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Czech National Bank's position on public consultative document by the European Commission: *Consultation on a Possible Recovery and Resolution Framework for Financial Institutions other than Banks*

I. General position of the Czech National Bank on the consultation subject

The Czech National Bank considers it useful to discuss the systemic risks of the activities of non-bank financial institutions and an appropriate response to such risks. However, it would be too early to create proposals for harmonised recovery and resolution frameworks for non-bank financial institutions given that the framework for credit institutions and investment firms now under discussion contains a number of disputable and conflicting elements (depriving national authorities of decision-making powers and transferring them to the EBA, mandatory lending between resolution funds, etc.).

Before a consensus is found regarding the key elements of this legal framework, including the cooperation mechanisms acceptable for the member states, it is not appropriate to create further legislative proposals in this area. However, it does seem appropriate that the following is prepared – for example within the ESAs and using the know-how of colleges (if established for the specific types of entities):

(i) more detailed analyses of risks for individual types of institutions and
(ii) case studies, which will deal with the procedures and impacts of the application of possible new resolution tools to non-bank financial institutions, the financial market and the real economy.

These analyses should then be used in discussions about potential future harmonised regulation. In our opinion, such deeper analyses are necessary for the qualified discussion about a number of questions raised in the consultation document.

Any potential harmonised regulation should – among other things – fully take into account that responsibility for maintaining financial stability in a union of fiscally independent Member States lies with these Member States. For this reason, they must have the possibility to create their tools and exercise all powers they deem necessary to fulfil this function.

It is also important in our opinion that the new EU legal regulation should not give rise to the establishment of new systemically important institutions through concentrating a great number of significant tasks in one entity. EMIR[1], according to which some standardised OTC derivatives should be obligatorily settled through central counterparties (CCP), can serve as a relevant example. In our opinion, the EU should rather create room for diversification of the individual functions and tasks and support the creation of contingency plans.

[1] Regulation (EC) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories.

We also deem it important to note that a common regime for financial market infrastructure (FMI) entities is possible, but that the specificities of both the CCPs and the central securities depositories (CSDs) must always be respected. The CCP and CSD face risks different risks and the conditions for these entities' resolution must be adjusted accordingly.

II. Financial market infrastructure: central counterparties and central depositories

Questions:
1. Do you think that a framework of measures and powers for authorities to resolve CCPs and CSDs is needed at EU level or do you consider that ordinary insolvency law is sufficient?
2. In your view, which scenarios/events might lead to the need to resolve respectively a CCP and a CSD? Which types of scenarios CCPs/CSDs and authorities need to be prepared for which may imply the need for recovery actions if not yet resolution?
3. Do you think that existing rules which may impact CCPs/CSDs resolution (such as provisions on collateral or settlement finality) should be amended to facilitate the implementation of a resolution regime for CCPs/CSDs?
4. Do you consider that a common resolution framework applicable to CCPs and CSDs is desirable or do you favour specific regimes by type of FMIs?
5. Do you consider that it should only apply to those FMIs which attain specific thresholds in terms of size, level of interconnectedness and/or degree of substitutability, or to those FMIs that incur particular risks, such as credit and liquidity risks, or that it should apply to all? If the former, what are suitable thresholds in one or more of these respects beyond which FMIs are relevant from a resolution point of view? What would be an appropriate treatment of CSDs that do not incur credit and liquidity risks and those that incur such risks?
6. Regarding FMIs (some CSDs and some CCPs) that are also credit institutions, is the proposed bank recovery and resolution framework sufficient or should something in addition be considered? If so, what should the FMI-specific framework add to the bank recovery and resolution framework? How do you see the interaction between the resolution regime for banks and a specific regime for CCPs/CSDs?

CNB opinion:
1. The entities forming the market infrastructure (CCPs and CSDs) have particular features that must be taken into account in a potential recovery or resolution process. We thus think that ordinary insolvency law need not be sufficient. However, we do not deem it necessary to adopt a comprehensive legal framework at the EU level. We also point out that the potential legal frameworks for these entities' resolution cannot be mixed up. The necessary regulation of recovery and resolution powers can be left to o the discretion of member states and the EU legal framework should be limited e.g. to the creation of appropriate fora for coordination, such as supervisory colleges. It should also be studied, to what extent these entities are interconnected with similar systems outside the EU, i.e. to what extent the solution adopted within the EU would be sufficient to achieve the objectives. An analysis of potential approaches should thus include the whole range of available possibilities.

In general we believe that if the harmonised framework will turn out to be a necessity, such framework should affect only those entities for which it is justified, i.e. cross-border systemically important institutions.

2. In our opinion, the possible scenarios which may lead to the necessity of central counterparty resolution have been sufficiently described in the consultation document. We consider the failure of the central counterparty's key participant or participants or the wrong

setting of risk management at the CCP, particularly in relation to margins accepted, as the most significant. The interoperability between central counterparties which can have a strong impact on risk management, i.e. on potential failures among participants, is another important aspect.

As regards central depositories, we see a risk of potential failures mainly in the activities linked with the operation of a settlement system or the provision of ancillary banking services. We believe that of great importance is also the fact that the central depository is as usually only one in a given jurisdiction, i.e. its failure may paralyse trading in investment instruments registered with this depository.

3. The potential introduction of the FMI recovery and resolution regime would, of course, require also changes in relating regulations. In addition to the rules mentioned in the question, this would also apply to the directives governing company law, for example, in case of interference with shareholder rights. However, the identification of all necessary amendments will require more detailed simulations of the course of failures of the individual FMI entities and their impacts on the rest of the financial market and the real economy, as well as of possible ways of solving such failures. The necessary amendments will also depend on the tools and powers incorporated in a potential legal framework.

4. A common regime for both types of FMI entities is possible, but must always respect the specificities of the CCP and the CSD, see also Question 1. We again note here that the potential legal frameworks for these entities' resolution cannot be mixed up. It should also be taken into account that supervision and potential resolution of both types of institutions need not be exercised by one authority in all Member States. The potential harmonised legal framework should not even indirectly force Member States to make changes in their administrative structure and division of powers between public authorities.

5. National authorities should have the possibility to adjust the rules of the potential harmonised legal framework to the systemic importance of the individual entities and the activities (and thus also risks) that these entities actually perform. For example, in the case of a systemically unimportant and closely specialised CCP the competent authority should be able to reduce the requirements for a recovery or resolution plan to zero, i.e. instead of resolution there would be a regular liquidation or insolvency proceedings. In this context we also refer to the draft CMD which is currently discussed in the Council's working group, where the issue of proportional application of the proposed framework to differently important types of entities is open. We also think that it may be problematic to define single quantitative limits on the EU level because of the different size of the markets.

6. In our opinion, the regimes used for banks will largely be applicable also to FMIs which are credit institutions. It is necessary to take into account some specific features typical for CCPs (interoperability) and central depositories (monopoly). The specific necessary additional elements will, however, arise from the aforementioned analyses and case studies containing simulations of the course of failure of the individual FMI entities, their impacts on the rest of the financial market and the real economy, as well as of ways of solving such failures.

Questions:

7. Do you agree that the general objective for the resolution of CCPs/CSDs should be continuity of critical services?

8. Do you agree with the above objectives for the resolution of CCPs/CSDs?

9. Which ones are, according to you, the ones that should be prioritized?
10. What other objectives are important for CCP/CSD resolution?

CNB opinion:
7. Yes, continuity of some services is of key importance particularly for central depositories. In our opinion, this objective is included in the objective of financial stability protection. The same applies to the objective of contagion prevention.

8. A potential common framework should not define partial objectives, but work solely with financial stability protection. Competent authorities should undoubtedly proceed efficiently in respect of both public funds and other assets (the assets of the institution subject to resolution and its creditors). It should be clear, however, that the public interest to protect financial stability should be the primary objective.

9. See the answer above. Priority should be given particularly to CSD resolvability, chiefly owing to often monopoly position of such CSD and also to appropriate setting of coordination mechanisms between different jurisdictions and authorities in case of interoperability between CCPs. Also, the ensuring of a reasonable degree of legal certainty for all relevant entities is necessary to meet the commitments related to the rule of law. At the same time, it is necessary to provide supervisory authorities (or resolution authorities) with a sufficiently high level of flexibility to choose always an appropriate manner and timing of intervention.

10. We have not identified any other necessary objectives.

Questions:
11. What should be the respective roles of FMIs and authorities in the development and execution of recovery plans and resolution plans? Should resolution authorities have the power to request changes in the operation of FMIs in order to ensure resolvability?
12. To what extent do you think that CCPs/CSDs in cooperation with their users would be able to define efficient recovery and resolution plans on the basis of amendments to their contractual laws?

CNB opinion:
11. Recovery plans must be created and maintained by the regulated entity (FMI), but the competent supervisory authority must assess and approve such plans. For example, no plan should be approved and implemented that would clearly not lead to the correction of the situation, is based on unrealistic assumptions or would lead to significant negative impacts on the rest of the financial sector.

As regards resolution plans, the involvement of a supervisory (or resolution) authority is undoubtedly necessary; such plans include the use of the supervisory powers and are largely outside the FMI's control. Nonetheless, the financial institution should be deeply involved in the preparation of such a plan, as it is in the best position to identify e.g. the activities which could be singled out to an independent entity, the links between entities and activities which would be damaged by dividing the company. In this area, the scheme applied to the FMIs should be the same as the scheme that will be chosen for banks and investment firms within the CMD.

12. CCPs/CSDs cooperation with their participants (e.g. through participation in a risk committee) is necessary in some cases (e.g. setting the size of a fund for the risk of failure).

Similarly, the participants should be involved in the preparation of a recovery plan. Should the legal framework require changes in some FMI agreements with their members, it would be necessary, in addition to the adoption of a new legal regulation, to leave sufficient transitory periods for the adjustment of these legal relations.

Particularly in the case of a CCP we consider members' involvement to be of key importance. These members should – in their own interest – ensure sufficient CCP capitalisation.

Questions:
13. Should resolution be triggered when an FMI has reached a point of distress such that there are no realistic prospects of recovery over an appropriate timeframe, when all other intervention measures have been exhausted, and when winding up the institution under normal insolvency proceedings would risk causing financial instability?
14. Should these conditions be refined for FMIs? For example, what would be suitable indicators that could be used for triggering resolution of different FMIs? How would these differ between FMIs?
15. Should there be a framework for authorities to intervene before an FMI meets the conditions for resolution when they could for example amend contractual arrangements and impose additional steps, for example require unactivated parts of recovery plans or contractual loss sharing arrangements to be put into action?

CNB opinion:
13. In general, we can agree with the proposed conditions for triggering resolution, but it should not be an obligation of a Member State or its body, but a possibility. We further point out that to prove compliance with the set conditions may be very difficult in practice and the requirement to exhaust all other options would be very impractical.

14. At the moment we do not see any reason for setting a different regime for FMIs than that valid for other financial institutions (banks, investment firms). It seems appropriate to set indicators only qualitatively. It does not seem appropriate to fix quantitative criteria and automatic reactions by the authorities. The specific types of appropriate criteria will arise from the analyses and case studies suggested above. In this respect it seems appropriate to study also past cases of FMI failures and analyse which signs of the impending failure could have been identified in these cases.

15. We can agree that supervisors should have relatively wide powers which will allow them to flexibly react to a set of future crisis situation unknown in advance. From the possibilities listed above, the supervisory authorities should surely be able to require the implementation of a recovery plan or its specific parts. As regards unilateral changes in agreements, it is necessary to proceed with caution so as not to excessively violate legal certainty of the parties concerned. The entities that would enter in agreements where such a change is possible should agree with this possibility in advance.

Questions:
16. Should resolution authorities of FMIs have the above powers? Should they have further powers to successfully carry out resolution in relation to FMIs? Which ones?
17. Should they be further adapted or specified to the needs of FMI resolution?
18. Do you consider that temporary stay on the exercise of early termination rights could be a relevant tool for FMIs? Under what conditions? How should it apply between interoperated FMIs? How should it be articulated with similar powers to impose temporary stays in the

bank resolution framework?
19. Do you consider that moratorium on payments could be a relevant tool for all FMIs or only some of them? If so, under what conditions?

CNB opinion:
16. Yes, we consider the suggested list of powers of resolution authorities as appropriate, we do not see the need for other specific powers at the EU level at the moment. However, this should always be a list of minimal powers. In addition, within the simulations and analyses suggested above, some cases could be identified, where the powers proposed would not be sufficient to ensure effective correction and reduction of risks to financial stability. Also for this reason we consider such analyses and simulations necessary. Qualified discussions on a potential new legal framework cannot be based only on a general consultation.

17. The same answer as to question 16 applies. Nonetheless, the choice and manner of use of the specific tool or power must be left to the decision of the national supervisor following the assessment of the specific situation and the type of FMI.

18. We do not have any experience with the application of this mechanism in practice, so we consider it necessary to conduct the analyses and simulations mentioned above. We, however, point out that there is a risk for the relevant authority when it applies the mechanism, as this decision could lead to damages to CCP participants and the entities exercising through them the transactions (possible action for damages). Currently we consider that the exercise of such power is possible only if the implementation of the specific resolution measures has been prepared and will be implemented in a very short period (in days).

19. We consider moratorium on payments in the case of CCP and CSD very problematic as the settlement of transactions is based on the execution of payments between clients and moratorium could thus be in contradiction with the objective of ensuring the continuity of their activity.

Questions:
20. Which reorganisation tools could be appropriate for resolving different types and CSDs and CCPs? What would be their advantages and disadvantages?
21. Which loss allocation and recapitalisation tools could be appropriate for resolving different types of CSDs and CCPs? Would this vary according to different types of possible failures (e.g. those caused by defaulting members, or those caused by operational risks)? What would be their advantages and disadvantages?
22. What other tools would be effective in a CCP/CSD resolution?
23. Can resolution tools based on contractual arrangements be effective and compatible with existing national insolvency laws?
24. Do you consider that a resolution regime for FMIs should be applicable to the whole group the FMI is a part of? What specific tools or powers for the resolution authorities should be designed?
30. Do you agree that the resolution of FMIs should observe the hierarchy of claims in insolvency to the extent possible and respect the principle that creditors should not be worse off than in insolvency? (Note: In our opinion, Question 30 is related to Questions 21–24, so we have transferred it above. In the consultation document it is given separately.)

CNB opinion:
20. and 21. It is clear from the different character of CCP and CSD activities that not all

resolution tools will be applicable to both types of the institutions. For example, the continuity of operation of the CSD can be ensured within conservatorship, as in the delivery vs. payment settlement or the operation of the securities register it is not necessary to replenish funds. By contrast, in the case of failure of the CCP, which is a counterparty of transactions, it is necessary to obtain additional funds to ensure further operation. The choice of an appropriate tool for resolution of a specific type of entities should be left to discretion of the relevant authority. There is no reason (and it could be counterproductive) to reduce the set of tools available for different subtypes of CSDs and CCPs.

22. We have not identified any other tools at the moment.

23. Yes, we believe that contractual tools can be used effectively in the resolution process. Of course, they can lead to a different order of creditors' participation in loss settlement than would be the case according to insolvency law, but only to the detriment of the entities that accept a worse order based on a contract (e.g. within recapitalisation effected primarily from the CCP's commitments vis-a-vis its members). When constructing such tools, however, it is necessary to analyse in great detail whether to apply the "no creditor worse off" condition as it could lead to a situation where recapitalisation is made from the national resolution fund rather than from the creditors' funds.

24. We believe that in principle, the tools and powers should be applied to the individual entities of a potential group. This is necessary, among other things, to preserve legal certainty of creditors of the institution subject to resolution. If all members of the same group run into difficulties at the same time, the coordinated application of some tools or powers to all members could be justified. In case of cross-border coordination it would be necessary to fully respect the final responsibility and powers of the authorities of each country for resolution of institutions having registered office in its territory. A specific situation would arise in this respect if the institution under resolution had significant branches in other member states –in such cases the authorities of such member states should be involved in resolution.

30. Yes, we do not see any reason to apply a different approach than for other financial institutions in this respect. We point out, however, that the “no creditor worse off” principle is associated with significant practical difficulties (mainly to find out what would be the result of insolvency proceedings), and the conditions set in the draft CMD lead – at least for the bail-in tool – to a situation where creditors must in total always obtain more than they would have obtained in insolvency proceedings.

Questions:

25. In your view, what are the key elements and main challenges to take into account for the smooth resolution of an FMI operating cross-border? What aspects and effects of any divergent insolvency and resolution laws applicable to FMIs and their members are relevant here? Are particular measures needed in the case of interoperable CCPs or CSDs?

26. Do you agree that, within the EU, resolution colleges should be involved in resolution issues of cross border FMIs?

27. How should the decision-making process be organized to make sure that swift decisions can be taken? Alternatively, do you think that responsibility for resolving FMIs should be centralised at EU-level?

28. Do you agree that a recognition regime should be defined to enable mutual enforceability of resolution measures?

29. Do you agree that bilateral cooperation agreements should be signed with third countries?

CNB opinion:
25 Cross-border aspects are important for CCPs, less for CSDs. Decisions and responsibility should remain with the domestic supervisory authority and cooperation with other supervisory authorities will be necessary (see e.g. colleges for CCPs in line with EMIR). This also applies to recognition of resolution regimes and measures by other jurisdictions. Further, it is necessary to ensure that any contractual arrangements mentioned in Question 23 are applicable and effective even if the debt instrument is governed by laws of another state. If it is not possible to ensure this condition, the supervisory, or resolution authority should require that such debt instruments of the given entity be governed by laws of such states where applicability and effect of the arrangement necessary for enforcing the resolution power are safeguarded. However, amid an absence of a (globally) harmonised insolvency regulation, contractual instruments seem to be a possible way of overcoming differences between national insolvency regimes.

26 Yes, see also above. The coordinating role of colleges is appropriate in this case. However, issues relating to resolution relate closely to supervision, so possible resolution colleges might exist within supervisory colleges. The EU should avoid establishing an excessive number of institutions and coordination forums.

27 See reply to Question 25. Decisions and responsibility should remain with national supervisory authorities, or resolution authorities. We consider it highly inappropriate to centralise powers at EU level. If a failure of FMI or an inappropriately selected (implemented) solution to this failure has an impact on the economy and national budget of an individual Member State and there is no credible mechanism of compensation of Member States for these consequences, it cannot be imagined that FMI resolution powers are taken from Member States.

28 We believe that the power to recognise (or not to recognise) the effects in the territories of their states based on decisions by foreign resolution authorities should be left to the discretion of each Member State.

29 Bilateral agreements should be signed with third countries where considered appropriate by the given Member State. We would like to mention that the regime of relations with third countries, as currently designed in CMD, is unacceptable from our perspective as it prevents the member state from deciding which decision and by which country it recognises in its territory.

III. Insurers and reinsurers

Questions:
1. Are the resolution tools applicable to traditional insurance considered above adequate? Should their articulation and application be further specified and harmonised at EU-level?
2. Do you think that a further framework of measures and powers for authorities, additional to those already applicable to insurers, to resolve systemically relevant insurance companies is needed at EU level?
3. In your view, which scenarios/events might lead to the need to resolve a systemically relevant insurance company? Even before that, which types of scenarios systemic insurers

and authorities need to be prepared for which may imply the need for recovery actions if not yet resolution?

CNB opinion:
1 Yes, individual measures stated in the consultation document are sufficient. However, we do not believe that given the previous developments in insurance and the specific features of insurance market it should be necessary to apply all the above mentioned measures in general and across the board. For instance, we do not consider it necessary to introduce guarantee schemes, due mainly to
- different business models of insurers, which de facto make it impossible to withdraw saved funds,
- preferential treatment of policy holders and beneficiaries in case of the insurance company default,
- the possibility of the transfer of the insurance portfolio and
- reinsurance.

We do not consider it appropriate to harmonise individual measures mentioned in the document, as corrective measures and penalty regimes respect justified national specifics consisting in e.g. requirements of administrative regulations etc.

2 We do not believe it is necessary to harmonise additional measures against systemic insurers. Especially not in a situation where no agreement has been reached for key issues relating to the credit institutions recovery and resolution framework, negotiations of guarantee schemes in insurance have not been completed and Solvency II directive has not become effective. We think that most examples of problems of systemic insurers mentioned in the document are probably due to insufficient supervision of risk concentration, intragroup transactions, and insurers' inappropriate approach to risk exposure. Since requirements in these areas will be significantly strengthened by Solvency II directive (together with closer international cooperation of national supervisory authorities), we suggest that considerations about the harmonised framework for resolution of insurance companies should be postponed until practical experience is gained with Solvency II directive. In any case, the potential future harmonisation framework should cover only those entities for which such measure is justified, i.e. cross-border systemic institutions.

3 Given the wide range of possible reasons for default, a different nature of activities carried on by individual insurers and completely different impacts on policyholders and the financial market and the real economy, cases and conditions under which actions would be appropriate or necessary cannot be listed in full. We believe that it might be appropriate to set a basic framework and general criteria for intervention, but a scope needs to be left for discretion of individual Member States and their authorities.

Questions:
4. Do you agree with the above objectives for resolution of systemic insurance companies? What other objectives could be relevant?

CNB opinion:
4 We believe that the main objective is to maintain financial stability, which also typically includes maintaining continuity of systemically important activities of insurers and to large extent also policyholders' protection. However, we do not consider it appropriate to state policyholder protection as a separate objective as it would mean the need for intervention by

resolution authorities even in the event of default of systemically unimportant insurers. No insurance company could thus terminate its activities by standard bankruptcy. We would not consider this result to be desirable as it would among other things increase the risk of moral hazard for policyholders.

Questions:
5. Do you think that recovery plans should be developed by systemic insurers and resolution plans by resolution authorities? Do you think that resolution authorities should have the power to request changes in the operation of insurers in order to ensure resolvability?

CNB opinion:
5 We believe that potential regulation should be identical to that applicable to the banking sector, where discussions are being currently headed towards a possible significant involvement of financial institutions in the development of resolution plans.

Questions:
6. Do you agree that resolution should be triggered when a systemic insurer has reached a point of distress such that there are no realistic prospects of recovery over an appropriate timeframe, when all other intervention measures have been exhausted, and when winding up the institution under normal insolvency proceedings would risk causing financial instability?
7. Should these conditions be refined? For example, what would be suitable indicators that could be used for triggering resolution of systemic insurers?

CNB opinion:
6 and 7 We can generally agree, subject to certain qualifications, with the proposed conditions for triggering resolution. However, we consider it crucial that it should be an option, rather than a duty, of a Member State (or its authority) to trigger resolution (see Question 3). At the same time, we would like to point out that a key problem may arise when proving one of the conditions due to its too general and ambiguous formulation ("has reached a point of distress such that there are no realistic prospects of recovery over an appropriate time frame"). We also believe that the formal requirement of exhausting all other measures would be very impractical and might result in unnecessary delays in resolution measures and thus also to higher-than-necessary losses.

Questions:
8. Do you agree that resolution authorities of insurers could have the above powers? Should they have further powers to successfully carry out resolution in relation to systemic insurers? Which ones?
9. Should they be further adapted or specified to the specificities of insurance resolution?

CNB opinion:
8 and 9 Alternative resolution instruments should not be significantly different from resolution instruments proposed in the other sectors (except "classic instruments" specific for insurers, i.e. especially the run-off and the transfer of the insurance portfolio). We can thus generally agree with the proposed list. However, Member States should not be limited by a harmonised framework, if any, when adopting further powers.

Questions:
10. Would the tools mentioned above be appropriate for the resolution of systemic insurers? What other tools should be considered and why?

CNB opinion:
10 See answer to questions 8 and 9 above.

Questions:
11. Do you think that, within the EU, resolution colleges should be set up and involved in resolution issues of cross border insurance groups?
12. How could the decision-making process be organized to make sure that swift decisions can be taken? Should this be aligned with the procedures already set out in Title III of Directive 2009/138/EC?
13. Alternatively, do you think that responsibility for resolving systemic insurers should be centralised at EU-level?
14. Do you think that a recognition regime should be defined to enable mutual enforceability of resolution measures?
15. Do you think that to this end bilateral cooperation agreements could also be signed with third countries?

CNB opinion:
11 As the Solvency II directive requires the establishment of a college for each cross-border insurance group, it does not seem to be necessary to establish further colleges in parallel only for the purpose of possible resolution. The aim of colleges under Solvency II is among other things to coordinate activities of national supervisory authorities in the event of a crisis situation of a supervised group and these colleges are to adopt the "emergency plan" for this purpose[2]. We believe that the very existence of a resolution college would be counterproductive as there would be a clash between powers of the supervisory college and the resolution college.

12 See Question 11. We believe that the decision-making process may be based on Solvency II directive.

13 No. A potential default of systemic insurers/insurance groups has impacts mostly in the territory of states in which these insurers operate and which will thus be represented in the college. Responsibility for resolving a crisis situation should thus be left with the directly affected authorities/Member States, mainly because the decisions made may have significant fiscal impacts.

14 We believe that the power to recognise (or not to recognise) the effects by decisions by foreign resolution authorities in their territories should be left to the discretion of each Member State. No directive regulating insurance contains a similar principle and we see no reason for its introduction in the case of resolution measures. It is necessary to distinguish between possible resolution measure at the group level and the insurer level, especially for cross-border groups. In line with Question 12, we believe that the decision-making and enforcement regime under Solvency II should be applied. Group-important issues are consulted at the college level, but enforcement is left to supervisory authorities, within which jurisdiction the relevant insurer falls. We think that coordination of resolution measures cannot result in favouring the policyholders' interests of one Member State at the expense of policyholders from another state, i.e. group-level interest cannot be favoured at the expense of individual financial institutions, their clients and at the expense of public interest of any Member State.

[2] *As regards this type of plan, see also the CNB's reply to Question 5.*

15 We agree with the involvement of third-country supervisors, especially within consultations and coordination of measures in a college. Multilateral agreements relating to cooperation in supervision, specific for each college (taking into account e.g. that some systemic European insurers are more active outside the EU than on the single European market; the level of involvement of third-country supervisors in discussion/coordination at the level of this college will thus probably be higher than for the other colleges) be a suitable solution in this case. Of course, this agreement would require consent of all college members. A mutual recognition of decisions should be solved exclusively by bi- and multilateral international treaties, parties to which individual countries would be (not only the EU and the third country in question). For more on this issue see reply to Question 14.

IV. Payment systems, payment institutions and other non-bank financial institutions

Questions:

1. Do you agree with the above assessment regarding payment systems, payment institutions and electronic money institutions? Alternatively, do you consider that either (or both) would merit further consideration as to their ability, first, to give rise to systemic risk and, second, the need for possible recovery and resolution arrangements in response?

2. Besides those covered in previous sections of this paper, which other nonbank financial institutions can become systemically relevant and how? Depending on the type of institutions, what are the main channels through which such systemic risks are transmitted or amplified?

3. In your view, what could be meaningful thresholds in relation to the factors of size, interconnectedness, leverage, economic importance or any other factor to determine the critical relevance of any other nonbank financial institution?

4. Do you think that recovery and resolution tools and powers other than existing insolvency rules should be introduced also for other nonbank financial institutions?

5. In your view, what could then be meaningful points of failure at which different types of other nonbank financial institution could be considered to fulfil the conditions for triggering:

- *a) The activation of any pre-determined recovery measures; or*
- *b) Intervention by authorities to resolve the entity?*

6. With respect to possible preventive and preparatory measures:

- *a) Do existing regulatory frameworks applicable to other nonbank financial institutions provide for sufficient safeguards, in particular with respect to their governance structures, market/counterparty/liquidity risk management, transparency, reporting of relevant information and other etc.?*
- *b) Are supervisors equipped with sufficient powers to be able to collect information and monitor the various types of risks existing or building up in the particular nonbank financial sector/institution?*
- *c) Are additional supervisory powers needed to ensure de-risking and prevent overly complex and interlinked operations?*
- *d) Would recovery and resolution plans be necessary to be introduced for all or only some of these institutions? Why?*

7. With respect to possible early intervention powers and measures:

- *a) Do existing regulatory frameworks applicable to other nonbank financial institutions provide for effective early remedial actions of supervisors aimed at correcting solvency or operational problems at an early stage?*
- *b) What other early intervention powers could be introduced?*

8. With respect to possible resolution measures and tools:

- *a) Should administrative, non-judicial procedures and tools for the restructuring or managed dissolution of other failing nonbank financial institutions be introduced?*

b) Depending on the entity, what could be the appropriate and specific resolution tools to be used? For which institutions are certain resolution tools or techniques not relevant? Why?

CNB opinion:

1 to 8 Given the above mentioned CNB's general opinion, we do not consider it currently appropriate to develop an analysis of risks to payment institutions and systems or to create harmonised legal frameworks for recovery and resolution of other types of financial institutions. However, should convincing arguments be collected for including other types of entities in this discussion, we are certainly not against its extension.