

**Mandate of the Working Group on the issue of human rights and transnational corporations and other business enterprises**

**Financial Sector and the European Union Corporate Sustainability Due Diligence Directive**

**Statement by the United Nations Working Group on Business and Human Rights**

The United Nations Working Group on Business and Human Rights (Working Group) has engaged with relevant stakeholders and policy makers, including the European Commission and the European Parliament, to convey its concern with the treatment of financial undertakings in all drafts of the EU’s Corporate Sustainability Due Diligence Directive, which contain unjustified carveouts and/or presumptions for the sector that depart from international standards and ignore existing practice.

The Working Group stressed that the United Nations Guiding Principles on Business and Human Rights (Guiding Principles) make clear in Guiding Principle that the “responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, **sector**, operational context, ownership and structure”. This is repeated in effect in all the major international instruments which incorporate the Guiding Principles in their provisions, such as the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises on Responsible Business Conduct.

The Office of the UN High Commissioner for Human Rights (OHCHR) has [reiterated](#) through both its general guidance and its responses to requests for interpretation of the Guiding Principles that the underlying responsibility to respect human rights remains the same for all financial institutions, even if the means through which they meet that responsibility may differ. This is reinforced by responses by the Working Group to specific questions, in its communications to the financial sector where a complaint has been made, in reports to the Human Rights Council and in country visits reports. The [OECD has also clarified](#) that the financial sector, in all aspects, are included within the scope of its Guidelines. This position has been affirmed by a number of OECD’s National Contact Points.

Further, the Working Group noted that the financial sector has a particularly important role in respecting human rights consistent with the Guiding Principles. In its [stocktaking exercise](#) of the implementation of the Guiding Principles over the first decade since their

adoption, the [Working Group recognized](#) that “financial actors have an unparalleled ability to influence companies and scale up on the implementation of the Guiding Principles”. In the [Equator Principles](#), which include the relevant provisions of the Guiding Principles, the signatories from the financial sector state that they “recognise that our role as financiers affords us opportunities to promote responsible environmental stewardship and socially responsible development, including fulfilling our responsibility to respect human rights by undertaking due diligence in accordance with the Equator Principles”.

Of particular concern to the Working Group is the introduction of a presumption in the European Parliament’s draft of the Corporate Sustainability Due Diligence Directive that financial undertakings are *directly linked* to adverse impacts in their value chain (Arts. 7(1)(b) and 8(2)(b)). Past attempts to suggest that such a presumption is appropriate or in line with international standards have been [roundly rejected by OHCHR](#), the [Working Group](#), and by [John Ruggie](#), the principal drafter of the Guiding Principles, among others. They have all clarified that financial institutions can **cause, contribute to and be directly linked** to adverse human rights impacts. For example, [John Ruggie responded](#) to a paper by a group of banks (the Thun Group) as follows:

“I am deeply troubled by the discussion paper the Thun Group has just recently published. It misconstrues *the* central Guiding Principle regarding the corporate responsibility to respect human rights.... [The] scope of due diligence should depend on the nature of the risk and the bank’s connection to it... not on the type of loan on an a priori basis. For example, providing a general corporate loan to a private prison company that is alleged to engage in severe human rights abuses ought to require a very deep dive by the bank, coupled with the imposition of strict conditions if it decides to go ahead with the loan. If the bank does neither and yet proceeds, then it is squarely in “contribution” territory [under Guiding Principle 13a] for any adverse impacts, even though the loan is not asset or project specific.

Therefore, as recognized by the Guiding Principles, all financial institutions, of every type, have the same responsibility to respect human rights, and creating carveouts or presumptions for the financial sector in the draft Corporate Sustainability Due Diligence Directive would be **inconsistent** with international standards on business and human rights.

With the aim to ensure a robust and impactful legislative regime that is aligned fully with the Guiding Principles, the Working Group, therefore, strongly recommends that the Corporate Sustainability Due Diligence Directive expressly includes the entire financial sector within its scope without developing a special regime for that sector’s human rights due diligence obligations. A more appropriate means to recognize the unique challenges the financial sector faces in implementing the Guiding Principles would be through the development of sector-specific guidance, not through carve-outs to the underlying obligations.