Press release

**AFME calls on negotiators to consider serious outstanding issues in CSDDD**

4 July 2023

As trilogue negotiations take place on the Corporate Sustainability Due Diligence Directive proposal later this month, the Association for Financial Markets in Europe (AFME) has today published a position paper, outlining its recommendations for negotiators and calling on them to focus on ensuring that the regulation provides a practical and appropriate approach for financial institutions.

**Oliver Moullin, Managing Director at the Association for Financial Markets in Europe (AFME)**, said:

*“As the negotiators continue discussions on the CSDDD, we want to outline the key challenges that arise from the proposed scope of the value chain for financial institutions and the practical application of due diligence requirements to financial services. As the co-legislators seek an agreement, it is essential to ensure that the directive does not harm the competitiveness of EU companies or the role of banks in providing finance to support the transition.*

*“To ensure that the Directive can become an effective tool for financial institutions to carry out due diligence, identify material risks, engage with their clients, and promote best practices across the investment value chain, it is necessary to ensure that the proposal takes a proportionate, risk based and workable approach and that it provides a clear, practical and legally certain framework.”*

A workable and effective compromise would be based on addressing the following priorities:

* **Value chain**: limiting due diligence requirements to upstream direct business relationships would address the significant challenges with applying the due diligence requirements to financial institutions’ downstream value chain. To the extent that financial institutions’ downstream value chain is included, it should be limited to the activities of large corporate clients directly receiving loan or credit services in the EU. It is crucial to ensure a harmonised approach to this within the Single Market.
* **Risk-based due diligence**: while entity-level due diligence policies shall be updated periodically, the identification of adverse impacts shall only be conducted prior to client onboarding and specifically for the provision of subsequent loans. Identification can’t be conducted effectively for other types of transactions e.g. before every individual payment or trade is executed, nor can banks ensure continuous monitoring of potential adverse impacts across all counterparties.
* **Preventing and mitigating adverse impacts**: a requirement for financial institutions to terminate the provision of financial services can have detrimental effects on the stability of European markets, and should be reconsidered. The Directive should avoid the use of ambiguous or unclear wording that may lead to different interpretations and, in turn, to legal and liability issues.
* **Civil liability**: civil liability should be clearly limited to circumstances where “intentionally or through gross negligence” a breach occurs that causes or directly contributes to the adverse impact, and where there is a direct causal link between the companies’ operations and the damage.
* **Combating climate change – transition plans**: the Directive shall ensure consistency and coherence with CSRD and existing EU and international initiatives, without additional requirements that might cause divergence.
* **Directors’ duties**: Article 25 interferes with national provisions regarding directors’ duty of care, potentially undermining directors’ duty to act in the best interests of the company.

* ENDS -

AFME Contacts

Rebecca Hansford

Head of Communications and Marketing

Rebecca.hansford@afme.eu

+44 (0)20 3828 2693

Notes:

AFME (Association for Financial Markets in Europe) promotes fair, orderly, and efficient European wholesale capital markets and provides leadership in advancing the interests of all market participants. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME participates in a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) through the GFMA (Global Financial Markets Association). For more information, please visit the AFME website: [www.afme.eu](http://www.afme.eu). Follow us on Twitter @AFME\_EU