



# Bringing Payments Services to the Surface

How can the EU Directive on Corporate  
Due Diligence help tackle the Problem  
of Ocean Biodiversity Loss?

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# Policy Brief

## Executive Summary

- The World Economic Forum considers biodiversity loss as one of the top five risks for the world in the next decade, ahead of terrorist attacks and state collapse.<sup>1</sup>
- Concerning marine biodiversity, unsustainable fishing practices and overexploitation are causing the crossing of maximum sustainable limits of the ocean ecosystems. Overfishing is one of the main drivers of ocean biodiversity loss, alongside habitat destruction, land-based development and pollution, climate change and ocean acidification.
- The financial industry is the most fundamental and ubiquitous enabler of ocean biodiversity loss. By funding and profiting from unsustainable fishing companies, financial actors make ocean biodiversity loss possible. Even more notably, by processing payments between gear suppliers and commercial fishing companies, banks enable fisheries to engage in these activities. Therefore, **if banks were legally bound to process payments more sustainably, they would play a great part in preventing marine biodiversity loss.**
- Our recommendations are centred around the European Commission Proposal on Corporate Sustainable Due Diligence (CSDD), published on the 23rd of February 2022. The proposed Directive will legally bind large providers of financial services operating in the EU to identify, mitigate, prevent, cease, and account for the adverse socio-ecological impacts in their operations, subsidiaries, and established business partners.
- With our recommendations, we aim to ensure that:
  - I. Banks, as the principal providers of payment services, are required to conduct due diligence for payments and;**
  - II. Enforcement mechanisms proposed in the Directive are effective in tackling ocean biodiversity loss.**

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<sup>1</sup> World Economic Forum, 'Global Risks Report 2022' <[https://www3.weforum.org/docs/WEF\\_The\\_Global\\_Risks\\_Report\\_2022.pdf](https://www3.weforum.org/docs/WEF_The_Global_Risks_Report_2022.pdf)> Accessed 10/05/2022.

## Rationale for action

The main drivers of ocean biodiversity loss are overfishing, habitat destruction and climate change. The finance system also has a pervasive role in ocean biodiversity loss which is nevertheless less openly acknowledged but still noteworthy. Furthermore, fisheries are regarded as underperforming assets according to the World Bank, which estimates loss potentially due to poor management and exploitation at USD 85 billion a year.<sup>2</sup>

Institutional investors have not traditionally regarded themselves as agents of environmental and human rights decisions.<sup>3</sup> Nevertheless, today, **the financial industry has a major role to play in financing the transition to a sustainable blue economy, helping to prevent ocean biodiversity loss and to restore ocean prosperity.**<sup>4</sup>

Particularly, banks are ubiquitous in the fishing industry value chain as they are the main capital providers for both small-scale fisheries and large transnational corporate actors (See Figure 1).<sup>5</sup> Their distinctive function is to facilitate exchanges in the economy through payment systems. Banks are deposit takers: liabilities of banks can be used by banks' clients as 'money' for transaction purposes.<sup>6</sup> Other financial institutions do not have the same capacity to raise cheap funds by using deposits as a medium for exchange.<sup>7</sup> As providers of payment services, banks are members of wholesale payment systems for the clearing and settlement of transactions.

By virtue of these characteristics, payment systems are highly concentrated and interconnected. Fishing companies headquartered in the European Union heavily rely on payments mainly processed by EU banks to carry out their everyday activities, especially to purchase fishing gears. A plethora of fishing gears leads to destruction for the ocean

prosperity. Most notably, bottom trawling gears disproportionately damage marine biodiversity, altering ocean natural cycles and depleting fish stocks.<sup>8</sup> A 2006 UN proposal to ban bottom trawling from the high seas was blocked by just a few Member States.

**The European Commission proposal on CSDD can play a double role in protecting ocean biodiversity from bottom trawling.** First, it legally requires frontline fishing companies to conduct due diligence for the adverse impact their operations, subsidiaries and established business partners have on the environment and human rights. Second, by compelling banks in the EU to exercise due diligence on the adverse impacts caused by themselves and their clients, it can promote a more active role of banks in sustainability.

Our research focuses on how to amend the proposed Directive to possibly reach these objectives. We insist on requiring banks to conduct due diligence not only on finance they provide, but also on payments they process. The previous attempt of the French Loi de Vigilance to introduce a far-reaching duty of care on corporate actors has already been undermined by industry interest groups. Through our proposed amendments, we seek to cast light on the role played by banks in enabling ocean biodiversity loss and to hold them accountable. Wider awareness of linkages between finance, payments and unsustainability practices will contribute to countering pressure groups who oppose a well-gear CSDD.

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2 World Bank, 'The Sunken Billions Revisited: Progress and Challenges in Global Marine Fisheries' (2018) <<https://openknowledge.worldbank.org/handle/10986/24056>> Accessed 10/05/2022.

3 Ibid 227.

4 UNEP FI, 'Turning the Tide: How to Finance a Sustainable Ocean Recovery' (2021) <<https://www.unepfi.org/publications/turning-the-tide/>> Accessed 11/05/2022.

5 Jean-Baptiste Jouffray et al., 'Leverage points in the financial sector for seafood sustainability' (2019) 5(10) *Science advances* eaax3324 4.

6 John Armour et al., *Principles of Financial Regulation* (OUP 2016), 281.

7 Ibid.

8 Gabrielle Carmine et al. 'Who is the high seas fishing industry?' (2020) 3(6) *One Earth* 730.

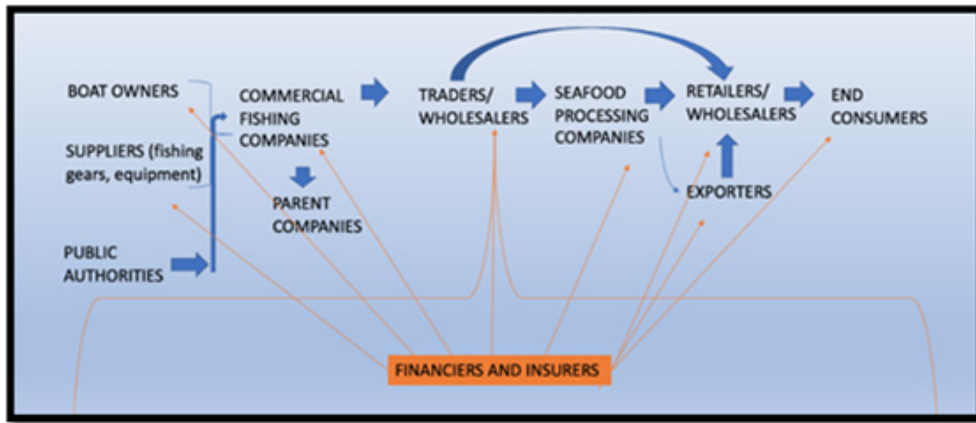


Figure 1: The role of financiers and insurers throughout value chain of the commercial fishing industry

## Proposed Recommendations

**Our proposed policy option is to intervene in the approval process of the EC Proposal on Corporate Sustainable Due Diligence during the Ordinary Legislative Procedure.**

The votes on the Proposal from the EU Parliament and the EU Council are expected to be held in 2023 which gives a short window of opportunity to advocate for the following policy recommendations.

The Proposal requires regulated undertakings to identify, assess, prevent, mitigate, monitor, cease and account for adverse human rights and environmental impacts. The duty would apply to company's own operations, its subsidiaries, and its established business partners. Because of its large potential to impact the banking system, the CSDD could assist our purpose to promote a better understanding and more specifically to address the problem of ocean biodiversity loss. At present, however, the text of the proposal is not fit for purpose. It is thus imperative to advocate for a series of effective amendments.

**Our recommendations have the capacity to truly strengthen the proposed Directive.**

In May 2022, over 220 NGOs and trade unions from around the world called on the European Parliament and Member States to address the significant flaws in the current text. The provisions must align with the expectations of EU citizens, workers, and communities affected by unsustainable corporate practices and prevent environmental harm.<sup>9</sup>

If approved, **the following amendments will ensure that the CSDD does not become a mere tick-boxing exercise. Instead, it would consolidate the Green Deal Initiatives launched by the European Union with a financial element.**

9 Friends of the Earth Europe, '220 organisations call on EU to strengthen its corporate accountability law' (11 May 2022) available at: < <https://friendsoftheearth.eu/news/letter-eu-must-strengthen-en-sustainability-law/>>.

## I. Including an express reference to 'payments' alongside other financial services explicitly included in the scope of obligations

**Rationale:** Provisions in the Proposal are directed to all companies, business sectors and geographical areas. As a result, the precise contents of obligations for each undertaking may be hard to determine – and enforce. Although the Directive applies to payment institutions, it does not specify the contours of due diligence obligations for banks and other financial entities. To discourage a reductive approach to due diligence by the financial industry, we should introduce a specific reference to payments. Once payments are included in the text of the CSDD, the EC may issue apposite guidelines for payment services providers.

## II. Requiring the financial industry to conduct due diligence not only at the inception of the contract but on an ongoing basis

**Rationale:** The Directive adopts significant carve-outs for the financial industry.<sup>10</sup> Instead, the leverage of the financial system should be used to promote sustainability in the productive economy. Financial actors should be called to carry out a dynamic evaluation of their clients' profiles every 12 months. Extending this requirement to banks will facilitate ongoing monitoring of their clients, making sure that due diligence policies and actions reflect changes in the financial landscape, shifting social expectations, regulatory environment and lessons learned.<sup>11</sup>

## III. Including all companies in high-risk sectors in the scope of the Directive

**Rationale:** A key priority is widening the scope of the Directive to businesses in high-risk sectors regardless of their size, including fisheries and aquaculture. Such amendment will be crucial to trace the flow of payments between gear suppliers and top EU fishing companies engaging in bottom trawling activities (such as Grupo Nores-Manuel

and Freiremar) that otherwise will not cross the thresholds for the application of the Directive.

## IV. Including the financial industry in the list of high-risk sectors

**Rationale:** Financial actors contribute to creating many socio-ecological problems that they fund and profit from. While such problems are typically attributed to major emitters, they are rarely held accountable. Including the financial industry in the list of high-risk sectors in the Directive will cast a light on their role in environmental degradation and human rights abuses. Coordinated with our recommendation n. III, this recommendation will enable the EU to hold smaller players responsible for ocean biodiversity loss and prevent regulatory arbitrage.

## V. Enhancing multi-stakeholder initiatives

**Rationale:** Openness and information-sharing are the most essential aspects of sustainable due diligence. In order to shift attention from profits to adverse impacts that businesses generate every day, it is paramount to build up multi-stakeholder grievance mechanisms. Grievance mechanisms would work both as an early-warning forum for awakening business conscience and as a remediation forum. The mediation process will enable stakeholders to propose well-tailored remedies under the circumstances of harm occurring.

## VI. Reversing the burden of proof in the civil liability framework

**Rationale:** The EC should require regulated undertakings to prove whether the harm would have occurred even if the company had exercised appropriate due diligence. Otherwise, in most Member States it will be impossible for claimants to prove that the regulated undertaking has acted 'unreasonably - disregarding the appropriate measures to prevent or cease the adverse impact on ocean biodiversity loss. Such a procedural barrier risks transforming the CSDD into a tick-the-box exercise.

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10 Proposal for a Directive on CSDD, Recital 30.

11 OECD, 'Due Diligence for Responsible Corporate Lending and Securities Underwriting: key considerations for banks implementing the OECD Guidelines for Multinational enterprises (OECD 2019) 30.

12 Proposal for a Directive on CSDD (n 10), Art 2(1).

