

Nordic Financial Unions

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NFU Response to Consultation on a possible recovery and resolution framework for financial institutions other than banks

Summary of main points

- Employees must be seen as stakeholders in relation to recovery and resolution arrangements, and procedures for consulting with employees during recovery and resolution phases must be set up.
- Regardless of the design of the framework and the powers invested in the administrator, there must be no worsening of employee's rights in any aspect due to a company being put under resolution.
- Finance employees can make a crucial contribution to supervisory arrangements and provide unfiltered information on daily practices to supervisors.
- NFU would like to see a level playing field where all financial markets, products and market participants are regulated in a fair and thorough fashion.

General remarks

Generally, NFU support the Commissions initiative to create a framework for recovery and resolution for nonbank financial institutions. There is a need to ensure that all financial markets, products and market participants are regulated in a fair and thorough fashion, thus ensuring sound competition and a level playing field – both between Member States and different parts of the sector. At the moment we have seen many positive initiatives on regulating banks, while other parts of the sector have remained fairly unregulated. Should this prevail, it could be an incentive to move operations from banks to nonbank financial institution, thus threatening both transparency and financial stability.

It is however evident that the insurance sector did not contribute to systemic instability in the same way as did some banks during recent years' financial turmoil, nor have they had to be bailed out by taxpayer money to any significant extent. From an investor protection perspective, the Commission has had a tendency to draw too far-reaching conclusions with

regards to the scope and content of insurance regulation on the basis of problems that has occurred mainly in the banking sector, with the recent IMD2 proposal primarily in mind. It is imperative that any new rules in the area of recovery and resolution do not build on impact assessments or analyses made in regard to the banking sector, but instead build on the specificities of the insurance sector both regarding its role in the financial crisis and the general systemic consequences that might occur if insurance companies get into trouble.

Moreover, NFU is surprised and disappointed to see that the employee dimension is hardly mentioned in the consultation document. Employees can greatly contribute to enhanced supervision, as finance employees have exclusive knowledge of the daily practices of a company. Information from employees can serve as a relevant indicator.

Furthermore, it must be ensured that procedures are put in place for consulting with the employees of an institution under resolution and/or recovery. Employees must be seen as stakeholders on equal footing with shareholders, customers and taxpayers.

The social dimension must be taken into account while constructing a recovery and resolution framework. The bottom line is that it must be made absolutely clear what a recovery or resolution will entail for the employees of the entity or group concerned, and that the framework must provide for a continuously sound and sustainable employment situation.

Specific remarks – CCP / CSD

Question 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?

Yes. NFU supports the idea of a pan-European framework on these issues. There is a need to ensure that all financial markets, products and market participants are regulated in a fair and thorough fashion, thus ensuring a level playing field and sound competition.

Question 10

What other objectives are important for CCP/CSD resolution?

NFU is disappointed to see that the employees are not at all mentioned here. When setting up objectives for credit institutions' recovery or resolution plans, the social consequences must be taken into account. Finance employees should not have to bear neither the burden nor the blame for bad management.

It should not be possible to put the blame of a material deterioration in an institution's financial situation on the employees, or push the cost burden of recovery onto the employees. The question of employees' prioritized right to salaries and other means of remuneration in cases of failing financial institutions must be addressed. As stated above, procedures for consulting with employees during recovery and resolution processes must be established.

The bottom line is that it must be made absolutely clear what a recovery or resolution will entail for the employees of the entity or group concerned, and that the framework must provide for a continuously sound and sustainable employment situation. This means that, regardless of the design of the framework and the powers invested in the administrator, there must be no worsening of employee's rights in any aspect due to a company being put under resolution.

Questions 13-15

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?

NFU would like to see early warning systems and information from the employees mentioned among the possible indicators. Finance employees are crucial as a source of information regarding the day-to-day practices in financial undertakings. They are often the first to realise that company practices are unsound – but they seldom have somewhere to turn with their worries. Employees can give supervisors direct information that is not filtered through management or a board of directors.

NFU has repeatedly maintained the importance of early warning systems, consultation with employees and whistle blowing systems. While we are pleased to see whistle blowing included in several proposals from the Commission lately (such as CRD IV, MiFID II and IMD II) it is most certainly relevant also in relation to resolution and recovery. Whistle blowing is all about ensuring that early warnings from the bottom up will reach the competent supervisory authority that should have the power, the mandate and resources to follow-up on the warnings.

Whistle blowing would not only ensure a fast and efficient “point of entry” for supervisors, but also provide employees with a measure where their concerns are taken seriously. This could be done in a way where the supervisors consult with employee representatives in a suitable way, be it through anonymous “hot-lines” or scheduled, consultative meetings with trade unions or other employee representatives.

It is important to stress that for employees to be able to provide this information in an orderly fashion, the supervisors must be able to create reliable systems. Employees must not be punished in any way for contributing to identifying and eradicating systemically unsound practices. The identity of the employee must be protected and it must be possible to report also possible breaches.

Question 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?

When considering moratorium on payments, NFU would like to stress that this cannot be used on any employee remuneration. Both in relation to this point and to the general context of recovery and resolution measures as well, NFU would like to stress the social partners' absolute right to assume the responsibility of sound and sustainable remuneration principles.

NFU strongly supports the idea of remuneration policies and practices that are consistent with, and promote, sound and effective risk management. However, remuneration policies should be left to the social partners to decide upon, since pay is, according to art. 153.5 in the Treaty on the Functioning of the European Union (TFEU), not for the EU to deal with.

This has also been acknowledged in Recital 14 in the directive 2010/76/EU (commonly known as CRD III) on capital requirements for the trading book and for re-securitisations:

Recital 14: The provisions on remuneration should be without prejudice to the full exercise of fundamental rights guaranteed by the Treaties, in particular to the provisions of Article 153(5) of the Treaty on the Functioning of the European Union (TFEU), general principles of national contract and labour law, applicable legislation regarding shareholders' rights and involvement and the general responsibilities of the administrative and supervisory bodies of the institution concerned, as well as the rights, where applicable, of social partners to conclude and enforce collective agreements, in accordance with national laws and traditions.

CRD III acknowledges that the provisions on remuneration are without prejudice to the social partners' right to conclude collective agreements in accordance with national laws and traditions. The provisions in recital 14 are of highest importance to the trade union movement, and a vital component of the Nordic model, based on collective agreements. NFU urges the Commission to take this right into account when drafting criteria for recovery plans.

Question 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?

NFU would again like to point to the fact that the discussion is leaving the finance sector employees out of the context. It is disappointing that the Commission does not explicitly

mention finance sector employees as stakeholders in this context – it should be as important to ensure the protection of the employees of the failing company. The enforcement of the resolution framework cannot be solely based on the economic interests of the customer, shareholder, or the tax-payer; the economic interests of employees must also be taken into account.

Employees of any finance institution must be considered to be creditors as well in this case, and should therefore also be addressed as such. If any compensation mechanisms or similar are to be introduced to safeguard creditors, these must also guarantee that no employees are left worse off than they would have been, had the company under resolution been wound up under the applicable insolvency law. This means that the question of employees' prioritized right to salaries and other means of remuneration in case of insolvency must be addressed.

Specific remarks – Insurance and reinsurance

Question 1 and 2

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 systematically relevant insurance companies is needed at EU level.

Yes. Even though NFU shares the belief that recovery and resolution will be less needed in the insurance sector, NFU supports the idea of a pan-European framework on resolution and recovery for insurance companies. All financial markets, products and market participants should be regulated in a fair and thorough fashion, thus ensuring a level playing field and sound competition.

That said, the insurance sector acts according to a different rationale than the banking sector and in many ways fulfil a quite different role in relation to the real economy than does the banking sector. It has not contributed to systemic imbalances in nearly the same way as the banking sector has, so any recovery and resolution measures proposed must take these fundamental differences into account. In essence, it is all about not punishing the insurance sector with excessive regulatory demands as a consequence of risky business behaviour by some banks. With reference to the IMD2 proposal currently being discussed in the European Parliament, one can identify certain requirements in that dossier (such as transparency in remuneration) that do not in any way correspond to the problems that have actually occurred. It is not a quality approach to draw hasty conclusions regarding regulatory measures needed for the insurance sector on the basis of what has been taking place in the banking sector.

Question 4

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

NFU would like to point out that a relevant objective is to provide for a continuously sound and sustainable employment situation. The social consequences must be taken into account. Finance employees should not have to bear neither the burden nor the blame for bad management.

It must be made absolutely clear what a recovery or resolution will entail for the employees of the entity or group concerned. Regardless of the design of the framework and the powers invested in the administrator, there must be no worsening of employee's rights in any aspect due to a company being put under resolution.

The question of employees' prioritized right to salaries and other means of remuneration in cases of failing financial institutions must be addressed. It should not be possible to push the cost burden of recovery onto the employees.

Question 6 and 7

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?

As stated above, finance employees are crucial as a source of information regarding the day-to-day practices in financial undertakings and their knowledge should be used as an indicator.

Employees are often the first to realise that company practices are unsound – but they seldom have somewhere to turn with their worries. Employees can give supervisors direct information that is not filtered through management or a board of directors. Therefore consultation with employees and "whistle blowing systems" should be used.

This could be done in a way where the supervisors consult with employee representatives in a suitable way, be it through anonymous "hot-lines" or scheduled, consultative meetings with trade unions or other employee representatives.

It is important to stress that for employees to be able to provide this information in an orderly fashion, the supervisors must be able to create reliable systems. Employees must not be punished in any way for contributing to identifying and eradicating systemically unsound practices. The identity of the employee must be protected and it must be possible to report also potential breaches.

Question 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?

Again, NFU would like to point out that a moratorium on payments cannot be used on any employee remuneration. NFU would like to stress the social partners' absolute right to assume the responsibility of sound and sustainable remuneration principles. According to article 153.5 in the Treaty on the Functioning of the European Union (TFEU), pay is not for the EU to deal with.

Specific remarks – Other nonbank financial institutions

Question 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?

Yes. As a result of the EU financial regulatory agenda, banks are becoming increasingly regulated in the European Union. However, nonbank financial institutions, so called shadow banks, do not abide by the same rules. This can create unsound competition between different parts of the sector and also be an incentive to move operations from banks to nonbank financial institution, thus threatening both transparency and financial stability. All financial markets, products and market participants should be regulated in a fair and thorough fashion, to ensure a level playing field.

Question 6a

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.?

NFU would again like to point out that finance employees are crucial as a source of information regarding the day-to-day practices in financial undertakings. Their knowledge should be used.

NFU has repeatedly maintained the importance of early warning systems, consultation with employees and whistle blowing systems. While we are pleased to see whistle blowing in several proposals from the Commission lately (such as CRD IV, MiFID II and IMD II) it is most certainly relevant also in relation to resolution and recovery. Furthermore, the proposed measures do not cover nonbank financial institutions.

Employees can give supervisors direct information that is not filtered through management or a board of directors. This could be done in a way where the supervisors consult with employee

representatives in a suitable way, be it through anonymous whistle blowing “hot-lines” or scheduled consultative meetings with trade unions or other employee representatives.

NFU would also like to highlight the importance of including employees in corporate governance, for example via employee board representation.

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?

It is vital that supervisors are not only equipped with the adequate powers but also with the resources that are needed to gather the information needed in a thorough and serious way. Even though financial employees and their knowledge should be used as a resource this can in no way diminish the importance sufficient resources for supervisors.

About NFU

Nordic Financial Unions (NFU) is the voice of the employees in the Nordic financial sectors. We are an organisation for co-operation between trade unions in the banking, finance and insurance sectors of the Nordic countries. Through our eight affiliated unions in Denmark, Sweden, Norway, Finland and Iceland we represent 160 000 members – a vast majority of the employees in the Nordic financial sectors. Together, we work for sustainable financial sectors.

NFU acknowledges that this consultation reply will be published.

Yours Sincerely,

Nordic Financial Unions (NFU)

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President

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