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NFU response to public consultation on Central Securities Depositories (CSDs) and on the harmonisation of certain aspects of securities settlement in the European Union

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.

General remarks

Most of the questions asked by the Commission in the consultation paper are dealing with matters that are largely oriented towards the industry, and hence not for NFU to comment specifically.

In our reply, we have focused on matters that will have an impact on employees in the finance sector now and in the future.

13. According to you, should the competent authorities have the above mentioned powers? Yes? No? No opinion? Please explain why.

NFU fully agrees with the Commission that the competent authorities should have at all times sufficient supervisory powers in order to ensure that a CSD complies with the requirements that future legislation will set.

The powers of supervisory authorities should furthermore include the right and/or obligation to consult with employees to the CSD. As a general principle, stakeholders, including trade unions from the finance sector and consumer associations, should be involved in financial oversight mechanisms at national, regional and international level. A structured dialogue must be in place to ensure systematic gathering of information from all relevant parties.

Workers' experiences can play a vital part of a toolbox for early warning and intervention. Employees' assessments of everyday operating procedures and practices in the companies provide an indispensable opportunity for early information on unsustainable and systematically dangerous practices.

NFU would in this context like to stress the importance of looking beyond governmental supervision as the only viable way to go. NFU therefore strongly supports the idea of the Commission to establish whistle-blowing mechanisms on national level, since such mechanisms can contribute to more effective application of EU law, to the benefit of all players in financial market (see comment under question 56).

38. What do you think about the eight principles above, particularly with respect to board composition and the need for a risk committee?

NFU agrees that eight principles mentioned must be taken into account, but would also like to point to the important role of employees in corporate governance.

It was pointed out in the Green Paper on Corporate governance in financial institutions and remuneration policies, COM(2010) 284 final, that "it seems necessary for members of the board of directors to be familiar with the structure of their financial institution and ensure that organisational complexity does not prevent effective control of the institution's activity in its entirety." NFU completely agrees with this statement, and would in this respect 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. This was also pointed out in the Commission staff working document accompanying the Green Paper, where it was acknowledged that employee representation broadens the debate within the boards.

In the same Commission staff working document it was stated that "the crisis has revealed that interests of shareholders and boards do not necessarily match with the long-term interests of the financial institution. Especially, the interests of stakeholders, such as depositors or, to a certain extent, employees, have not been sufficiently taken into account by shareholders and boards." NFU agrees with this view, and we have maintained that the primary purpose of financial institutions should always be to provide responsible and

sustainable financial services, not to make short term profit for shareholders. Europe must move away from the short-termism that has caused the crisis, and acknowledge that giving good advice and having excellent customer service is a precondition for the sustainable and long-term success of any financial institution.

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 within financial institutions 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 financial institution. 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 financial institution.

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.

It is important that board members have sufficient time to prepare for the task, in order to give the governance of each financial institution the attention it deserves. For the sake of openness and transparency it should also not be possible to combine the functions of chairman of the board of directors and chief executive officer, since one of the primary purposes of the board is to watch over the company, and to ensure that the operations of the company are legitimate.

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 financial sector companies, especially in the wake of the 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.

The role of employees in the risk management of financial companies has also been acknowledged in the Commission's regulation proposal on OTC derivatives, central counterparties and trade repositories, COM(2010) 484/5, Art. 26.

Employees should therefore have a clear role in the risk management system of a company, as well as in other organisational bodies, such as remuneration committees. Employees represent an independent, long-term interest in the company, and the participation of employees in remuneration committees is likely to ensure a sustainable approach to remuneration.

56. According to you, how should the principles examined in the communication on sanctions apply in the CSD and securities settlement environment?

NFU agrees with the Commission that there is a need for an appropriate regulatory framework for CSDs on European level. NFU has maintained the importance of all financial market players being subject to the same duties and controls, including CSDs. This should naturally be the case when it comes to sanctions as well. If sanctions applied in different Member States for similar infringements are considerably different, financial institutions could be tempted to engage in regulatory arbitrage when deciding on their place of establishment or the location of branches in order to benefit from the least stringent sanctioning regimes. This can prevent the development of a level playing field within the Internal Market.

Shortcomings identified in national sanctioning regimes can have a negative impact on financial supervision. NFU believes that the newly reformed European financial supervisory system must guarantee that all companies are supervised according to the same criteria, wherever they are based, to ensure a level playing field and sound competition.

From the employee perspective, ensuring sound and efficient whistle-blowing systems is one measure that would be appropriate, and NFU strongly supports the idea of introduction of whistle-blowing programs. 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.

As pointed out above, sound and efficient whistle-blowing systems functions as early warning mechanisms, and might play a key role in detecting unsustainable lending trends, high-risk business etc., as well as down-right criminal behavior. Whistle-blowing will also increase financial market stability and mitigate the risk for, and effects of, future crisis.

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.

One of the most important aspects of the discussion on establishment of whistle-blowing mechanisms is to ensure proper safe-guards for employees. The identity of employees who chooses to exercise their right to "blow the whistle" must be protected, and there must be no repercussions of any kind for employees who exercise their right to inform supervisory agencies or similar of any types of misconduct in a company.

Yours faithfully,

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