

Ms Věra Jourová, Vice-President for Values and Transparency  
Mr Didier Reynders, Commissioner for Justice  
Mr Thierry Breton, Commissioner for the Internal Market  
Rue de la Loi 200  
1049 Brussels  
Belgium

Brussels, 8 August 2022

Dear Commissioner Jourová,  
Dear Commissioner Reynders,  
Dear Commissioner Breton,

The undersigned associations write to provide **feedback on the proposed Corporate Sustainability Due Diligence Directive (CSDDD)**. In particular, we would like to highlight our concerns related to the extraterritorial application of the CSDDD to financial institutions headquartered outside the EU and propose a more proportionate approach that takes account of the specificities of the financial sector while maintaining a level playing field in the EU.

The undersigned associations represent financial institutions headquartered or with significant operations in non-EU jurisdictions who are deeply committed to, and invested in, the EU. We firmly support the goals of the Paris Agreement and the EU objective to reach climate neutrality by 2050. Our members are also committed to fostering environmental and human rights due diligence in business operations. Financial institutions have made significant progress on aligning their business practices with the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises, which currently represent the cornerstone of environmental and human rights due diligence. As an example of good practice, within the Thun Group of Banks financial institutions have developed guidance on the practical implementation of the UNGPs in the development and structuring of banking products and services<sup>1</sup>.

We have taken note of an increasing interest from a number of jurisdictions to implement some type of mandatory due diligence requirements to prevent and address human rights violation and/or negative environmental impacts in companies' supply chains. The EU has the unprecedented opportunity to provide guidance and global leadership, but to do that it is of utmost importance that, while it develops its framework, it does not prevent other jurisdictions from doing the same. Global coordination and the establishment of global standards will be key to promoting respect for human

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<sup>1</sup> The [Thun Group](#) is an informal group of bank representatives that work together with the primary purpose of i) furthering understanding of the UN Guiding Principles on Business and Human Rights (UNGPs) within the context of banking and, ii) considering how they may be applied across the range of different banking activities. Since its first meeting in 2011, the Thun Group's focus has been on sharing expertise and experience to support the integration of the UNGPs into the policies and practices of banking institutions.

rights and the environment in global value chains. For this reason, we believe it is essential to guarantee a risk-based and proportionate approach limiting the unintended effects of the extraterritorial application of the CSDDD, which are particularly severe in the financial sector, as explained below. We also stress the importance of aligning the CSDDD proposal as much as possible with established international standards and norms, such as the UNGPs and OECD Guidelines.

### **Extraterritorial application of the CSDDD in the financial sector**

The CSDDD as proposed by the Commission will impact non-EU financial institutions active in the EU with a net EU turnover of more than EUR 150 million, requiring them to comply with the due diligence obligations at consolidated level throughout their global business operations and value chains. The proposal is therefore expected to cover business activities that do not have any connection with the EU, e.g. a loan from a non-EU bank to a non-EU business with activities exclusively outside the EU, which often represent the majority of the business activities of non-EU financial institutions. Requiring non-EU financial institutions operating globally to comply with the CSDDD requirements throughout the entire group, will not only represent a disproportionate burden for non-EU financial institutions active in the EU, but it will also raise enforcement challenges and has the potential to conflict with similar third country obligations.

We therefore invite the EU co-legislators to carefully assess the implications of this extraterritorial application of the CSDDD framework and adopt a more proportionate approach. In particular, we believe there are several issues specific to the financial sector that need to be considered.

### **Overlapping and conflicting due diligence requirements for international financial institutions**

International financial institutions operate in and are subject to multi-jurisdictional legal and regulatory environments and are already complying with environmental and human rights due diligence obligations in other jurisdictions. For example, there are rules in the UK, Australia, and Canada which require companies to conduct due diligence on modern slavery<sup>2</sup>. Switzerland recently introduced mandatory due diligence requirements on conflict materials and child labour<sup>3</sup>. In the US, the Dodd Frank Act mandates certain due diligence obligations for conflict materials<sup>4</sup>. Other jurisdictions are currently developing similar frameworks. New Zealand, for instance, is planning to introduce legislation addressing modern slavery in companies' supply chains. Japan has updated its Corporate Governance Code adding provisions on human rights due diligence<sup>5</sup>.

The proposed extraterritorial application of the CSDDD is therefore likely to create overlapping and conflicting requirements, fragmentation of due diligence standards along national lines, and excessive red tape for financing in third countries. Overlapping due diligence obligations might cause greater harm to affected parties as it may be unclear what avenue is appropriate for protection, investigation, enforcement, and redress. Furthermore, companies might be held liable for the same environmental damage or human rights infringement under different legal systems, creating legal uncertainty and a disproportionate burden for businesses. Lastly, the different reporting obligations on financial institutions' due diligence processes stemming from different jurisdictions' legislative frameworks have the potential to confuse investors and consumers. As a consequence, the proposed scope might have negative knock-on effects on the level playing field, as third country financial institutions operating in the EU might need to comply with multiple requirements for their group-wide operations.

Moreover, if other jurisdictions were to follow the same path and design their sustainability due diligence frameworks with "extraterritorial scope of application", duplication of due diligence

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<sup>2</sup> UK Modern Slavery Act ([link](#)), Australia Modern Slavery Act ([link](#)), Canada Modern Slavery Act ([link](#)).

<sup>3</sup> <https://www.ejpd.admin.ch/bj/fr/home/aktuell/mm.msg-id-86226.html>

<sup>4</sup> <https://www.cftc.gov/LawRegulation/DoddFrankAct/Dodd-FrankFinalRules/index.htm>

<sup>5</sup> <https://www.jpjx.co.jp/english/news/1020/20210611-01.html>

requirements would grow exponentially and it could become unworkable for companies operating globally to comply with all local rules at the group level. Financial institutions based in the EU will also be affected as they will need to comply with other jurisdictions' due diligence requirements, on top of the EU obligations. Such an intertwined regulatory framework would represent a significant departure from existing approaches, which take into consideration other jurisdictions' frameworks to avoid duplicative requirements (financial reporting, anti-money laundering (AML) as well as Capital Requirements Regulations for example, as explained further down below) and a disproportionate burden on financial institutions. It could also represent a barrier for the development and uptake of international standards. We believe that the CSDDD will be most effective where it works alongside and recognises existing legislation in other jurisdictions, without duplicating or conflicting with it.

### **Complex regulatory environment faced by international financial institutions with respect to sustainability**

International financial institutions have hundreds of thousands of counterparts and are already heavily regulated in relation to sustainability. Elements of environmental and human rights due diligence are already present in several pieces of EU legislation. For example, the Sustainable Finance Disclosure Regulation (SFDR) contains requirements for financial products and entities relating to the principal adverse impacts of their investments. Changes to the Delegated Acts supporting the Directive relating to Undertakings for Collective Investment in Transferable Securities (UCITS)<sup>6</sup>, Alternative Investment Fund Managers Directive (AIFMD)<sup>7</sup> and Markets in Financial Instruments Directive (MiFID)<sup>8</sup>, require regulated investors (and the individual investment funds they manage) to have an integrated process to identify sustainability risks in their investment decision-making processes and risk management governance and controls. Those changes also already include a requirement to take into account and mitigate principal adverse impacts when conducting due diligence in the selection and monitoring of investments by all AIFMs, UCITS management companies and Investment Managers. Moreover, environmental crime is increasingly taken into consideration in AML frameworks both in the EU and in other jurisdictions, introducing due diligence requirements for financial institutions to address certain sustainability risks presented by their customers<sup>9,10</sup>. Lastly, the European Banking Authority (EBA) is currently assessing the possibility of broadening the current due diligence requirements in prudential regulation to cover environmental aspects<sup>11</sup>. A specific and coordinated approach is thus required should additional due diligence obligations in the financial sector be warranted.

### **A proportionate approach for international financial institutions**

For the reasons explained above, we propose to limit CSDDD's scope of application for third country financial institutions to:

- (1) EU entities meeting the turnover threshold outlined in the CSDDD proposal, at the highest level of EU consolidation; and
- (2) the business of EU branches of non-EU financial institutions which meet the aforementioned threshold outlined in the CSDDD proposal.

This proposed scope of application is in line with the established practices on the application of law to multinational financial institutions. For example, in the context of prudential rules, financial

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<sup>6</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021L1270&from=EN>

<sup>7</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R1255&from=EN>

<sup>8</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R1253&from=EN>

<sup>9</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1673&from=EN>

<sup>10</sup> <https://www.fatf-gafi.org/media/fatf/documents/reports/Money-Laundering-from-Environmental-Crime.pdf>

<sup>11</sup> <https://www.eba.europa.eu/regulation-and-policy/credit-risk/discussion-paper-role-environmental-risk-prudential-framework>

institutions headquartered outside the EU apply the EU Capital Requirements Regulations at the highest level of consolidation in the EU, while applying the prudential rules of the home country at group consolidated level. A similar approach is recognised in the context of anti-money laundering (AML), where non-EU financial institutions apply EU rules for the activities of the subsidiaries and branches established in the EU, while applying home country rules at group level. In financial reporting, mutual recognition of IFRS standards and US GAAP allows foreign companies in the EU to file financial reports according to US GAAP and vice versa. We strongly believe these principles should be respected also in the case of the CSDDD as well as generally within sustainable finance legislation. Importantly, respecting the established practices would also help preserve the competitiveness and attractiveness of the EU market as the extraterritorial application of the CSDDD could represent a disincentive for non-EU financial institutions to conduct business in the EU.

Moreover, we believe it is necessary to guarantee a sufficient degree of flexibility in the integration of due diligence requirements into corporate policies. As due diligence policies are often set at group level, it is important for financial institutions to have the possibility, when appropriate, to refer to group policies. This will allow financial institutions to implement a consistent due diligence policy across the group.

To conclude, we urge the EU to coordinate and align its due diligence framework with other jurisdictions to make sure that EU and non-EU headquartered financial institutions with global operations do not get caught by overlapping and/or conflicting requirements set out by different jurisdictions. Such a globally coordinated approach would ensure a level playing field across financial institutions and jurisdictions and would not represent a departure from existing frameworks on financial reporting, AML, and prudential regulation. We also call on the EU to strengthen the cooperation at the international level to improve and update where necessary current international regimes and industry schemes, like the UN Guiding Principles on Business and Human Rights (UNGP), the OECD Guidelines for Multinational Enterprises, and the Responsible Business Alliance (RBA), with the ultimate goal of developing a global framework governed by international standards.

Yours sincerely,

**International Regulatory Strategy Group (IRSG)**

**Japanese Bankers Association (JBA)**

**Swiss Finance Council (SFC)**

**UK Finance**

