OPTIONS FOR IMPROVING THE INCLUSION OF FINANCIAL INSTITUTIONS IN THE SCOPE OF MANDATORY DUE DILIGENCE IN THE CSDDD

The amendments below are **key priorities** to improve the inclusion of the financial sector in the CSDDD.

EU Commission proposal	**Our options for improvement**
1) On the definition of value chain (Article 3):	
Art. 3 (g) […] As regards companies within the meaning of point (a)(iv), 'value chain' with respect to the provision of these specific services shall only include the activities of the clients receiving such loan, credit, and other financial services and of other companies belonging to the same group whose activities are linked to the contract in question. The value chain of such regulated financial undertakings does not cover SMEs receiving loan, credit, financing, insurance or reinsurance of such entities;	Art. 3 (g) […] As regards companies within the meaning of point (a)(iv), 'value chain' with respect to the provision of these specific services shall include the activities of the clients directly receiving financial services *as well as the supply chain of this client that relates to the financial service in question*.
2) On using a risk-based approach (Article 6):	
Art. 6 (2) By way of derogation from paragraph 1, companies referred to in Article 2(1), point (b), and Article 2(2), point (b), shall only be required to identify actual and potential severe adverse impacts relevant to the respective sector mentioned in Article 2(1), point (b).	[Taken from the General Approach of the Council of the EU and the report of the European Parliament:] Art. 6 *(2) Member States shall ensure that, as part of their due diligence process, companies shall:* *(a) identify where adverse impacts are most likely to occur and to be severe, including by identifying individual higher risk operations, subsidiaries and business relationships which should be prioritised taking into account relevant risk factors; and* *(b) carry out in-depth assessments of prioritised operations, subsidiaries and business relationships in order to determine the nature and extent of specific actual and potential adverse impacts.*

	(c) address less significant adverse impacts once the most significant adverse impacts are addressed in accordance with Article 7 or 8 in a reasonable time.
3) On the regular identification of impact (Article 6):	
Art. 6 (3) When companies referred to in Article 3, point (a)(iv), provide credit, loan or other financial services, identification of actual and potential adverse human rights impacts and adverse environmental impacts shall be carried out only before providing that service.	Art. 6 (3) When companies referred to in Article 3, point (a)(iv), provide ~~credit, loan or other~~ financial services, identification of actual and potential adverse human rights impacts and adverse environmental impacts ~~only~~ *(a)* *[Alternative 1 (preferred):] shall be based, where available, on information reported under Article 11 of this Directive or Articles 19a and 29a of Directive 2013/34/EU, and possible risks notified via the procedures in Article 9 of this Directive and shall consider impacts identified throughout the clients' value chain, and ;* *[Alternative 2:] shall be based on and limited to information reported under Article 11 of this Directive or Articles 19a and 29a of Directive 2013/34/EU, and possible risks notified via the procedures in Article 9 of this Directive and shall consider impacts identified throughout the clients' value chain, and ;* *(b)* shall be carried out before providing that service *and before subsequent financial operations, and, if notified of possible risks via the procedures in Article 9, during the provision of the service.*
4) On the termination of financial services (Articles 7 & 8):	
Art. 7 (6) By way of derogation from paragraph 5, point (b), when companies referred to in Article 3, point (a)(iv), provide credit, loan or other financial services, they shall not be required to terminate the credit, loan or other financial service contract when this can be reasonably expected to cause substantial prejudice to the entity to whom that service is being provided. Art. 8 (7) By way of derogation from paragraph 6, point (b), when companies referred to in Article 3, point (a)(iv), provide credit, loan or other financial services, they shall not be required to terminate the credit, loan or other financial service	Art. 7 (6) By way of derogation from paragraph 5, point (b), when companies referred to in Article 3, point (a)(iv), provide ~~credit, loan or other~~ financial services~~, they shall not be required to terminate the credit, loan or other financial service contract when this can be reasonably expected to cause substantial prejudice to the entity to whom that service is being provided~~ *to entities that cause or contribute to potential adverse impacts within the meaning of paragraph 1, a decision to terminate the financial service contract in derogation from paragraph 5, first subparagraph, point (b) may only be taken, as a last resort, if the leverage efforts of companies referred to in Article 3, point (a)(iv) have ultimately failed to influence the entity to whom that service is being provided to prevent or adequately mitigate adverse potential impacts.*

contract, when this can be reasonably expected to cause substantial prejudice to the entity to whom that service is being provided.	Art. 8(7) By way of derogation from paragraph 6, point (b), when companies referred to in Article 3, point (a)(iv), provide ~~credit, loan or other~~ financial services~~, they shall not be required to terminate the credit, loan or other financial service contract when this can be reasonably expected to cause substantial prejudice to the entity to whom that service is being provided~~ *to entities that cause or contribute to potential adverse impacts within the meaning of paragraph 1, a decision to terminate the financial service contract in derogation from paragraph 6, first subparagraph, point (b) may only be taken, as a last resort, if the leverage efforts of companies referred to in Article 3, point (a)(iv) have ultimately failed to influence the entity to whom that service is being provided to prevent or adequately mitigate adverse potential impacts.*
5) On sector-specific guidelines (Article 13):	
Art. 13 In order to provide support to companies or to Member State authorities on how companies should fulfil their due diligence obligations, the Commission, in consultation with Member States and stakeholders, the European Union Agency for Fundamental Rights, the European Environment Agency, and where appropriate with international bodies having expertise in due diligence, may issue guidelines, including for specific sectors or specific adverse impacts.	[Taken from the ECON Report:] Art. 13 (1) In order to provide support to companies or to Member State authorities on how companies should fulfil their due diligence obligations, the Commission, in consultation with Member States and stakeholders, the European Union Agency for Fundamental Rights, the European Environment Agency, and where appropriate with international bodies having expertise in due diligence, *shall issue clear and easily understandable guidelines, including general and sector- specific guidance, in order to facilitate compliance in a practical manner*. *(1a) In order to provide support to companies or to Member State authorities on how companies should fulfil their due diligence obligations, the guidelines shall include:* *(a) sector specific guidance, in particular for the following sector, in line with current or future OECD guidelines:* *(i) the provision of financial services*
6) On the start of application (Article 30)	
Art. 30 – Transposition 1. Member States shall adopt and publish, by … [OJ to insert: 2 years from the entry into force of this Directive] at the latest, regulations and	Art. 30 – Transposition 1. Member States shall adopt and publish, by … [OJ to insert: 2 years from the entry into force of this Directive] at the latest, regulations and administrative provisions

administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions. They shall apply those provisions as follows: (a) from… [OJ to insert: 2 years from the entry into force of this Directive] as regards companies referred to in Article 2(1), point (a), and Article 2(2), point (a); (b) from … [OJ to insert: 4 years from the entry into force of this Directive] as regards companies referred to in Article 2(1), point (b), and Article 2(2), point (b). When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made. 2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions. They shall apply those provisions as follows: (a) from… [OJ to insert: 2 years from the entry into force of this Directive] as regards companies referred to in Article 2(1), point (a), and Article 2(2), point (a), ***except companies within the meaning of Article 3 point (a)(iv)*****,;** ***(b) from … [OJ to insert: 3 years from the entry into force of this Directive] as regards companies within the meaning of Article 3 point (a)(iv).*** ***(c)*** from … [OJ to insert: 4 years from the entry into force of this Directive] as regards companies referred to in Article 2(1), point (b), and Article 2(2), point (b). When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made. 2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

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