Comments Template on EIOPA-XX-16-XXX Discussion Paper on Potential harmonisation of recovery and resolution frameworks for insurers		**Deadline 28.02.2017 23:59 CET**
Name of company:	Czech Insurance Association (CAP)	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. Please indicate if your comments should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.	Public/Confidential
	Please follow the instructions for filling in the template: ⇨ Do **not** change the numbering in column "Reference"; if you change numbering, your comment cannot be processed by our IT tool. ⇨ Leave the last column empty. ⇨ Please fill in your comment in the relevant row. If you have no comment on a paragraph or a cell, keep the row empty. ⇨ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. **Please send the completed template, in Word Format, to CP-16-009@eiopa.europa.eu, by 28 February 2017.** **Our IT tool does not allow processing of any other formats.** The numbering of the questions correspond with the questions included in the Discussion Paper on Potential harmonisation of recovery and resolution frameworks for insurers.	
Reference	**Comment**	
General comment	Czech Insurance Association (hereinafter referred as "**CAP**") appreciates the overview of national recovery and resolution frameworks as presented by the EIOPA in the Discussion Paper on Potential Harmonisation of Recovery and Resolution Frameworks for Insurers (hereinafter referred as "Discussion Paper"). CAP invites any open discussion with the EIOPA	

on potential issues in regards with the taking-up and pursuit of the business of insurance and reinsurance.

It is undisputed that due pursuit of insurance business which contributes to the proper functioning of the Internal Market (by means of the Freedom of Establishment "FoE" or Free Movement of Services "FoS") and enhances the consumer protection lies in the centre of our common interest.

Upon thorough examination of the Discussion Paper CAP would like to state that there exists no real need for the harmonization of recovery and resolution frameworks for insurers at the EU level. CAP bases its conclusion on following arguments/reasons:

CAP understands that 2007-2008 financial crisis triggered concerns over potential systemic risks of other institutions than banks and questions how to tackle such potential crisis situations. Notwithstanding these concerns, the CAP would like to emphasize that **even EIOPA's analysis didn't come to a clear conclusion that there exists any urgent and sufficient need for a harmonized recovery and resolution scheme**.

At the offset, CAP reiterates that **insurance is very different to banking**. It is generally recognised that only certain non-insurance activities and if conducted on massive scale may give rise to systemic risk concerns. Thus, it follows that insurance industry experienced much fewer failures of high profile national or cross-border insurance groups than the banking (see para 104 of the EIOPA Discussion Paper). The Discussion paper itself acknowledges that the likelihood and potential impact of detrimental scenarios are lower compared to the banking sector (see para 130 of the Discussion Paper).

	First, the paramount argument against any current harmonisation is that the **new prudential requirements under Solvency II were just adopted and implemented in Member States**. Solvency II has established certain requirements in terms of recovery and resolution, such as recovery plan in case of non-compliance with the SCR and finance scheme in case of non-compliance with the MCR (Art. 138 and 139 thereof), respective supervisory powers, obligation to cooperate and coordinate among NSAs, etc. Thus, any new Union harmonisation of recovery and resolution for insurers should be carried on only and once it is clearly established that the existent framework (e.g. Solvency II) contains loopholes and is insufficient. CAP is of a strong opinion that it is **too early to state weather Solvency II proves to be inadequate tool**. Moreover, the first experience with new regulatory regime following more than one year of practical implementation is even from EIOPA point of view rather positive. In consequence, if proved necessary, **any initiatives should be discussed exclusively within Solvency II** and its fixed timeframe for reviews and not in any isolated and separate initiative disregarding current frameworks. In the Discussion Paper, EIOPA states that some of the Solvency II tools come into play only during normal times of business (e.g. cooperation and coordination of NSAs – see para 112 – 113 of the Discussion Paper) or once there is a risk an insurer is in breach of the regulatory capital requirements (e.g. MCR/SCR – see para 191 of the Discussion Paper). In EIOPA's view this may not be sufficient. CAP submits that we need to consider all these tools and steps in their complexity. From what is mentioned above, it is clear that **Solvency II set comprehensive prudential framework which provides for respective pre-emptive measures and remedies not only in the normal course of business but in times of crisis as well**.	

	The **essential part of the existent proper and functional framework is the cooperation and coordination; among NSAs and between NSA and an insurer**. For those purposes, we may emphasize stress tests carried out by EIOPA and NSA (In CZ the Czech National Bank carries its own stress tests alongside the one carried out by EIOPA) and the day-to-day cooperation and consultations of NSA with insurers (including regular controls, checks and reporting). The recent stress tests revealed that insurers are strong and the industry is resilient. Results indicated that on an aggregated level undertakings were adequately capitalised from a Solvency II perspective with an overall Solvency Capital Requirement (SCR) ratio of 196%. More than 70% of the participants had SCR coverage above 160%. From perspective of **Czech insurance market the SCR ratio reaches 239%** and realization of prescribed stress test's scenarios defined by EIOPA as well as supplementary scenarios added by Czech National bank (reflecting specifics task of the Czech market – risk of floods as well as premium inadequacy in MTPL) would not cause reducing of solvency ratio under 160%. Moreover, CAP agrees with EIOPA that in the insurance sector an insolvency situation materializes over time and failure is usually a slow burn process taking several years (see para 130 of the Discussion Paper). Thus, the NSA by carrying regular checks may easily spot any upcoming issues and can take necessary measures in time to prevent any detrimental impacts. Besides, in reality the situation with insufficient solvency of insurer is often solved by acquiring of insurance portfolio by another insurance without any negative effects to the clients.	
Q1	CAP deems there are other arguments that need to be taken into consideration against a harmonised recovery and resolution framework as described under General Comment above and Q2 below.	
Q2	CAP would like to present some other arguments against a harmonised recovery and resolution framework (besides those mentioned in the Discussion paper and in responses under General Comment and to Q1 above) to be taken into consideration:	

	Any Union harmonization of recovery and resolution frameworks for insurers has to fulfil the **principles of subsidiarity and proportionality**. It is questionable whether those fundamental principles will be remedied. As EIOPA rightly pointed out it is not demonstrated that the existing powers and tools are unsuitable to deal with severe stress scenarios (see para 131 of the Discussion Paper). Further, CAP fully agrees that it is the NSA which knows better the local market and may reflect national specificities in a better way, e.g. what concretely happened in defining country specific stress test scenarios last year. If action taken on the Union level the national specificities may not be addressed to the same extent which as a result will not benefit the insurer nor the clients. One of the mentioned ratios for harmonization is to avoid a fragmented landscape of different recovery and resolution frameworks. CAP would like to point out that the potential fragmentation (which does not have to be detrimental per se as shown above regarding the national specificities) can be easily cured by the **cross-border cooperation among NSAs**. CAP acknowledges that **the cooperation is crucial and any recent insolvencies of particular insurers may stem rather from individual regulatory failures than from any missing Union legislation. The current Union legislative frameworks deems to be complex and sufficient.** Third, the need for any Union harmonization may appear in case of truly high degree of cross-border activity. In this sense, CAP would like **to correct the quoted high degree of cross-border activity in the insurance sector** (29 percent – see para 114 of the Discussion Paper) which does not correspond with the definition of cross-border activity in Solvency II (Art 159 of Directive 2009/138/EC). According to the Solvency II the degree of cross-border activity is less than five percent and therefore reduces the practical need for a harmonization on European level.	

	Finally, it is inevitable that any such harmonization may **fall harshly on small and medium insurers** as entailing significant administrative and financial burdens. In this regard, CAP would like to highlight that all CZ insurers and almost all in the CET region would fall under the definition of SMEs in comparison to others in the EU insurance sector and thus its impact should be highly evaluated.	
Q3	**As a principal submission in regards to responses on questions 3 – 38, CAP would like to state that unless the general need for any harmonisation is fully founded, there is no need to analyse any building blocks.** In accordance with its response above, CAP submits that building block 1 is already covered by the Solvency II framework. In regards with the building block 2 – early intervention, CAP is of opinion that Solvency II regime already provides for intervention powers where there is a risk of breach and thus it covers the early intervention phase as well. Thus, CAP asks EIOPA why the intervention provided by Solvency II is not sufficient, especially under situation when Solvency II is complex prudential framework. Further, some of the early intervention powers mentioned in the table 3 (p. 53 and 54 of the Discussion paper) should rest within insurer and not the supervisor, especially if insurer is still viable. Supervisor should cooperate with the insurer and monitor the execution of the recovery plan, if relevant, i.e. to ensure the insurer has taken appropriate recovery plans (that may differ depending on respective insurer) and not to take management decisions instead of the insurer. Regarding the building 3, CAP does not agree with the EIOPA's submission on "existing concerns that NCAs may procrastinate on putting an insurer into resolution as it will be deemed that the insurer has not been monitored properly" (see para 209 of the Discussion Paper). Such occasion will be qualified as regulatory failure. The NSA seems as appropriate	

	authority to deal with any resolution plans. Based on the regular visits and checks NSA is empowered and obliged to perform and knows better the current situation of the insurer. Thus, NSA should be able to execute decisions on resolution. By establishing a completely separate Resolution Authority the insurer may pose itself into situation of being supervised by two completely different bodies with potential lack of information and coordination between themselves. The cooperation and coordination among NSAs and between NSA and insurer is crucial. Better working cooperation in the EU may solve any outstanding issues. We must bear in mind that another Union harmonization (even if fully detailed) will not heal any failures without a thorough cooperation among interested subjects. The European prudential framework is in place and thus the focus should shift from any subsequent initiatives to rather better compliance of Solvency II.	
Q4	No further building blocks are needed to be considered.	
Q5	Before dwelling into any responses to EIOPA questions, CAP would like to reiterate its principal conclusion that **no real need for EU harmonization of recovery and resolution frameworks has been demonstrated in the Discussion Paper**. Being said that, CAP suggests that any recovery and resolution framework should **only apply to cross-border groups of systemic importance** (designated G-SIIs) and possibly also stand-alone insurers where a failure could have an impact on financial stability.	
Q6	The proportionality is fundamental and paramount principle when applying the recovery and resolution framework. The exercise of recovery and resolution powers should be proportionate to the nature, scale and complexity of the situation and insurer (its size, complexity, business type, interconnectedness, etc.).	
Q7	CAP does not agree on the extra need for pre-emptive recovery planning. **Solvency II contains provisions regarding recovery planning**. The existing requirements under Solvency II (like the **ORSA** which is one of the company's management tool) would be sufficient. When a pre-emptive recovery plan is explicitly required, it could find its base in the ORSA and could be specifically extracted from the ORSA.	

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Q8	Pre-emptive recovery planning shall be **only considered for insurers that present risks to financial stability and the real economy**, as established by the relevant supervisory authority. If no such risks are posed, there is no reason to require a pre-emptive recovery plan from the insurer.	
Q9	CAP refers to response to Q8 above.	
Q10	Following the response on Q7 above there is no need to answer Q10.	
Q11	CAP does not agree on the extra Union harmonized need for pre-emptive resolution planning. First, the FSB Key Attributes provide for guidance on elements of the resolution plans. The concepts of Solvency II and the FSB Key Attributes are interlinked (some of the reorganization measures may be seen as early intervention as well as resolution measures – see box 1 on p. 27 of the Discussion Paper). Thus, the first step should be for EIOPA to carry out a thorough mapping exercise of such linkage, similarities and differences. Second, the recovery plans and resolution plans differ in its scope and purpose and thus the proportionality principle is crucial. The actual resolution plan will much depend on circumstances of the insurer. As already mentioned above the insolvency situation and failure is a usually gradually slowly developing process and thus the NSA should be in a position to have sufficient time and to adapt the plan on the current situation and circumstances.	
Q12	Resolution plans should be required **only for insurers that have been designated systemic**.	
Q13	See response on Q12.	
Q14	As the chapter of the Discussion paper deals with the resolution we assume that Q14) asks on resolution plans and not recovery plans. CAP refers to its response under Q11.	
Q15	CAP agrees that "resolution authorities" should only have to assess the resolvability of insurers	

	for which a resolution plan is drafted.	
Q16	CAP recommends to be cautious when it comes to the power to require the removal of significant impediments to the resolvability of an insurer. In such scenario, the competent authorities interfere with the legal structure of the insurer which would be a quite extensive intervention. Such intervention may be justified only under exceptional circumstances. To comply with the fair trial rules an impartial review (of such intervention) must be available.	
Q17		
Q18	As already stated above (response to General Comment), CAP is of opinion that Solvency II regime already provides for intervention powers where there is a risk of breach and thus it covers the early intervention phase as well. Thus, **CAP asks EIOPA why the intervention provided by Solvency II is not sufficient**. Further, some of the early intervention powers mentioned in the table 3 (p. 53 and 54 of the Discussion paper) should rest within insurer and not the supervisor, especially if insurer is still viable. Supervisor should cooperate with the insurer and monitor the execution of the recovery plan, if relevant, i.e. to ensure the insurer has taken appropriate recovery plans (that may differ depending on respective insurer) and not to take management decisions instead of the insurer.	
Q19	It depends on individual situation of concrete undertaking that is usually well known by local supervisor authority. NSA can combine the qualitative and quantitative information in the optimal way and is able to evaluate, even in the situation when solvency ratio is still above 100%, whether the risk of further deterioration is so significant that early intervention might be taken. It shows that **cooperation among NSAs and with EIOPA is crucial**. Any case of failures shows that there is rather demand to intensify and enhance better cooperation of supervisory	

	authorities than to adopt any new harmonising legislation.	
Q20	**The proposed list** of early intervention powers in table 3 **goes far beyond what is necessary and proportionate** in the recovery and resolution scheme (e.g. the call for cash injections by shareholders or parent companies). The resolution authority should not be the one taking decisions for the insurer and decide what measures the management board has to execute. In accordance with Solvency II the use recovery plan and finance scheme may be considered once the SCR/MCR are in breach or there is risk of a breach. CAP does not see justification for use of early intervention powers unless there has been a breach of SCR or MCR or the risk of breach is very likely. In that sense, we see as key element the proactive role of local supervisory authority and the ability to identify risky situations. As already said above, **if any loopholes are clearly demonstrated, than it is a call for EIOPA to act and intensify current framework under Solvency II rather than need to build another new general "independent" regulation**.	
Q21	No other early intervention powers should be considered.	
Q22	**CAP does not favour the creation of a separate "resolution authority" as this would overlap with the existing authority exercised by the NSA, the supervisory colleges or the appointed insolvency practitioner** where formal insolvency proceedings have been initiated. There is absolutely no need for new institutions.	
Q23	CAP agrees that the primary objective for resolution is the protection of policyholders (see para 213 and 214 of the Discussion Paper). The Solvency II regime already aims at the same objective of protection of policyholders in its prudential rules. Therefore, the Solvency II enables to take recovery measures once an insurer is in breach or there is a risk it will be in breach of the regulatory requirements, i.e. in a phase long before occurrence of any risk that policyholder will not be protected.	
Q24	Based on response to Q23 there is no need to answer Q24.	

Q25	First, entry into resolution should be the last case scenario. Further, the ladder of supervision already provided by Solvency II should not be disrupted. The conditions for entry into resolution are already established by the FSB Key Attributes. CAP understands that legal certainty is one of the key issues in any due process, however certain extent of flexibility is vital when determining conditions for entry into resolution. Resolution authorities must have enough flexibility to set the most appropriate resolution scheme aiming for the optimal outcome. The exact resolution strategy depends on many factors. The resolution authority (NSA) shall take into account the specificities of insurance business, such as the long-term investment character, to set the most appropriate resolution tools. Second, entry into resolution should not occur before the insurer has reached the point of non-viability. CAP fears that **premature entry into resolution diminishes the recovery options that may actually serve better purpose and outcome for the insurer and its policyholders** (including run-off and portfolio transfer).	
Q26	See response to Q27 below.	
Q27	The point of non-viability may be defined at a stage when there is an irrecoverable breach of the MCR under Solvency II.	
Q28	CAP would like to stress that following powers NSAs have in force and that already have been established under Solvency I and II regimes: • Withdraw license to write new business and put all or part of the insurance business contracts into run-off (i.e. requirement to fulfil existing contractual policy obligations for in-force business);	

	• Transfer all or part of the insurer's business to a solvent insurer or third party (including a bridge institution). The other workable solution under certain circumstances may be to initiate the liquidation of the insurer or part of it. All other powers mentioned in the Discussion Paper under Table 4: List of resolution powers (p. 59 of DP) may interfere with civil/priate-law relationships. CAP also deems that the mentioned power of "Temporarily restrict or suspend the policyholders' rights of withdrawing their insurance contracts" might show as controversial in reality. The bail-in tool in insurance is not appropriate tool and may have negative impacts on access to financial markets and market confidence.	
Q29	CAP argues that no other powers need to be considered.	
Q30	See response on Q28.	
Q31	See response on Q28.	
Q32	See response on Q28.	
Q33	See response on Q28.	
Q34	The general principle of pari passu (equal treatment) and the mentioned NCWO principle are appreciated. Further, the principle of due process (fair trial), meaning existence of judicial remedy, shall be respected.	
Q35	The cooperation and coordination is vital for any success of the recovery and resolution frameworks. CAP agrees that all relevant authorities should be involved in the resolution	

	process (see para 239 of the Discussion Paper). The cooperation and coordination arrangement should be organized in clear, understandable manner in accordance with the rule of law (e.g. the confidentiality issue). Any recovery or resolution arrangement should enable to take account of specificities of the respective financial groups (e.g. pure insurance group or group consisting of and banking; it should target specific different strategies/requirements on respective entities within the group).	
Q36	See response on Q35.	
Q37	See response on Q35.	
Q38	See response on Q35.	