclusion of employees in the decision-making and strategic discussions on the future of the company. The principle of employee participation should, as NFU sees it, be an integral part of the corporate governance agenda. Employees are key stakeholders in the companies, and they also represent the link between the companies and their customers.

If any legislation on these structures will cover establishments and/or subsidiaries in two or more Member States, it should provide for the setting-up of a European level works council in order to be consistent with existing European legislation.

It is of utmost importance that existing employees' rights are maintained when a national company is converted into a European structure or a European structure into a national company, when the level of existing employees' rights is higher than national requirements before the conversion. Vice versa, the legislation should provide for negotiations in order to

increase the level after the conversion, if the then existing rights are less advantageous than national requirements. Good governance is also about developing the inclusion of employees in the decision-making and strategic discussions on the future of the company.

Proposal No 38: The Commission will launch a public consultation (Green Paper) on corporate governance. It will also launch a public consultation on possible ways to improve the transparency of information provided by businesses on social and environmental matters and respect for human rights. These consultations could lead to legislative initiatives.

NFU strongly supports these initiatives. NFU would in this context like to highlight the benefits of the one-tier system for employee board-level representation. The one-tier system, as used in the Nordic countries, provides the company with a valuable asset.

The company gets an insight on how different issues are perceived from the employee perspective, and the employees get an overview on what the company is doing and how. An employee board-level representative can provide very valuable insights from a supervision perspective. He/she is not only involved in the decision-making of the company, but also has access to direct information on the situation in the company from the employee perspective. Also, being elected for the board by a different group of people than the rest of the board members, employee representation ensures a bigger versatility of independence in the board.

NFU is therefore of the opinion that board-level representation needs to be strengthened across Europe, in order to provide employees with an insight regarding the status of the company. For instance, we believe that board members elected by the employees should be trade union members in order to ensure that the person is supported by an effective network and has links to all employees in all parts of the company.

Promoting good corporate governance is, indeed, an area that deserves further attention. An important area could be to describe the competences of the board of directors in relation to the strategic challenges faced by the company. This should be done on a revolving basis, e.g. in the annual reports of the institution, thus enabling the AGM, relevant authorities and other stakeholders to evaluate whether the board of directors has the suitable competences for the business plan of the company. This must not, however, lead to any impingements regarding employees' right to board level representation. When it comes to ensuring that directors and board members have suitable skills and qualifications, it is not only a question of a selection process. It is also a matter of training. The board members, including employee board representatives, competencies must be continuously updated to fulfill any requirements that have been deemed appropriate or necessary for the task.

NFU also believes that the reinforcement of risk management, compliance and other organizational requirements must include the involvement of employees. On a general level,



NFU believes that it is necessary to strengthen the independence and authority of the risk management function in companies, especially in the wake of the financial crisis. NFU is of the opinion that employee representation ensures a bigger versatility of independence in the board, as well as in other decision-making or advisory bodies. NFU believes that it is important that the views of the employees can be put forward without being filtered through the chain of command. Employees should therefore have a clear role in the risk management system of a company, as well as in other organisational bodies.

From the employee perspective, ensuring sound and efficient “whistle-blowing systems” is another measure that would be appropriate. Whistle-blowing is, indeed, about ensuring that early warnings from the bottom and up will reach the competent supervisory authority which should have the power, the mandate and resources to follow-up on the warnings and, where necessary, investigate the entire company. NFU is of the firm belief that employees are the first to recognize a systemic failure or a risky business, since it is part of their day-to-day-operations.

Whistle-blowing would not only ensure a fast and efficient “point of entry” for national supervisors, but also providing employees with a measure where their concerns are taken seriously. This could be done in a way where the national supervisor consults with employee representatives in a suitable fashion, be it through anonymous “hot-lines” or scheduled, consultative meetings with trade unions. It is important to stress that for employees to be able to provide this information in an orderly fashion, the national supervisors must be able to create reliable systems for this, which are not filtered by a strong director or board of directors.

Proposal No 40: The Commission will adopt a legislative initiative on access to certain basic banking services at the start of 2011. It will also call on the banking sector to submit a self-regulatory initiative geared towards improving the transparency and comparability of bank charges by the end of 2011.

NFU believes that access to a bank account is in many cases a prerequisite for social inclusion in terms of access to employment, healthcare and housing. As the newly banked become more participative in society, they will become potential customers for other financial services products, increasing the size of the overall market and employment in the sector.

In order to ensure access to finance for everyone, it is crucial that the employees in the finance industry are given time and resources to deal with the newly-banked “low-return” customers.

Proposal No 41: By February 2011 the Commission will propose a Directive geared towards the creation of a single integrated mortgage market with a high level of consumer protection.

In such a proposal it is important that low-risk mortgage models based on stable sources of funding (such as covered bonds fulfilling high requirements regarding quality, market level etc.) are recognised as such in the setting up of structural liquidity standards and rules on available funding.

The Danish model for mortgage credit must be properly assessed and taken account of in this work, as being a very stable and sustainable mortgage model. Danish mortgage bonds are attractive due to their high security level, leading to low mortgage rates, and the option of prepaying a loan on favorable terms.

Proposal No 46: In 2011, the Commission will be submitting an initiative on the use of alternative dispute resolution in the EU. It will also be adopting a Recommendation in 2011 on the network of alternative dispute resolution systems for financial services. The aim of these two initiatives is to ensure that simple, reasonably priced out-of-court settlement procedures are established to deal with cross-border consumer disputes. By 2012, the Commission will be proposing a European system for the settlement of online disputes for digital transactions. It will also carry out a public consultation on a European approach to collective redress in 2010-2011, in order to identify arrangements which could be introduced into the legal framework of the European Union and the legal systems of the Member States.

NFU believes that without effective solutions in terms of dispute handling, the likelihood of an effective cross-border financial market is diminishing. It is of crucial importance that all financial services providers are subject to dispute resolution in some form, be that through national courts or alternative options. ADR schemes may be a good way to solve disputes, but then consumers and finance sector employees need to be thoroughly informed of the content of the scheme and what this would mean for them, especially regarding costs and obligations.

NFU agree with the Commission that ADR schemes generally offer a much quicker and cheaper way to settle disputes than in courts and also provide an opportunity to resolve disputes that consumers would not normally pursue in courts. There are however examples where certain types of ADR schemes are more expensive for the parties involved than if the dispute would be tried in a national court. The access to court is a vital prerequisite in any contractual relationship, and the use of ADR schemes cannot in themselves be excluding, directly or indirectly, private customers from court access due to costs or other conditions.



In relation to this, NFU would like to point out that if any regulation is being adopted regarding the adherence to ADR schemes, it must be clear what this will mean for the companies and thus for the employees that then would have to inform about it and apply it.

Proposal No 48: The Commission will increase consultation and dialogue with civil society in the preparation and implementation of texts. Particular attention will be paid to taking into account the points of view of consumers, NGOs, trade unions, businesses, savers, users and local authorities in the consultations prior to the adoption of proposals and, in particular, with regard to the work of expert groups.

NFU is delighted to see that the Commission will increase its focus on employees and their representatives, i.e. trade unions, and highlight their importance as stakeholders along side with, for example, shareholders and depositors. To us this is a natural view, but is still something we have felt obliged to request repeatedly, since it has not been obvious that this view is shared in the European context.

Yours faithfully,

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