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# NFU Response to the Public consultation on derivatives and market infrastructures

### About NFU

The Confederation of the Nordic Bank, Finance and Insurance 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

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

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

## Questions:

**Do stakeholders share the general approach set out above on organisational requirements for CCPs? In particular comments are sought on the role and function of the Risk Committee; whether the governance arrangements and the specific requirements are sufficient to prevent and manage potential conflicts of interest; stringent outsourcing requirements; and participation and transparency requirements? Do stakeholders consider that possible conflicts of interests would justify specific rules on the ownership of CCPs? If so, which kind of rules?**

**Organisational Requirements:** In the consultation paper, the Commission consider that a CCP should have robust governance arrangements, which include, among other things, "a remuneration policy which is consistent with and promotes sound and effective risk management and which does not create incentives to relax risk standards".

In 2009, the Commission proposed some amendments to the Capital Requirements Directive, one of them dealing with the issue of remuneration. According to the proposal, the new CRD should enable supervisory authorities to impose capital 'sanctions' on financial institutions where remuneration policies are found to generate unacceptable risk. Prudential oversight in the course of the supervisory review would focus on whether the remuneration policies and practices are consistent with sound risk management given the nature of the firm's business.

The issue of the Commission regulating remuneration is of particular interest to the Nordic countries, since this regulation may impose restrictions on the right to free collective bargaining.

NFU is of the opinion that the matter of remuneration policies should be left to the social partners to decide upon, since pay is, according to art. 137.5 in the EC Treaty, not for the Commission to deal with. Regardless of how the future work on this issue is being conducted, it must be made clear that any provisions regarding remuneration policies in CCPs does not apply to remuneration policies and provisions agreed in a collective agreement.

Another aspect that needs to be high-lighted is the question of independence of board members, which is addressed in the consultation paper. In many European countries, board-level representation for employees exists, and is also considered a valuable asset to the companies. 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, from a supervision perspective, very valuable insights, since 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 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.

It is discussed in the consultation paper if a certain percentage of board members in the CCPs should be independent both from other board members and from clearing members. 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.

**Risk Committee:** The position stated above regarding independence of board members is of course also valid regarding the issue of establishing risk committees in CCPs. According to the consultation paper, the idea is that the advice of the risk committee should be independent from any direct influence by the management of the CCP. 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.

**Transparency:** NFU agrees that CCPs should be obliged to adhere to transparency policies regarding, for example, pricing structure, risks, and risk management. Since the complexity of the products on the market in constantly increasing it is of the outmost necessity that roles, risks and responsibilities are made crystal clear to all parties involved.

## Questions:

**Do stakeholders share the general approach set out above on the recognition of third country CCPs? Are the suggested criteria sufficient? Do stakeholders consider that additional criteria should be considered? Do stakeholders agree with the extension of the clearing obligation to contracts cleared by third country CCPs to ensure global consistency?**

NFU has maintained the importance of all financial market players being subject to the same duties and controls. This should naturally be the case when it comes to CCPs as well. NFU supports one regulatory model that will cover any type of actor. Separate rules for different market actors, and different markets, increases market opacity and make it harder for investors to survey and evaluate different investment choices, as well as for employees to convey proper advice and information. This makes especially sense with respect to the existing and ever-expanding interlinkage between different actors on the global financial market, as we have witnessed with regard to the latest financial crisis.

A regulation aimed at only controlling CCPs in Europe will be less effective if it is not mirrored on other financial markets. This might lead to an imbalance between the financial markets on a global level, since any differences in such measures will provide for competitive advantages for some and disadvantages for others. Regardless of what level of regulation is chosen, it should, to the greatest possible extent, be the same for all actors in the global economy and for the finance industry in particular.

Yours faithfully,

NORDISKA FINANSANSTÄLLDAS UNION (NFU)

The Confederation of Nordic Bank, Finance and Insurance trade unions

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