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## **NFU Response to CEBS Draft Guidelines on Remuneration Policies and Practices**

### **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**

NFU agrees with many of the ideas behind the draft guidelines presented by CEBS. The global financial crisis has shown that all financial markets, products and market participants need to be regulated in a fair and thorough fashion. What we want is that any new tool, be it regulation or recommendations, is designed to also ensure that employees' interests are being looked after.

When the CRD III originally was discussed, NFU pointed out to the Commission as well as other European institutions that the issue of the European legislator regulating remuneration is of particular interest to the Nordic countries, since this regulation may impose restrictions on the right to free collective bargaining.

The social partners can, and must be allowed to, assume the responsibility of sound and sustainable remuneration principles. NFU strongly supports the idea of remuneration policies and practices that are consistent with and promote sound and effective risk management, but believes that remuneration policies should be left to the social partners to decide upon, since pay is, according to art. 153.5 in the Treaty on the Functioning of the European Union (TFEU), not for the EU to deal with.

This has also been acknowledged in Recital 14 in the European Parliament legislative resolution of 7 July 2010 on the proposal for a directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the

trading book and for re-securitisations (see below). This legislative resolution also serves as the foundation on which the CEBS draft guidelines is based.

*Recital 14: The provisions on remuneration should be without prejudice to the full exercise of fundamental rights guaranteed by the Treaties, in particular to the provisions of Article 153(5) of the Treaty on the Functioning of the European Union (TFEU), general principles of national contract and labour law, applicable legislation regarding shareholders' rights and involvement and the general responsibilities of the administrative and supervisory bodies of the institution concerned, as well as the rights, where applicable, of social partners to conclude and enforce collective agreements, in accordance with national laws and traditions.*

With this in mind, it is therefore highly unsettling that the CEBS has omitted this particular reference in its draft guidelines, since CEBS is, to a large extent, building its draft guidelines on the contents of the recitals.

The provisions in recital 14 are of highest importance to the trade union movement, and a vital component of the Nordic model, based on collective agreements. To present a set of guidelines, based on a legislative resolution by the European Parliament, where recital 14 is excluded, is unacceptable. The contents of the recitals must be seen as a unity in one context, and excluding the provisions in recital 14 in these guidelines will take the provisions on remuneration in a direction that clearly not was intended by the European legislator.

The exclusion of recital 14 also leads to situations where the contents of the two documents clash, as shown below. To ensure that financial institutions comply with the requirements on remuneration, the draft guidelines contain a provision on the adaptation of contractual agreements:

*37. Institutions should ensure that they adapt their contractual agreements with staff members in order to ensure that they do not limit their ability to comply with these requirements.*

As pointed out above, the European Parliament acknowledges that the provisions on remuneration are without prejudice to the social partners' right to conclude collective agreements in accordance with national laws and traditions. P. 37, however, could be interpreted as laying down provisions that diminish this right, containing measures that might hamper the autonomy of social partners to negotiate on the contents of collective agreements. The inclusion of recital 14 would, therefore, provide the necessary guidance on how to interpret p. 37, i.e. that it concerns provisions in individual contracts not covered by collective agreements.

NFU also understands that this issue was discussed at the public hearing on the guidelines that took place in London on 29 October 2010, and that the CEBS supported the idea of including recital 14 in the guidelines. NFU very much welcomes this initiative, and appreciates that the



CEBS recognises the collective bargaining process as a vital instrument regarding the regulation of remuneration in the financial sector.

The issue of remuneration can also be discussed from a hierarchical perspective. The principle behind EU directives is that they lay down certain end results that must be achieved in every Member State. National authorities have to adapt their laws to meet these goals, but are free to decide how to do so. In this respect, the impact of recommendations and guidelines stemming from the EU must not be underestimated, even if they, technically speaking, are voluntary.

NFU has also maintained that the circle of persons that might be affected by the CRD provisions is ambiguous and needs to be clarified, and this is also the case in the guidelines. It is very unclear who might be encompassed by the definition "staff whose professional activities have a material impact on the risk profile" of the bank or investment firm.

When launching the original CRD revision proposal, the Commission stated that the provisions on remuneration would, for example, not cover "more junior staff". In our opinion, this has not been acknowledged in the CEBS guidelines, where it is pointed out that institutions should not categorically dismiss low earners as non risk-takers. The CEBS has, in its attempt to define the target groups, rather widened the circle of staff that might be affected by the provisions than narrowed it down. The large number of employees that might be included in this vague definition will likely be even larger if the guidelines in the future will be extended to include also the insurance sector, where non-fixed salaries are very common.

The guidelines must therefore be revised on these matters, and it must be made clear that any provisions regarding remuneration policies in financial institutions do not apply to remuneration policies and provisions agreed in collective agreements.

Yours faithfully,

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