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Enclosure

CONSULTATION DOCUMENT

**EU Consultation on a Possible Recovery and Resolution Framework
for Financial Institutions other than Banks**

Register of Interest Representatives

Identification number in the register: 52646912360-95

Dear Sir or Madam,

The German Banking Industry Committee thanks the European Commission for the invitation to comment on the discussion paper. Please find enclosed the German Banking Industry Committee's response to the Consultation Document regarding the Consultation on a Possible Recovery and Resolution Framework for Financial Institutions other than Banks.

In case of any queries do not hesitate to contact the signatory on the right.

Yours faithfully,
on behalf of the German Banking Industry Committee
National Association of German Cooperative Banks



Gerhard Hofmann

by proxy



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Response

to the Consultation on a Possible Recovery and Resolution Framework for Financial Institutions other than Banks

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Berlin, 12-12-20

*The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent more than 2,000 banks.*

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We gladly seize the opportunity offered during the present consultation process to submit our comments concerning recovery and resolution of financial institutions other than banks.

Our member banks support and welcome the objective of regulating the recovery and resolution of systemically relevant financial institutions other than banks. In this context, financial market infrastructures (FMIs) are among the main pillars of functioning financial markets providing essential services that underpin the transactions in financial instruments. Insofar as certain financial market infrastructures (e.g. the German Central Securities Depository (CSD), Clearstream Banking AG as well as the Central Counterparty (CCP) EUREX Clearing AG) might become subsumed under the regulatory scope of the forthcoming Directive establishing a framework for the recovery and resolution of credit institutions and investment firms (Crisis Management Directive) because they also act as deposit-taking banks either at present or in future, CSDs and CCPs should be subject to separate provisions reflecting the idiosyncrasies since they are service providers of idiosyncratic, systemically relevant functions (c.f. Section 3 question 6).

Hence, in our comments we shall be focusing on the financial market infrastructures (FMIs) mentioned in Section 3 of the Consultation Paper. At this point, we are aware of the fact that the present consultation paper is not primarily addressed to us. However, as stakeholders and FMI users, we are similarly immediately affected by the forthcoming provisions. Based on the foregoing, we would like to provide proactive and selective input during the present consultation process.

1. General

We explicitly welcome the objective of ensuring the continuity of any FMI services which are regarded as systemically relevant for as long as possible, more specifically, to potentially separate them from the distressed FMI and to transfer them to viable banks. On a similar note, we endorse the plans to do so especially also during a crisis which, under normal circumstances, would lead to an insolvency. There should be closure and orderly wind-down of those parts and services which are not regarded as systemically relevant. In terms of ongoing regulatory arrangements this also means that attention will be paid to a possibly fast and uncomplicated termination and resolution of interdependencies during a crisis already when approving and monitoring FMI interdependencies (particularly as regards interoperability). Also, in order to ensure the availability of sufficient alternatives during a transfer of critical services, efforts should be undertaken in order to prevent the creation of any oligopoly or monopoly structures in the field of FMIs. Furthermore, some FMIs feature cross-border activities meaning that they may be systemically relevant not only for Europe but also on a global scale. Hence, there should be a particular focus on the fact that the resolution of such FMIs will not only be incumbent upon one national supervisory authority only. Instead, there will be a need for coordination of the supervisory authorities whose markets would be affected.

In this context, in order to mitigate the risks that would result in distress for FMIs, we also feel that the FMI's compliance with the "Principles for financial market infrastructures" (hereafter the "Principles") drafted and published by the CPSS and IOSCO in April is essential. We therefore welcome an incorporation of said Principles under respective European regulatory projects.

In our view, prior to adopting any further specific action concerning the legal framework, there should be a careful consideration not only of the comments submitted during the present consultation round but also of the results obtained during the recently finalised CPSS and IOSCO consultation process dealing with the recovery and resolution of FMIs.

Furthermore, we would appreciate it if the European Commission included the current or forthcoming regulatory projects for CCPs and CSDs into its current deliberations and if their respective results as well as the problematic aspects mentioned in the discussions were reflected in the regulatory framework. Apart from the regulation on OTC derivatives, central counterparties and transaction registers (EMIR) (with a focus on provisions for CCPs) which has already taken effect, this concerns particularly the forthcoming regulation on CSDs and securities settlement (CSDR) as well as securities law legislation which is relevant for legal issues surrounding a transfer of deposits and / or securities.

Furthermore, we would like to point out that many of the tools mentioned in the present Consultation Paper have been discussed in a controversial manner not only by our own membership; whilst not limited to, particularly the loss allocation models appear to be controversial. In addition to this, further models are under contemplation, the implications of which are still unclear thus necessitating the greatest care during the further deliberations. Based on the above and in order to avoid unwanted and irreversible legal repercussions, we suggest a more in-depth discussion and a careful investigation as well as a cautious assessment of the effects of the approaches and tools outlined here and elsewhere. Said exercise should involve experts from the various stakeholders (e.g. FMIs, direct and indirect users, clearing and non-clearing members, supervisory authorities, bankruptcy trustees).

2. Questions

Below, please find our answers to the questions under Section 3:

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?

CCPs and CSDs have a vital role for stable and functioning financial markets. Hence, we are of the opinion that the existing insolvency law is **not sufficient**. This applies both to national, cross-border and even global settings. We welcome the opportunity to establish a special regulatory framework for the recovery and resolution of FMIs that will reflect the prominent role of CCPs and CSDs as well as their idiosyncrasies in terms of their structure and tasks. This will help avoid additional financial crises and it will promote the further evolution of these FMIs which have proven their robustness during the last financial crisis. As far as securities clearing / securities settlement services are concerned, in many Member States, during a crisis, ordinary insolvency law would usually lead to a discontinuation of these services thus potentially giving rise to uncertainties or at least incur a lengthy winding-up process regarding holdings involving the right to separate or preferential settlement. This, in turn, would give rise to a risk of contagion that would undermine financial market stability.

With a view to the heterogeneous national insolvency regimes we particularly welcome a harmonisation concerning the recovery and resolution of cross-border, systemically relevant FMIs. At this point, particular care is required so as to avoid any overlap with national insolvency rules.

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?

With a view to recovery and resolution, the present question relates to different scenarios. First, we would like to point out that critical scenarios can materialise in one of three different categories which will have to be treated separately:

- 1. Regular business operations** during which the supervisor, at most, has a monitoring task.
- 2. Recovery**, where an FMI is ailing but where an autonomous / unaided recovery of regular operations is possible. At this point, the supervisor will only intervene in exceptional cases and in a supporting capacity.
- 3. Resolution** whenever a recovery appears impossible. The supervisor is driving this process proactively.

CCP: On principle, a member's default forms part of **regular business operations**. For this reason, the European Market Infrastructure Regulation (EMIR) contains certain rules which are supposed to provide financial protection to the CCP (e.g. provisions concerning the so-called waterfall) whenever such cases occur. Also, the Principles lay down effective risk management approaches for handling exposures that are part and parcel of regular business operations.

However, simultaneous defaults by several members or, in the event of interoperability, defaults of other CCPs could exhaust the waterfall bringing the **CCP** to a **point of distress**. Along with losses incurred due to the CCP's function, any form of malpractice would be possible, covering the whole spectrum between compliance and outright non-compliance (e.g. misinvestments, losses due to operational reasons, mismanagement, displacement due to competition, crime or extraordinary financial trends). The competent supervisor should monitor such events and ought to be aware of the fact that these events trigger **recovery activities** which ought to be handled by the CCP itself. There may be a need for the supervisor to take action if the recovery activities fail or if the CCP fails to adopt mandatory recovery measures. In such an event, the supervisor would particularly have to establish whether the CCP had already entered the **resolution** stage (the outlook for a recovery is negative) or whether the CCP will be able to single-handedly complete the recovery successfully and which instructions would have to be issued this end.

CSD: A CSD is not directly party to a contract. Instead, it executes orders for its participants which, in turn, are mutually bound by bilateral contractual relations. Hence, a CSD will remain unaffected by a participant's default. However, such risks might materialise in cases where a CSD assumes **credit risks**. This may occur as part of **regular business operations** or it might incur **a crisis** for the CSD. Furthermore, we would like to reiterate our point made above, i.e. that also malpractice (e.g. misinvestments, losses due to operational reasons, mismanagement, displacement due to competition, crime or extraordinary financial developments) can make a **CSD** reach **a point of distress**.

For the scenarios mentioned, there already exist provisions as far as regular business operations are concerned (under EMIR or, moreover, they are currently under development: CSDR). For both other categories, corresponding recovery and resolution plans / measures should be defined which shall be applicable unless the respective FMIs have already prepared corresponding plans

themselves or if the plans prepared by them are found to be inadequate. However, these recovery and resolution plans / measures should provide an adequate reflection of the individual root causes and effects. Also, said recovery and resolution plans / measures should articulate the consequences in a clear and predictable manner.

3. Do you think that existing rules which may impact CCPs/CSD's resolution (such as provisions on collateral or settlement finality) should be amended to facilitate the implementation of a resolution regime for CCPs/CSDs?

No, we don't think so.

In our view, the primary rationale behind said regulatory frameworks (Financial Collateral Arrangements Directive, Settlement Finality Directive) consists in establishing legal certainty as well as time points for the finality of orders that have an effect on third parties. In other words, the primary rationale consists in the protection of members' or, moreover, the respective FMI's clients' ownership rights or legal titles. Hence, these regulatory frameworks also cover a potential insolvency by members / clients. However, they do not regulate an insolvency of the FMI in its capacity as a "platform" provider. Therefore, any *regulatory framework* for the recovery and resolution of FMIs should neither prejudice nor override these provisions but, on the contrary, ought to take these provisions into account.

In our view, the envisaged resolution regime would incur precisely no FMI insolvency with its consequences under the [German] Bankruptcy Act, or, moreover, under ordinary insolvency laws. Instead, it would give rise to a kind of special law governing orderly FMI closure subject to the prudential oversight by the competent authority.

At this point, the central business operations (securities clearing and settlement) would not be discontinued. Instead, initially, they would continue in an unchanged manner and could be rendered also in future. The Financial Securities Directive and the Finality Directive should continue to be applied to these services in an unmodified manner. More likely than not, an amendment focusing on a potential resolution will lead to legal uncertainty during the application and could thus have repercussions which would be counterproductive with a view to the regulatory framework's underlying rationale (financial market stability).

Regarding the protection mechanisms already established under the EMIR (initial and variation margin, default fund, dedicated fund) we would like to emphasize that these must not be prejudiced in any way by the forthcoming regulatory framework, lest this will promote an unwanted risk of contagion for the FMI's users/members/clients.

Furthermore, when implementing a regulatory framework, we also believe it is important that the CPSS and IOSCO principles (the Principles) be taken into account. Also, during the preparation of the regulatory framework, the CSD Regulation's provisions which are currently being discussed as well as the potentially imminent proposals for provisions in the field of securities law legislation ought to be taken into account adequately.

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?

A common regulatory framework regarding recovery and resolution of CCPs and CSDs would appear inappropriate. This is due to the differences in terms of the **business type** but also in terms of the **risks** as well as the membership structure of CCPs and CSDs. Based on the foregoing, *in lieu* of a common resolution framework, we advocate in favour of **separate, specific provisions that depend on the type of the FMI**. Furthermore, it is worth noting the Crisis Management Directive would be applied to FMIs if and when these are, at the same time, deposit banks. At this point, the regime for FMIs should be more specific. The Crisis Management Directive should only apply on a subsidiary basis to bank specific tasks and risks (cf. also question 6 below).

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?

The notion that only system relevant banks should be covered by the regulatory scope may initially suggest that the regulatory scope should be determined on the basis of the size, the degree of interconnectedness as well as the degree of substitutability. However, unlike banks, in our view **CSDs** can already be regarded as system relevant *ex ante*. This is due to their **monopolistic structure**. The same applies to **CCPs**, given their **special risk of contagion** inherent in their business model. Hence, regardless of their size (thresholds), interconnectedness or substitutability, credit or liquidity risks etc., the regulatory framework should **generally** apply to **all FMIs** (CCPs and CSDs).

The size, the degree of interconnectedness or the substitutability as well as the question concerning credit and liquidity risks should only be relevant in terms of the deadline for submission of recovery plans and the selection of the appropriate measures during a recovery or resolution of the respective FMI.

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?

As far as recovery and resolution is concerned, it is first and foremost the function of the FMI that counts. This also explains their system relevance and the need to avoid conventional insolvency proceedings. Therefore, with a view to ensuring the continuity of the special, systemically relevant services rendered by CCPs and CSDs, the special provisions of the regulatory framework

should be applicable to FMIs regardless of whether they are also deposit banks or not. In these cases, an application of the Crisis Management Directive should only take place on a **subsidiary** basis and its regulatory scope ought to be confined to functions which are divorced from the systemically relevant services that relate to banking. In our view, an FMI specific regulatory framework should not stipulate any further rules on top of the Crisis Management Directive. Instead, its regulatory scope should be confined to a limited set of specific and detailed rules applicable to CCPs / CSDs. Additionally, the Crisis Management Directive might be applied (on a subsidiary basis) if and when typical banking functions are equally affected by the crisis. At any rate, in order to avoid any inadvertent, inconsistent outcomes, there should be coordination between the competent supervisory / resolution authorities and the action to be taken under their respective jurisdiction.

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

Yes, we agree. However, also the continuity of ancillary services that are indispensable for supporting the critical service should be an option. Yet, this shall only apply if the specific FMI's services **are actually deemed systemically relevant**. In terms of all other services, their separation and discontinuation needs to be an option.

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

Yes, however, the above objectives should not be regarded as exhaustive.

9. Which ones are, according to you, the ones that should be prioritized?

All "high level objectives" should be prioritized (continuity of critical services, preservation of financial stability, avoidance of contagion and an unnecessary destruction of value, safeguards against losses for tax payers). Concerning the more operational objectives, we suggest the following prioritisation:

- a) Legal certainty and predictability concerning the events and points in time triggering recovery / resolution and concerning the tools and consequences involved.
- b) Coordination mechanisms of different jurisdictions and supervisory authorities
- c) Appropriate resolution powers and tools
- d) Adequate preparation for the failure of a CCP/CSD

10. What other objectives are important for CCP/CSD resolution?

Other objectives important for CCP/CSD resolution are listed below:

Functioning markets, clarity and predictability of the consequences involved in the measures taken, adequate trade-off concerning all stakeholders interests affected by the policies adopted, loss allocation based on root causes (under due consideration of the user and ownership

structure), option of a discontinuation and close-down of any functions that are not systemically relevant.

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?

a) Role of the FMI

When developing recovery plans, FMIs should integrate the (direct and indirect) user interests and should support supervisory authorities in their preparation of resolution plans. Furthermore, they should be open to cooperation with users and supervisory authorities both, during the development and during the implementation of recovery and resolution plans.

b) Role of supervisory authorities

Authorities should monitor the development and potential feasibility of recovery plans and provide support in order to achieve these objectives. Furthermore, they should develop and execute resolution plans under due involvement of the respective FMI and its users.

c) Intervention powers held by supervisory authorities

The rationale behind the second question is not immediately obvious to us. On principle, prior to a recovery, the supervisor should abstain from any interference with the business operation. Whenever the FMI has entered the resolution stage, the supervisory authority should have the powers to intervene in a supporting capacity in exceptional cases. This particularly applies if recovery plans are not implemented at all or if their implementation by the FMI's senior management is inadequate. At this point, it would be worth considering certain thresholds or milestones or, respectively, levels of urgency. A break-up of an FMI that is in the resolution process needs to be made possible.

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?

The recovery and resolution plans should particularly take legal provisions into account (EMIR and CSDR). More precisely, they should not impair the protection mechanisms envisaged thereunder specifically for stress scenarios (e.g. waterfall). In drawing up the respective recovery and resolution plans, there is a compelling need for cooperation with [FMI] users. The users of the FMIs are directly affected. Hence, naturally, they take a vital interest in effective recovery and resolution planning meaning that their involvement ensures the development of plans that can be implemented well and that function.

Furthermore, the recovery plans will also have to reflect the root causes of the losses. In order to address the root causes, different tools would be available. These would have to be discussed and

agreed with users in order to achieve the largest degree of acceptance possible in the general terms of trade or contractual agreements. Rules incurring the need for margin calls or a waiver of receivables or a transformation of liabilities into shareholdings in the FMI need to be transparent, clear and predictable; in order to become effective, they need the individual, explicit approval by the respective user.

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?

Generally speaking, it should. However, one critical point to be borne in mind is whether the preconditions for normal insolvency proceedings would have to be assessed identically in cross-border transactions / scenarios. We welcome a corresponding harmonisation in this respect.

However, the trigger point which demarcates the beginning of the resolution process for the FMI should be clearly defined and it should be possible to determine it on the basis of objective criteria.

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?

Both FMI types will feature **identical** indicators triggering resolution. Also and especially based on the harmonisation, we are very supportive of this. However, there is divergence concerning the trigger point, or, moreover, the timing. Also the ensuing resolution measures (e.g. the transfer of the vital components) will differ in terms of type and speed depending on the respective FMI.

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?

On principle, supervisory authorities should intervene if and when the respective FMI fails to adopt appropriate action or is no longer capable of issuing the corresponding instructions itself. Prior to a resolution, such action would have to be taken by the FMI's regular supervisor. The regular supervisor, however, may not be identical with the resolution supervisor.

However, one precondition for this is that the measures which are being adopted by the supervisory authority were laid down in the FMI's recovery plans and that the FMI itself culpably refrains from adopting these measures. Not even a supervisory authority is entitled to impose additional measures which are not envisaged in the recovery plans. Nor is it entitled to unilaterally alter existing contractual agreements.

Furthermore, it is worth noting that a recovery will have to be implemented to the greatest extent possible by the FMI itself and that actions on the part of the authorities shall be the exception and not the rule. Notwithstanding the foregoing, supervisory action will never be possible in the absence of a legal mandate.

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?

On principle, resolution authorities should have all the above options and powers for both CSDs and CCPs.

17. Should they be further adapted or specified to the needs of FMI resolution?

Yes, they should be further adapted to the specific needs of the respective CSD or CCP.

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?

We have **major concerns** over the powers to impose a stay.

On the one hand, imposing a stay might constitute a meaningful tool for the purposes of stabilising or transferring operations. On the other hand, the right timing for imposing the stay is vital. Also, safeguards are required in order to avoid bypassing.

By way of analogy to the Crisis Management Directive, the following guiding principle should be generally valid:

- Application limited to a restricted set of circumstances
- Time limit (up to 48 hours max.), clear rules specifying the starting point and the end
- adequate safeguards, e.g. concerning netting: no cherry-picking, transfer and termination as a whole
- Emergence of termination rights following suspension (the remaining stakeholders need to be able to fully exercise their contractual rights)

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?

a) CSD: No, given that the CSD always carries out payments for and on behalf of third parties, we doubt that a moratorium on payments could be a relevant tool.

b) CCP: We also have **major concerns** over a moratorium which might be imposed specifically on payments by the CCP within the framework of the protection mechanism (margins). This would

only be a viable option in cases qualifying for the imposition of a stay. Hence, there is a need for congruence with the guiding principles mentioned under **question 18**.

20. Which reorganisation tools could be appropriate for resolving different types and CSDs and CCPs? What would be their advantages and disadvantages?

First, we feel that there should be a clarification that the tools mentioned at this point as well as further loss allocation or margining tools shall and must only be treated as a means of "**last resort**" and that they cannot be used prior to reaching the resolution stage. Furthermore, the loss allocation tools need to appropriately consider the function and the business model of the respective FMI.

In addition to this, we feel that there are still a number of points in the discussion that are as yet unresolved. We **have major concerns over** these tools. This is due to the fact that not only do they involve a massive interference with proportionality but they also entail unpredictable consequences for stakeholders (**risk of contagion**). On the one hand, compared to the insolvency, they potentially lead to a clearly weakened position of creditors. On the other hand, these models might accelerate the FMI's crisis and cause a spill-over to users. As far as these models are concerned, the boundaries should be clearly defined. They must not incur any unlimited margin call requirements. Also, a *pro rata* contribution by all creditors (not only by the direct and indirect users) would be desirable.

Whenever a *de facto* margin call requirement arises, this must go hand in hand with specific rescue measures. Furthermore, the parties affected need to have the right to end the contractual relations once they have met the margin call requirement / payment.

Feel free to contact us for any discussions on the models mentioned under (i) to (v) or any further models.

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?

Cf. Q20.

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?

This depends on the respective national law. Hence, we feel a harmonisation would be highly commendable (cf. reply to Q1).

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?

a) The question whether the respective FMI's resolution regime should also be applicable to the entire group that the FMI is part of depends on the FMI's structure, functionality and on its special situation. Furthermore, there will be a need for an *ad hoc*-assessment, both, at the level of the individual undertaking as well as at the level of the group. At this point, it seems pivotal to contain the risk which has manifested itself within the FMI and to prevent it from spreading to other entities (within the group). More specifically, the risk of contagion should be kept to a minimum.

b) Loss allocation and recapitalisation arrangements could be spread within the group. One possible tool could consist in guarantee undertakings issued by the parent or affiliated companies. Here, too, an *ad hoc*-assessment at the level of the FMI / group level would be appropriate. However, there should preferably not be any involvement in the resolution of the respective FMI whenever further group entities, in turn, provide system relevant services.

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?

There is a need for harmonisation of rules and coordination of the supervisory authorities. Possibly, there ought to be fast termination of interoperability. In this context, already during the ongoing supervision / regulation it ought to be ensured that interoperability can be terminated quickly during a potential crisis and that the associated FMI will not be privileged compared to any other participants.

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

There should always be coordination and cooperation which is decisive for a successful outcome. However, we are still unsure whether standing resolution colleges should be involved in this or whether this ought to take place on the basis of an *ad hoc*-cooperation.

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?

First, the respective decisions should be taken by the cooperating national authorities or, moreover, the colleges created between them. If there is a lack of consensus, an EU authority could be contacted for liaison purposes (e.g. ESMA etc.).

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

Yes, we do agree.

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

Yes, however, reciprocity would have to be taken into account.

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?

Yes, this principle should serve as a guiding principle during resolutions. Creditors should never be worse off unless justified by exceptional circumstances involving overriding interests and after due consideration of the principle of proportionality. However, the boundaries should be defined in a clear and unambiguous manner.