

A COMPARISON OF RECOVERY AND RESOLUTION FRAMEWORKS IN BANKING AND INSURANCE

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CONTENTS

1.	Introduction	3
2.	Summary of main findings	4
3.	Conclusions	7
	ANNEX – Comparison topic-by-topic	8

1. INTRODUCTION

The European Commission's proposal for an Insurance Recovery and Resolution Directive (IRRD) was adopted in September 2021 as part of the Solvency II (SII) review package. Since then it has been under consideration by European Parliament and the Council of the European Union.

In order to provide further understanding on the proposal, and conscious of the current discussions, EIOPA conducted a comparative analysis of the IRRD and the Bank Recovery and Resolution Directive (BRRD) in order to identify similarities and differences between the two legal texts, with the aim to understand the rationale behind them.

Disclaimer:

In view of the dynamic nature of the legislative process, this staff paper deliberately focuses on the original IRRD proposal put forward by the European Commission. EIOPA is aware that several of the aspects touched upon in this document are subject to discussion in the course of the on-going negotiations and, therefore, that the final text may divert from the original legislative IRRD proposal. However, the paper's analysis works on the assumption that the general elements, the rationale and the fundamentals of the answers provided remain valid.

2. SUMMARY OF MAIN FINDINGS

The section below summarises the key findings; for a complete overview please consult the Annex.

2.1. Similarities

The following areas were considered as mostly similar or with minor differences:

- **Overall scope:** The overall scope seems largely similar. Both Directives allow MS to adopt more and/or stricter rules. There are however differences in the scope of entities expected to prepare recovery and resolution plans (further details discussed in section 2.2 and in the Annex under the title 'Preparation').
- **Valuation:** Both Directives apply the 'No Creditor Worse Off' (NCWO) principle, which would be assessed in the same way; also the concept of independent valuer is the same. Further concepts and overarching ideas in Level 1 (L1) legislative text are the same as regards valuation ¹ and ²; however, differences are expected in the future with regard to valuation methods, to reflect the differences between banking and insurance (EIOPA is empowered under the proposal to develop RTS).
- **International cooperation:** The approach with regard to international cooperation is the same in BRRD as well as in IRRD. There are some operational difference due to the existence of the SSM; for example as regards the role played the SRB, as the central resolution authority within the Banking Union.
- **Penalties:** The approach in the case of breach or non-compliance is the same in IRRD as well as BRRD.
- **Resolution objectives:** The resolution objectives are similar. There is a slight difference in the wording of the objective to maintain financial stability, which reflects differences between banking and insurance.
- **Resolution conditions:** The resolution conditions are the same with one difference. The BRRD allows for precautionary recapitalisation – a form of public measure that could be granted without triggering a failing or likely to fail (FOLTF) determination (further details discussed in section 2.2 and in the Annex under the title 'Recovery and resolution funding').

¹ Valuation 1 is based on based on fair and realistic assumptions and forms the basis for the assessment of conditions for resolution.

² The aim of Valuation 2 is to support the decision on the adoption of resolution tools. It uses economic principles based on fair, prudent and realistic assumptions; losses must be fully recognised.

- **Resolution powers:** the resolution powers are mostly the same; however, the trigger points for early intervention measures are different, which reflect the differences between Solvency II and CRR/CRD. The nuances again reflect the differences between banking and insurance. Finally, differences exist in the powers of the resolution authority such as the protection of reinsurance rights in the safeguards and ancillary powers in the IRRD.

2.2. Differences

The analysis revealed significant differences in the following fields:

- **Preparation:** Main difference concerns the scope of entities expected to prepare recovery and resolution plans, which reflects the different nature of insurance business and level of systemic risk compared to banks. Also the frequency of updates of recovery plans is annual for both insurers and banks. There is a possibility to lower this frequency by virtue of simplified obligations. With regard to the resolvability assessment, the BRRD contains a dedicated Annex outlining elements to be considered as a minimum by RAs. The IRRD is less detailed in this sense. The idea is giving national RAs more leeway and EIOPA's Mandate, under the proposal, to develop technical standards in this matter was considered sufficient³.
- **Resolution tools:** Several differences seek to reflect the specific nature of insurance. The most relevant difference is the inclusion of a traditional tool, i.e. the solvent runoff, which does not exist in BRRD. Also, following the application of the 'open bank' bail-in tool,⁴ the BRRD foresees business reorganization. For (re-)insurers a reorganization plan is not foreseen following the application of the bail-in tool. Bail-in tool is called write down or conversion of capital instrument in IRRD.
- **Recovery and resolution funding:** This is the area where differences are more pronounced. While both Directives pursue the goal of avoiding/limiting taxpayers' money being used, there is a number of differences. BRRD provides an exemption for precautionary recapitalisation – a form of public measure that could be granted without triggering a failing or likely to fail (FOLTF) determination. Further, in case of a systemic crisis, BRRD provides for government stabilization tools which can assist to fund resolution. Neither of these tools are included in the IRRD. These differences are in line with the divergence in the time horizon available to rescue an institution in difficulties. While for insurers generally more time is available, for banks the time horizon can be much shorter. Moreover, Recital (31) of IRRD would allow extraordinary public financing as a measure of last resort in extreme cases to fund resolution. The topic of resolution funding

³ In practical terms, there do not seem to be any significant repercussions since both EBA and EIOPA were indeed mandated to develop technical standards on the assessment of resolvability.

⁴ Open bank' bail-in tool is to be understood as the application of the bail-in resolution tool, in combination with the restructuring of the failing bank, in a way that allows that bank to meet the conditions for its authorisation and to continue carrying out its activities without requiring its exit from the market

is however broader than the IRRD and BRRD only. In this sense, the harmonization of national deposit guarantee schemes (DGs) is provided for in the DGSD, which pre-dates the BRRD. A European deposit insurance guarantee scheme (EDIS) may become a final pillar of the Banking Union, but is not in place yet. In line with previous EIOPA opinion on the subject matter, a minimum harmonization of the national insurance guarantee schemes would be very important. A common European insurance guarantee scheme does not appear necessary though.

- **Institutional set up:** In absence of an Insurance Union, the proposal does not consider setting up a central resolution authority such as the Single Resolution Board set up for the most significant banks, supervised by the ECB, in the Banking Union.

3. CONCLUSIONS

The analysis performed confirms that the Commission's IRRD proposal has indeed some common elements with the BRRD. These commonalities are warranted given that both directives are inspired by similar international standards, both from the IAIS and the FSB and that, to a certain extent, the general framework of a resolution does not need to differ considerably. This also explains why EIOPA's advice and the Commission's proposal are aligned to a significant extent in its conceptual design, and are comparable to the legal text in other sectors, thereby ensuring cross-sectoral consistency. At the same time, the IRRD maintains significant differences to properly reflect the (re)insurance-specific features.

In summary:

- Where there are significant similarities, EIOPA is of the view that these are warranted to the extent that they concern areas without the need for sector-specificities (e.g. cross-border resolution, penalties, etc.). In fact, as mentioned, consistency with the banking framework is desired where this does not undermine the sectors' specific features.
- On the contrary, fundamental elements of recovery and resolution, such as resolution tools and preparation, include relevant differences reflecting the insurance-specific elements. Further nuances addressing the differences between the two sectors can be found also in many other areas including resolution conditions and resolution powers. The IRRD appears less demanding.

All in all, the key question is therefore not whether both frameworks are similar, which they are in several instances, but rather whether the differences in the business model of insurers and the way they exert risks are properly taken into account in the IRRD. EIOPA believes this to be the case.

An area where EIOPA believes further harmonization would be desirable refers to the national Insurance Guarantee Schemes. In this regard, EIOPA made a comprehensive proposal in the context of its 2020 Opinion on the Review of Solvency II,⁵ which has not been considered in the current Commission's proposal. Furthermore, the treatment of conglomerates needs to be also clarified.

⁵ [Opinion on the 2020 review of Solvency II | Eioipa \(europa.eu\)](#)

ANNEX – Comparison topic-by-topic

This Annex provides an in-depth analysis of the differences and similarities of both Directives. It includes an assessment on the level of similarity, which ranges from 1 (very similar) to 5 (not similar at all). In addition, the main similarities/differences are also described.

- **Overall scope:**

Similarity	(Sub-)topic	Main similarities	Main differences	Main similarities/ differences
1	Entities in scope	General scope: similar idea of entities under supervisory remit established in the EU	General scope: BRRD: credit institutions and investment firms IRRd: insurance and reinsurance undertakings Scope differs with regard to entities expected to conduct pre-emptive recovery and resolution planning (see section Preparation below)	Difference Small differences reflect differences in insurance and banking.
1	Conglomerates	Neither BRRD nor IRRD deals with this topic	-	Similarity Nevertheless, treatment of conglomerates should be clarified.
1	Level of harmonisation	Same wording of Art. 1(2) allowing MS to adopt “additional and/or stricter rules”	-	Similarity Otherwise there would be implications for MS with a R&R framework in place (FR, NL, RO).

- **Preparation:**

Similarity	(Sub-)topic	Main similarities	Main differences	Main similarities/ differences
1	Simplified obligations	Legal text is the same	-	Similarities The approach with regard to the simplified obligations is the same in IRRD as well as in BRRD. EIOPA will provide guidelines similarly to EBA.
3	Pre-emptive recovery planning	Concepts and overarching idea is the same	IRRD: at least 80% of a Member states market should be subject to such requirements and low risk undertaking would be excluded on an individual basis BRRD: • Applicable to all credit institutions • BRRD is more detailed in the list of contents of a recovery plan • BRRD includes an analysis of how and when an institution can apply for the use of central bank facilities	Differences Difference in scope reflects the different nature of insurance business and level of systemic risk compared to banks (i.e. not all insurers need to have a recovery plan) Like banks; (re-)insurers are expected to update the recovery plans every year. Experience shows that this frequency is perhaps too high for (re-)insurers. It should be clarified, however, that the article on pre-emptive recovery planning also has to be read in conjunction with the Article on simplified obligations, which allows for a lower frequency.
3	Resolution planning	Concepts and overarching idea is the same	IRRD: 70% of undertakings per Member State should be subject to resolution planning and low risk undertaking would be excluded on	Difference

			an individual basis BRRD: • Applicable to all institutions • Includes an indication of MREL	Difference in scope reflects the different nature of insurance business and level of systemic risk compared to banks (i.e. not all insurers need to have a resolution plan)
2	Resolvability assessment	Concepts and overarching idea is the same	BRRD is more prescriptive with a dedicated annex including elements to consider in the resolvability assessment. Both EBA and EIOPA tasked to develop technical standards.	Difference BRRD contains a dedicated Annex outlining elements to be considered as a minimum by RAs in a resolvability assessment. IRRD is less detailed in this sense. The idea behind this was to give NRAs more leeway and EIOPA's Mandate to develop technical standards in this matter was considered sufficient. In practical terms, there do not seem to be any significant repercussions since both EBA and EIOPA were indeed mandated to develop technical standards on the assessment of resolvability.

• **Resolution objectives:**

Similarity	(Sub-)topic	Main similarities	Main differences	Main similarities/ differences
2	Resolution objectives	Same list of 4 objectives with similar overarching ideas (1.	1. Protection of consumers: scope of 'consumers' differs; IRRD: policy holders,	Differences Small differences reflect differences

		protection of consumers; 2. maintain financial stability; 3. ensure continuity of critical functions; ⁶ 4. protect public funds by minimising reliance on extraordinary public financial support); no hierarchy; RAs to balance them as appropriate in each case.	beneficiaries and claimants; BRRD: depositors and investors. 2. Maintain financial stability: more nuanced wording in BRRD explicitly mentioning 'contagion to market infrastructures'; BRRD refers to avoiding 'significant adverse effect on the financial system' rather than 'maintain financial stability'	in insurance and banking. The cumulative conditions in the definition of critical function in the case of IRRD seems to be too restrictive.
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- **Resolution conditions:**

Similarity	(Sub-)topic	Main similarities	Main differences	Main similarities/ differences
2	Resolution conditions	Same three conditions (1. undertaking is failing or likely to fail; 2. no prospect of recovery; 3. resolution action is necessary in public interest) with same overarching ideas	Very minor differences with regard to 1. Undertaking is failing or likely to fail: some conditions differ: • IRRD: additional specific conditions: breach of MCR • BRRD: additional specific conditions: assets will be less than liabilities; exemption for precautionary recapitalisation – a form of public measure that could be granted without triggering a failing or likely to fail (FOLTF) determination. Further details are addressed in	Similarities Equal importance of conditions in both banking and insurance.

⁶ There is difference in the definition of 'critical functions' between the IRRD and the BRRD: in BRRD, a function is deemed to be "critical" when its discontinuance is likely to have a negative impact on the real economy or financial stability (Art. 2(1)(35)); in IRRD, these two conditions are cumulative ("would be likely to have a significant impact on the financial system and the real economy" (Art. 2(2)(19)).

			Section Recovery and resolution funding (State aid).	
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• **Resolution tools:**

Similarity	(Sub-)topic	Main similarities	Main differences	Main similarities/ differences
3	Write-down or conversion of capital instruments/ Bail-in	Overarching idea is the same	BRRD: tool is called bail-in; may require business reorganization plan (to be submitted 1 month after application of bail-in for approval by RA) Slightly different objective: • IRRD: prepare for solvent run-off, prepare a bridge institution and a sale of business; • BRRD: restore conditions for authorization. BRRD much more detailed on eligible assets and liabilities; interplay with MREL. Moreover, although both frameworks do not apply to certain liabilities, in the banking sector shareholders and creditors, including depositors, are in the scope of application of the WDCI/bail-in, while in the insurance sector the insurance liabilities can only be written down, while the conversion is not applied to them	Difference On the contrary to the BRRD, the IRRD does not foresee an application of the bail-in tool in a way that would allow the insurer to meet the conditions for its authorisation and to continue carrying out its activities without requiring its exit from the market⁷. Therefore, reorganization measures might not be necessary.
5	Solvent runoff		Does not exist in BRRD	Difference The run-off as a separate resolution

⁷ Open bank' bail-in tool is to be understood as the application of the bail-in resolution tool, in combination with the restructuring of the failing bank, in a way that allows that bank to meet the conditions for its authorisation and to continue carrying out its activities without requiring its exit from the market

				tool does not exist in BRRD.
1	Sale of business	Exactly the same provisions	BRRD: the RA shall market or make the arrangement for the marketing of the assets, rights, liabilities, shares, etc. If there is a threat to FS that would undermine effectiveness of SoB, RA might be exempted and EBA should develop Guidelines on when these would occur. There is no similar reference in the IRRD.	Difference BRRD contains additional conditions for when the RA would not be required to market the sale and EBA was mandated to develop Guidelines in this regard. IRRD also contains conditions for disapplying the requirements on marketing; these are however slightly different in light of the differences between the banking and insurance sector.
2	Bridge undertaking	Concepts and overarching idea is the same	Slightly different objective; BRRD: time limit (extendable) - IRRD: none	Difference As the time limit for the operation of the bridge undertaking in BRRD is extendable, there do not seem to be any practical implications.
1	Asset and liability separation	Concepts and overarching idea is the same; to be used only in conjunction with other tool(s)		Similarity The Asset and liability separation tool has not been typically used in insurance up to date. Nevertheless, it was included in the FSB Key Attributes for Effective Resolution to “run-down non-performing loans or difficult-to-value asset”.

- **Resolution powers:**

Similarity	(Sub-)topic	Main similarities	Main differences	Main similarities/ differences
2	Powers	Concepts and overarching idea is the same	Instead of the "power to temporarily suspend redemption rights" (IRRD), the BRRD contains a similar power to "suspend certain obligations" (Art.33a) allowing for a suspension of any payment or delivery obligations pursuant to any contract.	Differences The nuances reflect differences in insurance and banking.
2	Supervision and early intervention measures/ powers	Concepts and overarching idea is the same	In BRRD, the trigger points are different, i.e. increasing level of leverage, non-performing loans. The trigger points for supervisory actions in insurance is the breach of capital requirements (MCR, SCR) either immediately or within the next three months. The IRRD proposal is fully consistent with the Solvency II framework and in particular its intervention ladder for undertakings in the event of deteriorating financial conditions and the recovery measures already available for breaches of capital requirements. In this sense, the IRRD does not lead to new intervention triggers.	Differences Trigger points make sense to be different since the bank has other indicators to be used to signal a deteriorating position.

- **Valuation aspects:**

Similarity	(Sub-)topic	Main similarities	Main differences	Main similarities/ differences
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1	Valuation 3 ⁸	Concepts and overarching idea is the same	-	Similarity Reasonable that No Creditor Worse Off (NCWO) principle is assessed in the same way.
1	Valuation 1 ⁹ and 2 ¹⁰	Concepts and overarching idea is the same	-	Similarity Level 1 legislative text is the same; however, differences with regards to valuation methods are expected in the future in RTS and/or valuation handbooks given the different nature of banks and insurance companies.
1	Independent valuer	Legal text and overarching idea is the same.	-	Similarity Reasonable in order to avoid bias in valuation.

- **International cooperation:**

Similarity	(Sub-)topic	Main similarities	Main differences	Main similarities/ differences
1	Cross-border group resolution	Almost same provisions	IRR: Art.67 (e) : Negative effects on policy holders explicitly mentioned (not in BRRD) BRRD: Balancing interests of different MS: refers to subsidiaries and branches	Similarities The approach with regard to cross-border group resolution is the same in

⁸ The purpose of Valuation 3 is to assesses any potential difference in the treatment of shareholders and creditors in resolution and in a hypothetical insolvency scenario. It is important for the assessment according to the No Creditor Worse Off (NCWO) principle; i.e. no shareholder or creditor should achieve a worse outcome under resolution than they would under insolvency.

⁹ Valuation 1 is based on based on fair and realistic assumptions and forms the basis for the assessment of conditions for resolution.

¹⁰ The aim of Valuation 2 is to support the decision on the adoption of resolution tools. It uses economic principles based on fair, prudent and realistic assumptions; losses must be fully recognised.

				IRR and BRRD.
1	Relations with third-countries	Same provisions	BRRD: significant branches/subsidiaries explicitly mentioned; IRR: open scope	Similarities The approach with regard to relations with third countries is the same in IRR and BRRD.
1	Resolution Committee	Exactly the same provisions concerning: • Its role (permanent internal committee; prepare decisions incl. on draft ITS ad RTS relating to tasks conferred on resolution authorities as provided in BRRD/IRR; promote development and coordination of resolution plans and develop methods for resolution of failing institutions); • Role of EBA/EIOPA (cooperate with other ESAs within JC [for the purposes of BRRD/IRR]; ensure structural separation between the resolution committee and other functions)	BRRD: an additional provision emphasizes that EBA shall ensure that any decisions would not impinge on fiscal responsibilities of Member States	Similarities The approach with regard to the Resolution Committee is the same in IRR and BRRD.
2	Role of EIOPA and	Similar roles in the development of technical material, promotion	In practice, in view of the existence of SSM, some practices may differ (e.g. special role	Differences Differences are due to the existence of

	EBA	of resolution convergence and role in the efficient functioning of resolution colleges.	of the SRB). SRB however is a resolution authority.	SSM.
1	Resolution Colleges	Almost identical general provisions	Provisions concerning European resolution colleges for insurance are missing in IRRD. This is due to the fact that no group structures with parent companies in third countries and two or more Union branches or two or more branches that are regarded as significant by two or more Member States have been identified in the insurance sector, such that it would make necessary to introduce such a provision.	Similarities The general approach with regard to Resolution Colleges is the same in IRRD and BRRD; however, there are no specific provisions dedicated to European resolution colleges in IRRD. The latter is another example where the IRRD was adapted to insurance specificities.

- **Penalties:**

Similarity	(Sub-)topic	Main similarities	Main differences	Main similarities/ differences
1	Penalties	Almost same provisions	BRRD: failure to notify about a group financial support is an infringement of the law. IRRD does not foresee intra-group financial support.	Similarities The approach with regard to penalties is the same in IRRD and BRRD.

- **Recovery and resolution funding¹¹:**

Similarity	(Sub-)topic	Main similarities	Main differences	Main similarities/ differences
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¹¹ Includes related and relevant aspects which are however outside the contents of IRRD and BRRD such as e.g. DGSD which preceded the BRRD.

5	Capital buffer to absorb losses	N/A	BRRD: minimum requirement for own funds and eligible liabilities (MREL) for banks IRR: not foreseen	Differences A capital buffer is not suitable for (re-)insurers as it would inflate their balance sheets and make them more vulnerable.
5	Resolution funding financed by the industry	N/A	BRRD and SRMR: Single Resolution Fund (SRF) may be used – subject to strict rules - to complement other measures during resolution IRR: not foreseen	Differences The difference between BRRD and IRR could be explained by the fact that harmonisation of insurance resolution funding schemes has not been considered.
2	Guarantee Schemes	Banking: national deposit insurance guarantee schemes exist and may be used to compensate depositors Insurance: fragmented situation.	Banking: European deposit insurance guarantee scheme (EDIS) may become a final pillar of the Banking Union; not in place yet	Difference A common European insurance guarantee scheme does not appear necessary. A minimum harmonization of the national insurance guarantee schemes would be beneficial.
5	State aid	N/A	BRRD: includes following possibilities for the following types of public support: • precautionary recapitalization of solvent banks • government stabilization tools (subject to strict conditions; in case of systemic crisis, Member States may provide extraordinary financial support for the purpose of participating in the resolution of a bank, including by	Difference BRRD provides an exemption for precautionary recapitalisation – a form of public measure that could be granted without triggering a failing or likely to fail (FOLTF) determination. Further, in case of systemic crisis, BRRD provides for government stabilization tools which can assist to fund resolution. Neither of these is included in the IRR. These differences are in line with the divergence in the time

			intervening directly to avoid its winding up in order to meet the resolution objectives) IRRD: no such provisions exist	horizon available to rescue an institution in difficulties. While for insurers generally more time is available, for banks the time horizon is much shorter.
5	Emergency liquidity by central banks	N/A	Banking: credit institutions have access to different forms of central banks' emergency liquidity that could be used in case of liquidity shortage. Insurance: (re-)insurers have no access to emergency liquidity by central banks.	Differences Credit institutions require access due to their unique role in monetary policy transmission. Besides, liquidity risk is key (strategic) in banking while in insurance it is not of the same magnitude.

EIOPA

Westhafen Tower, Westhafenplatz 1

60327 Frankfurt – Germany

Tel. + 49 69-951119-20

info@eiopa.europa.eu

<https://www.eiopa.europa.eu>