The Insurance Recovery and Resolution Directive (IRRD): No longer a step behind the banking sector

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Abstract

The failure of insurance companies could negatively impact the stability of the European financial market. To cope with such scenarios and their adverse effects, Directive (EU) 2025/1 (IRRD) concerning the recovery and resolution of (re-)insurance companies was adopted. This legislative act closes a gap in the insurance regulation compared to the banking sector. This article shall trace the roots of the IRRD, which are found in both the FSB Key Attributes of Effective Resolution Regimes for Financial Institutions as well as Directive 2014/59/EU (BRRD) itself. In addition, the political deliberations behind the IRRD shall be illuminated and set in contrast with criticism from literature and practical experience briefly. Finally, there will be a hint towards the possibility of harmonised insurance guarantee schemes in the EU.

Keywords: IRRD; Insurance Recovery and Resolution Directive; Financial Stability; Insurance Sector

1. Introduction

Failing banks are not the only carrier of systemic risk in the financial sector. As insurance companies are an interconnected part of the financial system, their failures can also lead to grave consequences.[1]This is illustrated clearly by examples from the near past. First, the Gable Insurance Company AG, situated in Liechtenstein, which marketed insurance policies across borders is being liquidated in insolvency proceedings. At this time, acknowledged privileged insurance claims[2] totalling CHF 126.1 million, whilst the available assets are only valued at CHF 79.6 million.[3] These preliminary figures indicate that not all outstanding claims can be paid in full and that policy holders could bear losses in the millions. An even more recent example is the Eurovita SpA which shows that a sudden detraction of funds by panicking customers (comparable to a bank-run) with regard to an insurance company is in fact possible. Due to many policyholders terminating their contracts the insurance company became financially distressed. Other insurance companies had to take over the portfolio to save it.[4] Finally, the highly

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[1] Recital 1 and 2 of Directive (EU) 2025/1 of the European Parliament and of the Council of 27 November 2024 establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 and Regulations (EU) No 1094/2010, (EU) No 648/2012, (EU) No 806/2014 and (EU) 2017/1129 [2025] OJ L, 2025/1 ('IRRD'); European Systemic Risk Board, 'Report on systemic risks in the EU insurance sector' (2015) 14 ff; The de Larosière Group, 'The high-level group on financial supervision in the EU' (2009) 49 <https://ec.europa.eu/economy_finance/publications/pages/publication14527_en.pdf> (*De-Larosière* report); Katja Brandtner, *Systemrelevanz (in) der Versicherungswirtschaft?* (Verlag Versicherungswirtschaft GmbH 2014) 63.

[2] Art 161a para 1 of the Liechtenstein Insurance Supervision Act (Liechtensteinisches Versicherungsaufsichtsgesetz) orders a priority of claims relating to an insurance contract in case of bankruptcy. Hence, these claims are privileged and, as soon as the liquidator has assessed their legitimacy, also acknowledged.

[3] BWB Legal, 'Status report of the liquidator of 17 June 2025' (2025) <https://gableinsurance.li/wp-content/uploads/2025/06/Zwischenbericht-Nr-9-der-Masseverwalterin.pdf> accessed 8 June 2026, 3.

[4] Marco Metzler, 'Warum die Eurovita-Pleite auch in Deutschland relevant ist'(*private banking magazin*, 18 July 2023) <https://www.private-banking-magazin.de/metzler-ratings-zinswende-lebensversicherungen-eurovita/> accessed 8 June 2026.

topical case of the insurance group FWU AG shows that insurer insolvencies do happen. First, the holding company seated in Germany declared its insolvency.[5] Subsequently, one subsidiary seated in Luxembourg could no longer meet its minimum capital requirements. As per 22 January 2025 the Luxembourg insurance supervision authority declared the recovery plan to have failed and requested the liquidation of the insurance company.[6]

These examples show that policyholders are still exposed to losses in the event of the failure of insurance companies and hence, not extensively protected enough and highlight the significance of the new framework for the recovery and resolution[7] of insurance companies in the European Union.[8] Directive (EU) 2025/1 (IRRD) establishing this framework was adopted on 27 November 2024 and entered into force on 28 January 2025.[9] It encompasses requirements regarding pre-emptive recovery plans and resolution plans, as well as, a resolution regime and provisions regarding the cooperation with authorities in the EU and beyond. This paper aims to show that the IRRD is closing a gap in the EU regulation of the insurance sector, especially when compared to the financial sector as a whole. By comparing the IRRD to its role models, the Key Attributes of Effective Resolution of Financial Institutions[10] by the Financial Stability Board (FSB)[11] and the Banking Recovery and Resolution Directive[12] (BRRD) (collectively referred to hereafter as 'the role models' or 'the role model framework'), the effectiveness with which the IRRD closes this gap will be assessed.

Part 2 will provide an overview of the regulation and supervision of the financial sector. This will be done by the example of the banking sector and, thereafter, a similar overview of the insurance sector will be provided. In Part 3 the role models for the IRRD are discussed. This will be done foremostly by comparing the role model

[5] Herbert Fromme and Frida Preuß, 'Lebensversicherer FWU ist insolvent' (*Süddeutsche Zeitung*, 25 July 2024) <https://www.sueddeutsche.de/wirtschaft/lebensversicherung-luxemburg-insolvent-insolvenz-fwu-dirrheimer-lux.8gVWiun2nZGCrVxeqkZdco> accessed 8 June 2026; FMA, 'Insolvenz der deutschen Holdinggesellschaft der Versicherungsgruppe FWU' (*FMA*, 24 July 2024) <https://www.fma.gv.at/deutsche-holding-der-versicherung-fwu-insolvent/> accessed 8 June 2026.

[6] FMA, 'Liquidation der luxemburgischen FWU Life Insurance Lux S.A. angeordnet' (*FMA*, 24 February 2025) <https://www.fma.gv.at/liquidation-der-luxemburgischen-fwu-life-insurance-lux-s-a-angeordnet/> accessed 8 June 2026; see also the website of the company in liquidation <https://fwulifelux.com/>.

[7] The term 'recovery' describes supervisory measures aiming at restoring a failing company. Opposed to that is the term 'resolution' describing the process of an ordered market exit of a failing company having no prospects of returning to viability. The resolution of an insurance company is an alternative to insolvency proceedings, aiming to reduce the disruptive effects on the financial market stability.

[8] This framework does not establish harmonised rules for Insurance Guarantee Schemes (IGS), although efforts were made towards a harmonised approach. See European Commission, 'Whitepaper on Insurance Guarantee Schemes' (2010) COM (2010) 370; EIOPA, 'Background Document on the Opinion on the 2020 Solvency II Review – Analysis' EIOPA-BoS-20/750 (2020), 672 ff.

[9] Directive (EU) 2025/1 of the European Parliament and of the Council of 27 November 2024 establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 and Regulations (EU) No 1094/2010, (EU) No 648/2012, (EU) No 806/2014 and (EU) 2017/1129 [2025] OJ L, 2025/1.

[10] Accessible at <https://www.fsb.org/uploads/P250424-3.pdf>.

[11] See section 3.1 on the Financial Stability Board.

[12] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council [2014] OJ L 173, 190 as amended by the subsequent regulations, the most recent being Directive (EU) 2024/1174 of the European Parliament and of the Council of 11 April 2024 amending Directive 2014/59/EU and Regulation (EU) No 806/2014 as regards certain aspects of the minimum requirement for own funds and eligible liabilities [2024] OJ L 2024/1174.

frameworks with the IRRD. Part 4 shall give insights into the considerations as to why the IRRD is needed and discuss critical comments concerning the adoption of the IRRD. Finally, Part 5 concludes.

2. Overview of the (regulation and) supervision of the banking and insurance sectors

According to *Raschauer*,[13] financial market supervisory laws regulate the financial services providers that form the financial market, which only exists through their intermediary activities. These are credit institutions, investment firms, investment funds, financial institutions, e-money institutions, payment institutions, alternative investment funds, insurance companies and pension funds. Separate regulatory and supervisory regimes have been established for each of these different institutions.[14] The following sub-section provides an overview of financial supervision, using the banking sector as an example. The second sub-section provides an overview of the insurance sector. The third sub-section shows, where the gap in the regulation of the insurance sector is to be found.

2.1. Overview of the Banking Sector

Financial supervision in the EU is organised in three pillars:[15] national supervisory authorities, cooperation between national supervisory authorities, and superordinate supervisory authorities of the EU. These pillars are realised in the European System of Financial Supervision (ESFS). This includes the European Systemic Risk Board (ESRB), the European Supervisory Authorities (ESAs), their joint committee and the Member State supervisory authorities.[16] This applies not only to the banking sector, but to the entire financial market.[17]

In 2014, the BRRD was added, which provides a framework for the recovery and resolution of credit institutions. Resolution under this Directive represents an alternative to insolvency proceedings, which is intended to achieve a better result for the parties involved.[18] The Single Supervisory Mechanism (SSM) was created specifically for the banking sector, which establishes both the supervisory responsibility of the European Central Bank (ECB) and a uniform supervisory mechanism.[19] Together with the Single Resolution Mechanism (SRM),[20] this is intended to contribute to the creation of a banking union.[21] The SRM is of particular importance for the present analysis, as it is closely linked to the BRRD. Specifically, the relationship between the SRM and the BRRD is regulated in Arts 5 and 7 Single Resolution Mechanism Regulation.[22] Essentially, the SRM enables a uniform procedure in compliance with the uniform rules already laid down in the BRRD.[23] For the purposes of comparing the IRRD

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[13] Bernhard Raschauer, *Finanzmarktaufsichtsrecht* (Verlag Österreich 2015) 2.
[14] Ibid 23 et seq.
[15] Mona Philomena Ladler, *Finanzmarkt und institutionelle Finanzaufsicht in der EU* (Manz 2014) 145 ff.
[16] Ibid 172.
[17] Ibid.
[18] Recital 5 BRRD.
[19] Raschauer (n 13) 46.
[20] Established by the Single Resolution Mechanism Regulation (Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 [2014] OJ L 225, 1 ['SRMR']).
[21] Christoph Ohler, 'Art 1 SSMR' in Binder/Gortsos/Lackhoff/Ohler (eds), *Brussels Commentary European Banking Union* (Nomos 2022) para 1.
[22] Jens-Hinrich Binder, 'Art 5 SRMR' in Binder/Gortsos/Lackhoff/Ohler (eds), *Brussels Commentary European Banking Union* (Nomos 2022) para 3.
[23] Jens-Hinrich Binder, 'Art 1 SRMR' in Binder/Gortsos/Lackhoff/Ohler (eds), *Brussels Commentary European Banking Union* (Nomos 2022) para 1.

with its role models, the BRRD is relevant. However, the literature on the substantive provisions of the SRM may be referenced in this context.

The development of (substantive) banking supervisory law can also be traced through the European Directives: The Capital Requirement Directive (CRD) in its several evolutionary stages[24] and the Capital Requirement Regulation (CRR)[25] developed banking regulation and thus also banking supervision.[26] Directive 2001/24/EC[27] was created for credit institutions in crisis.[28] It sets out certain procedural and supervisory provisions, international jurisdiction, recognitions and effectiveness in relation to the liquidation of credit institutions.[29] It was then succeeded by the above-mentioned BRRD. The BRRD is discussed in more detail in Part 3.2 in comparison with the IRRD.

2.2. Overview of the Insurance sector

As mentioned in section 2, the regulation and supervision of insurance companies is part of financial market regulation. Nevertheless, this must be considered separately, as the insurance sector is subject to different requirements due to its distinct business model.

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[24] CRD I to CRD IV: Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions [2006] OJ L 177, 1 (CRD I); Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management [2009] OJ L 302, 97 (CRD II); Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies [2010] OJ L, 3 (CRD III); Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC [2013] OJ L 176, 338; Directive (EU) 2024/1619 of the European Parliament and of the Council of 31 May 2024 amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks [2024] OJ L, 2024/1619 (CRD IV); see Raschauer (n 13) 25 et seq.

[25] Regulation (EU) No 575/2013 of the European Parliament and of the Council of June 26, 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 646/2012 [2013] OJ L 176, 1 as amended by the subsequent regulations, the most recent being Regulation (EU) 2025/1215 of the European Parliament and of the Council of 17 June 2025 amending Regulation (EU) No 575/2013 as regards requirements for securities financing transactions under the net stable funding ratio [2025] OJ L, 2025/1215.

[26] Raschauer (n 13) 25 et seq.

[27] Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions [2001] OJ L 125, 15.

[28] Raschauer (n 13) 27.

[29] Reinhard Pröbsting,'Die grenzüberschreitende Sanierung und Liquidation von Kreditinstituten' (2008) ZfRV 239.

The harmonisation of European insurance supervision law essentially began with three generations of Directives relating to life[30] and non-life[31] insurance.[32] The last generation created a genuine internal insurance market through uniform authorisation and the introduction of home Member State control.[33] This was followed by Directive 95/26/EC on rules for statutory auditors and Directive 98/78/EC on the supervision of insurance groups.[34]

As early as 2001, Directive 2001/17/EC on the reorganisation and winding-up of insurance undertakings[35] created uniform rules for insurance undertakings in crisis.[36] The aim of the regulation was not to harmonise the regulatory systems of the Member States, but to ensure 'mutual recognition [...] and the necessary cooperation'[37] in dealing with insurance undertakings in crisis situations. The Directive achieves this objective through its principles, in particular the principle of home country, universality and (procedural) unity as well as cooperation.[38]

Shortly afterwards, 'Solvency I' (Directives 2002/12/EC[39] and 2002/13/EC[40]) was enacted to harmonise solvency regulation across the EU. Subsequently, reinsurance was brought into the scope of insurance regulation of insurance undertakings with Directive 2005/68/EC.[41] However, this did not apply to the provisions on the reorganisation and liquidation of insurance undertakings, from which reinsurance undertakings are still exempt.[42] The thirteen existing insurance Directives[43] were finally consolidated in and superseded by the Solvency II

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[30] First Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance [1979] OJ L 63, 1; Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC [1990] OJ L 330, 50; Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC [1992] OJ L 360, 1.

[31] First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance [1973] OJ L 228, 3; Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC [1988] OJ L 172, 1; Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC [1992] OJ L 228, 1.

[32] Peter Baran and Alexander Peschetz, *Österreichisches Versicherungsaufsichtsrecht* (3rd edn, Manz 2015) 3.

[33] Ibid; Raschauer (n 13) 34.

[34] Baran and Peschetz, (n 32) 5.

[35] Directive 2001/17/EC of the European Parliament and of the Council of March 19, 2001 on the reorganisation and winding-up of insurance undertakings [2001] OJ L 110, 28.

[36] Stephan Korinek ‚Vorbemerkungen zum VAG' in Buchegger (ed.), *Österreichisches Insolvenzrecht Zusatzband 1* (Verlag Österreich 2009), para 11.

[37] Recital 9 of Directive 2001/17/EC.

[38] Baran and Peschetz (n 32) 199 ('Principles'); Korinek (n 36) para 11 ff mentions the 'coordination principle' instead of cooperation; see also recitals 117 and 123 Solvency II Directive.

[39] Directive 2002/12/EC of the European Parliament and of the Council of 5 March 2002 amending Council Directive 79/267/EEC as regards the solvency margin requirements for life assurance undertakings [2002] OJ L 77, 11.

[40] Directive 2002/13/EC of the European Parliament and of the Council of 5 March 2002 amending Council Directive 73/239/EEC as regards the solvency margin requirements for non-life insurance undertakings [2002] OJ L 77, 17.

[41] Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC [2005] OJ L 323, 1; see Baran and Peschetz (n 32) 4.

[42] Art 2 (1) subpara 2 Solvency II Directive.

[43] Baran and Peschetz (n 32) 8; see also Art 310 Solvency II Directive.

Directive.[44] The Solvency II Directive provides the current framework for the regulation and supervision of insurance undertakings. It also contains substantive changes in the areas of solvency requirements, governance and group supervision, among others but, notably, it did not provide for a resolution mechanism for insurance companies in crisis at EU level.[45]

In 2020, European Insurance and Occupational Pensions Authority (EIOPA) launched a review of the Solvency II Directive.[46] EIOPA identified a need for improvement and reforms in several areas, [47] including the introduction of uniform rules on the restructuring and resolution of insurance companies.[48] The European Commission responded to this demand in the form of a proposal for a Directive on the recovery and resolution of insurance undertakings - the IRRD - which entered into force on 28 January 2025.[49] European Member States need to implement its provisions by 29 January 2027, which shall enter into force by 30 January 2027. The Directive covers four core areas: (i) the requirement for insurance undertakings to draw up preventive recovery and resolution plans;[50] (ii) the conditions and methods for the resolution of insurance undertakings;[51] (iii) special requirements for groups and interaction with third countries; (iv) and the creation of a resolution authority and its interaction with existing authorities.

The IRRD aims to achieve minimum harmonisation of the provisions on the recovery and resolution of insurance undertakings.[52] The Directive is based on Art 114 TFEU.[53] Both the *De-Larosière* report,[54] which shaped the EU's regulatory answer to the financial crisis, and the parallel legislation in the banking sector suggested a corresponding framework for the recovery and resolution of insurance companies. With the IRRD, the Commission has now closed this regulatory gap. However, a common supervisory and resolution mechanism, as exists in the banking sector, i.e. the Banking Union, does not exist in the insurance sector. The introduction of such a uniform mechanism for the insurance industry is not foreseeable.[55] The obvious reason for this is that insurance companies do not require the same short-term and coordinated action horizon as banks in crisis.[56] Thus, the non-existence of an 'Insurance Union' does not constitute a gap.

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[44] Directive 2009/138/EC of the European Parliament and of the Council of November 25, 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance [2009] OJ L 335, 1(Solvency II).
[45] Arthur Van den Hurk, 'The Dutch Act on Recovery and Resolution of Insurers in the Context of EU and International Developments' in Koen Byttebier and Kim van den Borght (eds), *Law and Sustainability* (Springer 2022) 101.
[46] EIOPA, 'Opinion on the Solvency II Directive Review' EIOPA-BoS-20/749 (2020).
[47] EIOPA (n 46) 7-13.
[48] EIOPA (n 46) 12.
[49] Proposal for a Directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2009/138/EC, (EU) 2017/1132 and Regulations (EU) No 1094/2010 and (EU) No 648/2012. For the final legislative act see n 9.
[50] See section 3.1.11.
[51] See section 3.1.3.
[52] Recital 11 IRRD.
[53] See preamble of the IRRD.
[54] see (n 1).
[55] See Mihael Perman, 'The Insurance Recovery and Resolution Directive - A Personal View' (2022) ZVers 250. According to Perman, this is primarily because there are no uniform requirements for insurance guarantee schemes. However, as mentioned in the last chapter, a corresponding evaluation is scheduled for the end of January 2027.
[56] A so-called 'run' on insurance companies is conceivable, as the example in the introduction shows, but this will generally rarely happen. Accordingly, the competent authorities have more leeway (in terms of time), also to coordinate with other European authorities. See also recital 14 IRRD. The recital also mentions the Insurance Core Principles of the IAIS but these will not be considered in the present article.

2.3. IRRD closes the gap

As shown in sections 2.1 and 2.2, the supervisory regimes for banks and insurance companies are evolving largely in parallel. The creation of a framework for the recovery and resolution of insurance companies was therefore to be expected and even a necessary consequence of the adoption of the BRRD and the findings of the *De-Larosière* report. The characteristic of the IRRD to be filling a 'gap' is also reflected in its orientation towards the BRRD and the FSB Key Attributes.[57]

Until the IRRD, insurance companies were not subject to any special resolution regime including policyholder protection measures on the EU level. This was a significant gap in the protection of maintaining the provision of critical services, which is now being closed by the IRRD.

3. Comparing the IRRD with its role models

As can be seen from the above, the IRRD is not a 'new' idea. Its regulatory content and objectives are based in a modified form on both the BRRD[58] and the Key Attributes of Effective Resolution Regimes for Financial Institutions[59] (KA) of the Financial Stability Board (FSB).[60] This section will compare the IRRD with these two role models.

3.1. Comparison to the FSB Key Attributes

The FSB was the G20 countries' response to the financial crisis of 2007/2008, with the aim of creating and strengthening international prudential standards.[61] It was not created from scratch but emerged from the Financial Stability Forum (FSF).[62] In an effort to strengthen financial stability, the FSB is driving forward reforms with regulatory proposals.[63] For example, the FSB first presented the Key Attributes of Effective Resolution Regimes for Financial Institutions in 2011,[64] which were subsequently revised in 2014 and again in 2024.[65] The FSB understands the KA to be the core elements that are necessary for effective resolution.[66] They should be part of

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[57] See recital 55 and EIOPA, 'Overview of the proposal for an insurance recovery and resolution Directive' EIOPA-22/636 (2022), 9.

[58] EIOPA, 'Staff Paper on A Comparison of Recovery and Resolution Frameworks in Banking and Insurance' EIOPA-22-940 (2022), 7.

[59] Also indirectly modelled on the BRRD; see for the origin of the BRRD in the FSB KA: Melitta Schütz '§ 1' in Armin Kammel and Melitta Schütz (eds.), *BaSAG* (2022 Manz) Rz 6; Barbara Reisenhofer et al, *Sanierung und Abwicklung von Banken - BaSAG²* (2022 Manz) Chapter 1.

[60] The IAIS Insurance Core Principles (see https://www.iais.org/uploads/2025/06/IAIS-ICPs-and-ComFrame-December-2024.pdf) are also referred to in recital 5 but will not be considered in this comparison.

[61] Art 1 Charter of the Financial Stability Board; Eric Helleiner, 'What Role for the New Financial Stability Board? The Politics of International Standards after the Crisis' (2010) Global Policy 282.

[62] See Chris Brummer, 'Financial Stability Board Charter' (2012) International Legal Materials, 51(4), 828–839; Helleiner (n 61) 282.

[63] Clément Bourgey et al, 'In 15 years, the Financial Stability Board has become the 'guardian' of global financial stability' (2024) Bulletin de la Banque de France 254/2, 4.

[64] Eva Hüpkes, 'Resolving systemically important financial institutions (SIFIs): The Financial Stability Board key attributes of effective resolution regimes', in John Ramond LaBrosse et al (eds), *Financial Crisis Containment and Government Guarantees* (Edward Elgar Publishing 2013) 43 f.

[65] See also the FSB website on the Key Attributes of Effective Resolution Regimes for Financial Institutions (revised version 2024) <https://www.fsb.org/2024/04/key-attributes-of-effective-resolution-regimes-for-financialinstitutions-revised-version-2024/ > accessed 8 June 2026.

[66] '[C]ore elements [...] consider[ed] to be necessary for an effective resolution regime' from FSB, 'Key Attributes of Effective Resolution Regimes for Financial Institutions' (2024) <https://www.fsb.org/2024/04/key-attributes-of-effective-resolution-regimes-for-financial-institutions-revised-version-2024/> accessed 8 June 2026.

every resolution regime as 'essential features'.[67] The KA are therefore a benchmark for the effectiveness of a resolution framework.[68] Accordingly, the comparison of the IRRD with the KA can also be seen as an assessment of effectiveness.[69]

Accordingly, the elements of the IRRD will be examined for their congruence with the KA to show the latter's function as role models. Specifically, the general KA will be examined considering Annex 2, which provides special, additional requirements for a resolution framework for insurance undertakings.[70] In particular, these also set out objectives that a framework for the resolution of insurance undertakings should aim to achieve.

The FSB's Key Attributes Assessment Methodology for the Insurance Sector will be utilised in comparing the two sets of rules. [71] This guideline contains Essential Criteria (EC), which highlight the key aspects of KA.[72] Reference is also made to the importance of proportionality when assessing whether the KA are complied with or fulfilled.[73] The guideline also provides explanatory notes (EN) on the individual KA, which in turn support interpretation, for instance by providing examples.[74] Both EC and EN are referred to throughout the text in case of unclear KA requirements.

3.1.1. Scope (KA 1)

KA 1.1 stipulates the overarching requirement that all relevant (re)insurance companies[75] must be subject to an effective[76] resolution regime. Therefore, a statement on KA 1 can only be made after all other KAs have been examined.[77] Apart from this, KA 1 deals with the scope of application.[78] For its scope of application, the IRRD refers on the one hand to the (re)insurance undertakings subject to the Solvency II Directive[79] and on the other hand to their parent or holding companies and, under certain circumstances, branches in third countries.[80] This clearly covers all (re)insurance undertakings relevant to supervisory law. The requirements of KA 1.1, which at

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[67] FSB (n 66).
[68] FSB, 'Key Attributes Assessment Methodology for the Insurance Sector' (2020) <https://www.fsb.org/uploads/P250820-1.pdf> accessed 8 June 2026, 8.
[69] For a comparison with the BRRD, see Nicholas Coleman et al, 'Measuring the Implementation of the FSB Key Attributes of Effective Resolution Regimes for Financial Institutions in the European Union' (2018) International Finance Discussion Papers 1238.
[70] FSB (n 66) 72 ff.
[71] FSB (n 68).
[72] FSB (n 68) 8 f.
[73] FSB (n 68) 10 f.
[74] FSB (n 68) 9.
[75] The FSB KA refer to insurers as 'insurance company' whereas the IRRD refers to them as '(re)insurance undertaking'. In the following, the term insurance company is used, but especially in the context of provisions of the IRRD the term (re)insurance undertaking is used as well.
[76] In this context, 'effective' means meeting all key attributes.
[77] As stated in EN 1 (a).
[78] KA 1.1: 'Any financial institution that could be systemically significant or critical if it fails should be subject to a resolution regime that has the attributes set out in this document ('Key Attributes'). The regime should be clear and transparent as to the financial institutions (hereinafter 'firms') within its scope. It should extend to: (i) holding companies of a firm; (ii) non-regulated operational entities within a financial group or conglomerate that are significant to the business of the group or conglomerate; and (iii) branches of foreign firms.'.
[79] See Art 2 Solvency II Directive.
[80] Art 1 IRRD: 'parent insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies, parent insurance holding companies and parent mixed financial holding companies, union parent insurance holding companies and union parent financial holding companies'.

least require applicability to systemically important insurance companies[81] and a transparent scope, are therefore fulfilled.

KA 1.2 concerns financial market infrastructure.[82] This point is not relevant for the assessment of the implementation of the FSB KA in relation to insurance companies, as it specifically concerns financial market infrastructure which is regulated by a separate legislative act.[83]

Special requirements with regard to Global Systemically Important Financial Institutions (G-SIFIS) are addressed in KA 1.3. Specifically, a recovery and resolution plan as well as a group resolution plan, a regular review of resolvability and the conclusion of cooperation agreements between the competent authorities are to be prescribed for those G-SIFIS that are seated in the respective Member State. This KA gives recommendations concerning insurance companies which are G-SIFIS. As will be seen, the IRRD does implement the recommendations. However, reference is made to the corresponding KA for the individual aspects mentioned above. Therefore, the relevant requirements are also discussed in the respective KA.

3.1.2. Resolution authority (KA 2)

The provisions of the IRRD regarding the resolution authority are largely in line with the requirements of the KA. KA 2.1 and 2.2 deal with the establishment and powers of the resolution authority. These are fulfilled by Art 3 of the IRRD. KA 2.3 deals with more precise requirements for the principles that the resolution authority should adhere to when carrying out its activities,[84] these are contained in the IRRD in Art 22 in the form of resolution principles.

Policyholder protection schemes are addressed in the special KA for insurance companies. The resolution authority should coordinate with these to achieve its objectives, insofar as they are applicable. This probably refers to 'insurance guarantee schemes' (IGS), which are intended to guarantee insurance claims in the event of the insurance company's insolvency, analogous to the deposit guarantee scheme in the banking sector. The IRRD does not provide such a guarantee scheme. However, EIOPA addressed the establishment of such a system in the Solvency II Review report.[85] In addition, Art 98 IRRD stipulates that the Commission must submit a report on the appropriateness of a common standard for insurance guarantee schemes by the end of January 2027 after consulting EIOPA.

The IRRD does not contain an authorisation to conclude agreements between resolution authorities of other jurisdictions, as required by KA 2.4. Within the EU, however, the Member State authorities are organised in

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[81] See also EC 1.1.

[82] Comprising payment systems, securities clearing and settlement systems and payment instruments, see ECB, 'Financial Stability Review' (2006) <https://www.ecb.europa.eu/pub/pdf/fsr/financialstabilityreview200606en.pdf> accessed 18 August 2026 125.

[83] Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 [2021] OJ L 22, 1; see also FSB (n 68) 18 footnote 24.

[84] Point 3.1 of the Annex (II-Annex 2: Resolution of Insurers) mentions KA 2.3 as well as point 1 and the preamble of the Annex.

[85] EIOPA, (n 46) 12 and 93; see also EIOPA, 'Opinion to Institutions of the European Union on the Harmonization of Recovery and Resolution Frameworks for (Re)Insurers across the Member States' EIOPA-BoS/17-148 (2017) 6.

resolution colleges in which joint decisions can be reached.[86] Outside the EU, EIOPA can conclude non-binding framework agreements with third-country authorities[87] and the European Commission may propose agreements with third countries.[88] This means that there is in fact a similarly effective provision.

KA 2.5 addresses the independence and resources available to the resolution authority. The IRRD sets out a comparable requirement in Article 3 (3).[89] Another requirement for the resolution authority's full capacity to act is the exclusion of liability[90] of employees and decision-makers as provided for in KA 2.6.[91] This is not specified in the IRRD. However, Art 3 (11) IRRD leaves it up to the Member States to provide for such a limitation of liability.

Finally, KA 2.7 stipulates that resolution authorities should have access to insurance companies if this is necessary for the purposes of recovery or resolution. Such a power is not provided for in the IRRD. However, this can be seen as compensated for by the rights of access to information.[92]

3.1.3. Resolution powers (KA 3)

a Entry into resolution

As stipulated in KA 3.1, the IRRD has clear guidelines as to when and under what circumstances insurance companies are to be resolved. These can be found in Art 19 and 20 IRRD. Point 4.1 of the Annex to the KA corresponds in essence to KA 3.1.

However, it is questionable whether the requirement to initiate resolution at an early stage has been adopted. KA 3.1 recommends that companies should be wound up before they become insolvent.[93] The IRRD does state that this is possible. However, it is not intended that insurance companies be wound up automatically before they are insolvent. The broad wording of the possible points of time when insurance companies should be referred to resolution means that the application of the requirements by the competent supervisory and resolution authorities is of great importance. Compliance with KA 3.1 can therefore only be assessed with a view to (future) practice. A comparison of the text of the Directive therefore only shows partial compliance with KA 3.1. This may result from the principle of proportionality: An insurance company should not be resolved unless this is strictly necessary. Therefore, the deviation from the recommendation in KA 3.1 is justified with regard to proportionality.

b General resolution powers

[86] See Art 70 and 71 IRRD.
[87] See Art 79 IRRD.
[88] See Art 75 IRRD.
[89] See also recital 19 IRRD.
[90] EN 2 (i) adds that this should not prevent judicial review of the resolutions authority's actions.
[91] EC 2.6 further mentions the cost of legal defence. This is - unsurprisingly as it is a framework Directive - not specified in the IRRD but may be addressed in the member state implementations.
[92] See section 3.1.12 for consideration of KA 12 regarding access to information.
[93] So-called 'limbus situations'; see Thomas Stern and Christian Schiele,''Limbus-Sitationen" und Transferstrategien' (2023) ÖBA, 488 (486).

The resolution authority has extensive resolution powers under Article 42 et seq IRRD.[94] These functionally correspond to the powers specified in KA 3.2.[95] The structure of the resolution tools specified in KA 3.2 (transfer of assets and liabilities, solvent run-off, bridge entities, sale of business and bail-in tool [in the IRRD: write-down and conversion]) also corresponds to those provided for in the IRRD.[96] These powers are described in more detail in the following subsections of KA 3 (KA 3.3 - 3.7).

c Transfer of assets and liabilities

KA 3.3 stipulates that a transfer of assets and liabilities shall neither i) require the consent of the persons involved nor ii) be considered a default or termination of a contract. KA 3.3 also refers to KA 4.2 for this requirement.

The IRRD implements both requirements. On the one hand, Art 28 (1) IRRD on the principles for the application of the resolution tools pursuant to Arts 30, 31 and 32 IRRD stipulates that the consent of shareholders or other third parties is not required.[97] On the other hand, Art 48 (1) IRRD clarifies that such measures may not be considered an event of default. Thus, KA 3.3 is fully met.

d Bridge institution

According to KA 3.4, the resolution authority should set up a bridge entity that continues critical functions and the healthy part of the company. Art 32 IRRD stipulates the instrument of the bridge entity and Art 33 IRRD sets out requirements for the operation of that bridge entity. Thus, the requirements of the subsections of KA 3.4 are fully met.[98]

e Bail-in

In the context of KA 3.5, bail-in means a write-down of equity or unsecured claims of creditors or a conversion of such claims into equity or shares. The resolution authority should have the option of carrying out such a write-down or conversion, even if this is already contractually provided for. The IRRD introduces the resolution tool of write-down and conversion in Arts 35 et seq. Secured claims and certain other privileged claims are excluded from the application of the instrument pursuant to Art 35 (5) IRRD.[99] In all other respects, however, all claims and ownership instruments are to be covered by this instrument.[100] According to KA 3.5, claims contractually pre-noted for bail-in should also be subject to the instrument. However, as the IRRD already includes all claims that are not (or cannot be) excluded in paragraphs 5 to 8, such a provision is not necessary.

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[94] In addition to general (Art 42) and ancillary (Art 43) powers which enable the resolution authority to implement resolution tools, there are also special powers (Arts 44 et seq), e.g. special management, provision of operational services and facilities or the exclusion of certain contractual terms.

[95] Some special powers may not be explicitly stated in the IRRD, eg EC 3.4 and EN 3 (h) on the recovery of monies, but fall under the remit of the resolution principles, leaving the member states and resolution authorities the leeway to solve such issues individually.

[96] See Arts 27 et seq IRRD.

[97] This excludes the acquirer of the assets and liabilities or the acquiring bridge entity. See also the correspondence between Recital 68 IRRD and EC 3.7 compare n 70, 29.

[98] See for (i) - Art 32 (1) IRRD; (ii) - Art 33 (1) IRRD; (iii) - Art 32 (4) IRRD; (iv) - Art 33 (2) IRRD.

[99] In addition, Art 35 (6) to (9) IRRD provide for further (possible) exceptions.

[100] Art 35 (4) IRRD.

KA 3.6 demands that the bail-in tool can be used in combination with other instruments. As can be seen from Art 35 (1) IRRD the bail-in tool can only be used in aid of other resolution tools. Therefore, KA 3.6 is fully met.

f Resolution of insurers

Specifically with regard to the resolution of insurance companies, the resolution authority should be able to transfer the portfolio of the insurance company and prevent the conclusion of new contracts while the existing contracts are being wound down or expire. The requirements of KA 3.7 are fully met by the resolution tools of Art 27 (solvent run-off management tool) and 31 IRRD.

g Exercise of resolution powers

KA 3.8 stipulates that resolution authorities may take several resolution measures simultaneously or in succession. The IRRD contains that explicit provision in Art 26 (3) subpara (2). The resolution tools should also be able to relate to specific parts of the insurance company. In addition, resolution authorities should be able to wind down those parts of the insurance company that are not systemically relevant. The provisions of Chapter III of Title III implicitly state that resolution measures can be applied simultaneously or successively.[101] The requirement that these should be able to only relate to parts of the insurance company is fulfilled, as Art 28 (5) IRRD states that 'supplementary transfers' are possible by using the resolution tools again.

The impact of the use of resolution measures on other jurisdictions or (parts of) groups domiciled in these jurisdictions is dealt with in KA 3.9. Resolution authorities should take into account the possible effects of resolution measures and consider these when applying resolution tools. This topic is addressed in the context of decision-making involving several resolution authorities (Art 69 IRRD). Here, Art 69 (e) IRRD states that decision-making must consider 'the interests, potential effects of decisions, actions or inaction and the adverse effects on policyholders, financial stability, financial resources, insurance guarantee schemes, financing arrangements and adverse economic and social impacts **in all Member States** [emphasis added]'. The IRRD therefore fulfils the requirement of KA 3.9 at the least in part, but in practice the resolution authorities will undertake 'best efforts' to avoid any instabilities.

3.1.4. Set-off, netting, collateralisation, segregation of client assets (KA 4)

The IRRD provides separate rules for certain agreements (title transfer, set-off agreements, netting agreements and reinsurance agreements). In accordance with Art 59 IRRD, these agreements or the obligations and assets associated with them cannot be separated from each other or be only partially transferred. Art 59 (2) IRRD also stipulates that it is possible to deviate from these requirements if the amount covered of transferred insurance policies is maintained. Further requirements for the protection of collateral arrangements, structured finance arrangements and trade clearing and settlement systems can be found in Art 60 to 62 IRRD. This fulfils the

[101] As stated in EC 3.17.

requirement of KA 4.1, which merely states that the provisions should be clear, transparent and enforceable and should not affect the effective use of resolution measures.[102]

Art 48 (3) (a) IRRD stipulates that a crisis prevention measure does not entitle anyone to exercise termination, suspension, modification, set-off or netting rights. The Directive thus implements the requirement of KA 4.2. However, if such rights are provided for, KA 4.3 stipulates that the resolution authority should at least be able to suspend the exercise of these rights. The resolution authority ensures that the suspension: i) is strictly limited in time; ii) considers the integrity of contracts and offers security to counterparties; and iii) has no effect on rights that are exercised independently of resolution measures. The IRRD implements these requirements in Art 51 and 48 (4). KA 4.4 prescribes this temporary suspension of early termination options referring to I-Annex 5, which sets out the objectives of such a suspension and its requirements.

3.1.5. Safeguards (KA 5)

a Respect for creditor hierarchy and 'no creditor worse off' principle

For the ranking of creditors, the IRRD refers to national insolvency law.[103] However, it also stipulates that shareholders of the insurance company in liquidation must be called upon first.[104] Creditors of the same class are to be treated equally, unless the Directive provides otherwise. These requirements correspond to KA 5.1. Recital 61 is also close to parts of the wording of KA 5.1.

KA 5.2 is fulfilled in its entirety by Art 22 (1) (g) in conjunction with Art 55 to 57 IRRD. The 'No Creditor Worse Off' principle (NCWO) is defined in Art 22 (1) (g) IRRD. This is further specified and implemented in Art 55, 56 and 57 IRRD.

Managers of insurance companies in resolution should be protected under KA 5.3 if they follow instructions of the resolution authority. There is no corresponding provision in the IRRD.[105] KA 5.3 is therefore not fulfilled. However, since managers can be replaced in accordance with Art 22 (1) (c) and Art 44 IRRD and must otherwise ''provide all necessary assistance'' in accordance with Art 22 (1) (d) IRRD, it is debatable whether such a provision is implied. Even without such a provision, managers who follow the instructions of the resolution authority will factually not be held liable for required cooperation.[106] To grant effectiveness to the framework, Member States should consider the inclusion of such a provision.

b Legal remedies and judicial action

KA 5.4 deals with the speed with which resolution measures are taken. The resolution authority should either be able to take resolution measures independently or factor a corresponding delay for a court order in resolution

[102] EN 4 (a) emphasises the need for clear rules, lest the effectiveness of the framework is impeded due to uncertainty. It should especially be made clear which assets fall under the remit of such provisions. As the IRRD explicitly names the agreements in its Art 59 et seq, this requirement is met.
[103] Art 22 (1) (b) IRRD.
[104] Art 22 (1) (a) IRRD.
[105] There is only a corresponding provision for the management of bridge companies and asset management companies in Art 32 (7) and Art 30 (9) IRRD. This enables the member states to limit liability.
[106] A claim of state liability will be far more attractive to possible claimants than one against a natural person.

planning. As Art 67 IRRD stipulates that court approval for crisis prevention measures may be granted in advance, but in an accelerated manner, the requirement of KA 5.4 is met.

If legal action is taken against resolution measures, KA 5.5 stipulates that this must not lead to the suspension or reversal of the resolution measure. Instead, persons affected should be financially compensated.[107] Art 67 (4) subpara (2) IRRD stipulates this in the same way.

Finally, according to KA 5.6, temporary exemptions or deferrals of disclosure obligations should be possible to maintain market confidence. There is no corresponding provision in the IRRD. KA 5.6 is therefore not fulfilled.

3.1.6. Funding of firms in resolution (KA 6)

The requirements regarding the financing of resolution are also implemented by the IRRD. For this purpose, at least one financing fund must be set up in each Member State in accordance with Art 81 IRRD. The IRRD thus already corresponds to KA 6.1. KA 6.2 and KA 6.3 address the sources for this financing; the IRRD is stricter here, as the financing must be provided by the (re)insurance undertakings licensed in the Member States in case financing needs arise but can also be provided for in advance.

KA 6.4 addresses moral hazard. To eliminate that hazard, the authority should, on the one hand, determine that the use of the financing fund is necessary and, on the other hand, pass on the resulting losses to investors and any other costs to creditors and the industry. By financing the funding mechanisms in the form of ex-ante or ex-post payments by the resident insurance companies in accordance with Art 81 (1) (1) IRRD, the IRRD fulfils the second point mentioned. According to Art 81 (1) subpara (1) IRRD, the financing mechanisms are primarily to be used for compliance with the 'No Creditor Worse Off' (NCWO) principle. Subparagraph (2) grants the possibility of using the financing arrangements to achieve other resolution objectives where necessary. Recital 48 of the IRRD also states that financing arrangements can be used 'as a last resort to cover other costs related to the use of resolution tools'. However, 'in any event [...] shareholders' claims should be written down before resolution financing arrangements can be used to absorb losses'. This also fulfils the first point addressed by KA 6.4.

KA 6.5 is not applicable as the IRRD does not provide for the possibility of nationalisation.[108]

3.1.7. Legal framework conditions for cross-border cooperation (KA 7)

The subsections of KA 7 set out the requirements for the framework agreements on cooperation with foreign authorities. KA 7.1 simply states that resolution authorities should strive to cooperate with foreign authorities. Accordingly, KA 7.2 stipulates that no automatic measures should be taken if foreign resolution or insolvency proceedings are initiated.[109] Instead, only targeted measures should be taken, that duly consider the other jurisdiction. This aspect is addressed in Art 78 IRRD, which stipulates that action by Member State authorities is

[107] EN 5 (e) elaborates that this should only relate to actions of the resolution authority that are lawful. Measures taken in bad faith or are otherwise outside the resolution authorities' legal powers should be excluded from such a provision.
[108] The KA also do not provide for nationalisation as a resolution tool in accordance with EN 6 (d). KA 6.5 is an additional requirement if nationalisation is a possibility provided for in the framework.
[109] See also EC 7.2.

only envisaged if the Union branch is not subject to foreign resolution proceedings or is not recognized under the conditions of Art 77.

The resolution authority should also be able to exercise resolution powers over branches of foreign insurance companies in accordance with KA 7.3. The IRRD implements this requirement in Article 77 and 78. As required by KA 7.3, the foreign resolution procedure is generally recognised, and only in certain circumstances is a separate resolution of the branch initiated. This aspect in turn also complies with KA 7.5, which requires that mutual recognition and support of the resolution procedures is regulated. Art 79 IRRD regulates cooperation with third countries in the absence of an international agreement pursuant to Art 75 (1) IRRD. It provides that EIOPA may conclude legally non-binding framework cooperation agreements with the third country authorities.

KA 7.4 deals with the non-discrimination of foreign creditors. The requirement of non-discrimination is indirectly fulfilled by the resolution principle of Art 22 (1) (f) IRRD. According to (f) of the cited article, creditors of the same class are to be treated equally.[110]

KA 7.6 and 7.7 are discussed together with KA 12 (see below).

3.1.8. Crisis Management Groups (CMGs) (KA 8)

Similar to the CMGs, the IRRD requires the establishment of so-called 'resolution colleges'.[111] Their set-up and tasks are regulated in Arts 70 and 71 IRRD. The composition is in line with the proposal under KA 8.1, except for the lack of participation of the central banks. There is therefore no complete concurrence with this KA. However, since Art 65 (2) (c) and (i) IRRD requires resolution authorities to inform concerned central banks and the European Central Bank of any resolution measure this deviation may not be seen as an impediment to effectiveness. In addition, the resolution colleges merely work among the EU Member States. Third countries are not represented. Art 75 to 80 IRRD provide for cooperation with third countries. However, the scope of this cooperation has to be determined by agreements with individual third countries. Therefore, KA 8.1 is not fulfilled. Depending on the agreements with third countries this may yet be no impediment to effectiveness.

KA 8.2 proposes regular reports from the CMGs to the FSB. Such reports are not provided for in the IRRD, which is why KA 8.2 is not fulfilled. But, since Art 65 (2) (h) IRRD requires resolution authorities to inform the ESRB, another macroprudential supervisory body is kept informed. This may be a similarly effective approach as the one prescribed in KA 8.2.

3.1.9. Institution-specific cross-border cooperation agreements (KA 9)

The special agreements required by KA 9 for cross-border cooperation in relation to specific insurance companies are closely linked to KA 8 and therefore not included separately in the IRRD. Such a cooperation agreement should be concluded for all G-SIFIs in accordance with KA 9.1, the existence of which must be made public in accordance with KA 9.2. The IRRD offers EIOPA[112] and the EU Commission[113] the opportunity to conclude agreements with

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[110] Recital 35 IRRD further elaborates that different treatment should not be discriminatory based on nationality.
[111] A resolution college is used as a decision-making forum for relevant authorities regarding the resolution of an undertaking.
[112] Art 79 IRRD.
[113] Art 75 IRRD.

third countries.[114] On the other hand, resolution colleges must be formed for (groups of) companies within the EU. However, the IRRD does not provide for specific cooperation agreements for individual insurance companies. Therefore, there is only partial compliance with KA 9.

3.1.10. Resolvability assessments (KA 10)

The assessment of resolvability for insurance companies that are not part of a group is described in Art 13 IRRD, that for groups in Art 14 IRRD. This assessment is part of the resolution plan in accordance with Art 13 (3) IRRD. The resolution plan is updated by the authority in accordance with Art 9 (5) IRRD at least every two years or if the company indicates circumstances that make an update necessary. In this case, the resolvability must also be reassessed in accordance with Art 13 (3) IRRD. This also fulfils the update requirement of KA 10.1.[115]

KA 10.2 specifies the aspects to be considered when assessing resolvability. These are (i) the continuation of critical functions, (ii) the interdependencies within the group, (iii) the ability to provide information and (iv) the quality of cross-border cooperation between authorities. The IRRD dedicates the annex to the '*dimensions of resolvability*'. The nine dimensions mentioned contain the following points, which correspond to the aspects in KA 10.2: point 1 'Operational continuity' (on i); point 3 'Separability' (on ii); point 6 'Information systems and data requirements' (on iii). The last point (iv) is not addressed in the IRRD Annex. However, it must be considered that the IRRD relies on the cooperation of the Member State authorities. Hence, omitting this dimension may be traced back to the existing provisions on cooperation. Accordingly, KA 10.2 may only be partially fulfilled but with little to no effect on the effectiveness of the IRRD.

The responsibility for assessing the resolvability of G-SIFIs is dealt with in KA 10.3. This is in line with the requirements of the IRRD, as on the one hand the resolution authority of the home Member State is responsible[116] and on the other hand it must cooperate with the other authorities in the resolution college in accordance with Art 14 IRRD. KA 10.4 requires cooperation of home and host authorities in case of the resolvability assessment of a subsidiary. As the IRRD prescribes only such an assessment on group level, KA 10.4 is not applicable. This does not impede the effectiveness of the IRRD.

KA 10.5 is fully met by the IRRD, as Art 15 IRRD provides for the power to reduce or remove impediments to resolvability. This power exists irrespectively of the insurance company's financial difficulties[117] and its exercise must consider the insurance company's business activities in accordance with Art 15 (4) subpara (2) IRRD.[118]

3.1.11. Recovery and resolution planning (KA 11)

a General

[114] Compare section 3.1.7.
[115] EC 10.1 links the need for a resolvability assessment to the existence of a resolution plan.
[116] Art 2 (33) IRRD in conjunction with Art 30 (1) Solvency II Directive and Art 247 Solvency II Directive.
[117] This is because the resolution authority can prescribe these measures as soon as it identifies impediments to resolvability.
[118] See EN 10 (b).

Requirements for recovery and resolution planning are one of the two main topics of the IRRD. At least 60% of the (re)insurance market[119] should be covered by recovery plans and at least 40% of the (re)insurance market[120] by resolution plans. These must be updated regularly.[121] It should be noted that small and non-complex companies are generally not covered by these requirements.[122] Conversely, those insurance companies that are particularly systemically relevant or whose default would be particularly critical are covered. This also applies to G-SIFIs. These provisions therefore fulfil the requirements of KA 11.1.

KA 11.2 deals with the content of the recovery and resolution plans, which should comply with I-Annex 4. This catalogue is not adopted by the IRRD. The IRRD requirements are much more concise and less detailed. They do not fully comply with I-Annex 4 and therefore KA 11.2 is not fully met. However, exact compliance may not be necessary for the successful application of the recovery and resolution plans. The effectiveness of this sub-aspect of the recovery and resolution framework is given despite its more distilled content.

The requirements set out in the IRRD regarding the recovery and resolution plans partially reflect KA 11.3. Regarding recovery plans, the requirements are only partially met. However, the elements specified in KA 11.3 are not relevant for these but rather for resolution plans. The resolution plans of the IRRD meet the requirements of KA 11.3, as both the resolvability is taken into account[123] and a presentation of the company, its critical functions and critical interdependencies.[124]

Finally, KA 11.4 deals with the provision of information to the authorities for the examination and preparation of plans. The IRRD provides for the obligation to provide information in its Art 12, which fulfils the requirements of KA 11.4.

b Recovery plan

KA 11.5 deals with further components of recovery plans. These should include i) options for dealing with a range of stress situations; ii) scenarios that address capital and liquidity shortfalls; and iii) processes for the timely deployment of recovery measures. The IRRD stipulates in Art 5 (7) that companies should assess the credibility and feasibility of their preventive recovery plans based on a series of scenarios. The indicators pursuant to Art 5 (8) IRRD must be taken into account. KA 11.5 is therefore fulfilled. The various options for ending the resolution procedure are also explicitly set out in the IRRD but are not part of the resolution plan. As a result, KA 11.6 is only largely fulfilled. Yet again, this does not impede the effectiveness of the IRRD, as concerned parties may easily gather that information from the provisions of the IRRD.

c Resolution plan

KA 11.6 presents the elements that resolution plans should contain. Art 9 (6) IRRD states that critical functions and their continuation options should be included, which is in accordance with KA 11.6. It also requires that information requirements for the insurance company as well as obstacles to resolution and options for eliminating

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[119] Art 5 (2) subpara 2 IRRD.
[120] Art 9 (2) subpara 2 IRRD.
[121] Art 5 (4) and Art 9 (5) IRRD.
[122] Art 5 (3) subpara 2 and Art 9 (2) subpara 3 IRRD.
[123] Art 9 (6) (f) IRRD.
[124] Art 9 (6) IRRD.

them are identified. The IRRD also addresses these two aspects in Art 9 (6) (f) and (g) on the one hand and indirectly in Art 5 (6) (b) (description of the company) on the other. However, the IRRD does not explicitly require measures to protect insurance creditors. However, these are generally protected by the objective of the IRRD in relation to resolution.[125] KA 11.6 is therefore only partially fulfilled, but this does not impede the effectiveness of the IRRD.

To ensure the continuation of critical functions, KA 11.7 stipulates that service contracts should also be maintained in the event of resolution and, if applicable, transfer to a bridge entity or other transferee. To this end, the IRRD stipulates in Art 45 that the resolution authority may require the continued provision of essential services by another entity in the group.[126] However, this only applies to entities that are part of the same group.[127] KA 11.7 is therefore only partially fulfilled. In practice, however, Art 35 (5) (d) (ii) IRRD allows for ongoing procurement of essential services as liabilities towards creditors that provide such essential services may not be written down.

KA 11.8 in turn refers to resolution plans in relation to G-SIFIs and CMGs. Art 70 (1) IRRD explicitly addresses and regulates the exchange of information and the coordination between authorities. Art 10 (1) IRRD explicitly states that the group resolution authority is responsible for drawing up the group resolution plan. KA 11.8 is therefore fully complied with. Despite drawing up a group resolution plan, according to KA 11.9 each resolution authority should be able to draw up its own resolution plan for the insurance company in its Member State. This requirement is partially met by Art 17 (4) IRRD. An individual plan may only be drawn up in case a group plan does not exist. However, this deviation from the KA aims at preventing potentially conflicting plans and is therefore necessary for a reliable resolution framework in the EU.[128]

d Regular updates and review

As already mentioned above, the recovery and resolution plans must be updated regularly, including in the event of significant changes to the insurance company or other relevant circumstances.[129] KA 11.10 is therefore fully complied with as well as KA 11.11 in its key points.

KA 11.12 requires that authorities must be able to demand an amendment to the plans or specific content. The IRRD fulfils this requirement with Art 6 (4) and (5) for recovery plans and for resolution plans by the fact that these are to be drawn up by the resolution authorities themselves.

3.1.12. Access to information and information sharing (KA 12)

The requirements for access to and exchange of information are set out in KA 12.1 and 12.2. Reference is made to I-Annex 1 ‘Information Sharing for resolution purposes’, which specifies the requirements in more detail. KA 12.1 stipulates that there must not be any obstacles to the appropriate procurement of information by the authorities. Relevant information should be exchanged at national and international level. Access to sensitive information may be restricted. The exchange of information regarding G-SIFIs should be regulated in cooperation agreements. Art 72 IRRD deals with the exchange of information between Member State authorities. Accordingly, all information

[125] See Art 18 (2) (a) IRRD.
[126] See also recital 46 IRRD.
[127] Art 2 (86) IRRD.
[128] This could not be remedied by a ‘clear process for coordination’ as recommended in EC 11.12.
[129] Art 5 (4) and Art 9 (5) IRRD.

relevant for the exercise of functions under the IRRD must be transmitted upon request. This means that KA 12.1 is fulfilled, as the free exchange of information applies in principle.

The Management Information Systems (MIS) referred to in KA 12.2 should be able to produce 'information necessary for recovery and resolution planning, assessing resolvability and the conduct of resolution'.[130] Hence, it seems KA 12.2 does not require an altogether new system but will rather rely on existing systems. A requirement for such MIS is not to be found in the IRRD. Rather, insurance companies are required to convey such information to the authorities as are necessary for the performed tasks. In Art 12 IRRD the information and cooperation requirements of insurance companies towards authorities regarding the drawing up of resolution plans is set down. It reads that insurance companies must provide all necessary information and cooperate as much as necessary. The same is set down in relation to the assessment of resolvability. Finally, in Art 42 on the general resolution powers the resolution authority is granted the power to require from any person any information necessary for resolution actions. To comply with these requirements, insurance companies will use their existing systems for information management. Hence, KA 12.2 may not be fully mirrored in word but a compliance to the effect of KA 12.2 is given.

KA 7.6 and 7.7 are to be discussed under KA 12, as these also concern requirements regarding the provision of information. Essentially, this concerns the exchange of information with foreign, i.e. third-country authorities, which should be possible subject to appropriate safeguards. Information sharing with third country authorities is provided for in Art 80 IRRD. The prerequisites conform with the requirements in KA 7.6 and 7.7. Therefore, full compliance with KA 7.6 and 7.7 is given.

3.1.13. Conclusive remarks on the alignment of the IRRD to the KA

The above analysis shows that the IRRD fulfils most of the KAs. Some KAs are only partially fulfilled,[131] few are not fulfilled.[132] However, these deviations do not impede the effectiveness of the framework. Also, both the Member State implementation as well as the practical implementation of the provisions may nevertheless lead to compliance with the KA or a similar level of effectiveness. Some individual KAs or their sub-points are not fulfilled. These are clearly the exception. Some of these are still being evaluated[133] or are not applicable to the insurance industry at all[134]. The IRRD therefore largely meets the requirements for an effective framework for the recovery and resolution of insurance companies.

However, this conclusion can only refer to the IRRD itself. The transposition of the Member States are free to make use of many options and may implement the recovery and resolution regime differently. For interpretation purposes in line with the Directive, however, it is still valuable to examine the conformity of the IRRD itself with the KA.

3.2. Comparison to the BRRD

[130] For more detail see EC 12.5.
[131] KAs 2.3, 2.6, 3.1, 3.9, 9 and 11.2.
[132] KAs 5.3, 5.6 and 8.1.
[133] See KA 2 on the Insurance Guarantee Schemes.
[134] See KA 2.7 on Financial Market Infrastructure.

The BRRD is in part an almost template-like model for the IRRD. However, in line with the characteristics of insurance companies and the insurance market, the IRRD also contains provisions that were designed specifically for them.[135]

3.2.1. Structural comparison

Title I of both Directives deals with the scope of application, definitions and the competent or designated authorities. The material scope of application of both Directives is the definition of 'rules and procedures for the recovery and resolution' of companies in the banking[136] and insurance sectors.

Title II deals with preparation: Chapter I deals with (preventive) recovery and resolution planning and Chapter II with resolvability. Both chapters correspond to their counterparts in the other Directive. The BRRD also contains a Chapter III, which deals with intra-group financial support. Chapter III of the IRRD, on the other hand, deals with joint decisions by the competent authorities. This difference can be traced back to there being no SRM in the insurance sector. The authorities only have the IRRD to guide them in their coordination, not the SRM Regulation. On the other hand, insurance companies run less risk of short-term low liquidity, which explains there being no provisions for intra-group financial support.

Title III of the BRRD concerns early intervention by the authorities. According to Art 27 BRRD, the competent authority can take measures in accordance with Art 27 (1) (a) to (h) BRRD if the financial situation of the company deteriorates, i.e. the requirements set out in Art 27 BRRD are breached.[137] The BRRD already provides for more invasive measures in this early intervention phase, which should lead to the restoration of a healthy financial position. For example, the dismissal of senior management and management body (Art 28 BRRD) and the appointment of a temporary administrator (Art 29 BRRD) are also possible. There is no such title in the IRRD. However, early intervention by the authority is provided for in Solvency II in Art 141. A study[138] by EIOPA on recovery and resolution regimes in the EU prior to the IRRD also deals with the possibilities for authorities to intervene at an early stage. [139] In this context, specifically Art 141 Solvency II Directive is mentioned.[140]

Title III of the IRRD concerns resolution. In the BRRD, this is dealt with in Title IV. Chapter I of those titles deals with the objectives, requirements and general principles of resolution in both Directives. Chapter II concerns the special administration in the BRRD, which is provided for in Art 44 IRRD among the resolution powers. However, the content of Art 35 BRRD, which is the only article in Chapter II of Title IV, and Art 44 IRRD are essentially the same.

Accordingly, the IRRD deals with valuation in Chapter II, which is dealt with in Chapter III of the BRRD. The content of Articles 23 to 25 IRRD essentially corresponds to that of Article 36 BRRD.

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[135] For example, the instrument of solvent run-off or orderly resolution management in Art 27. For a comparison of the two legal acts also see Thomas Stern, ‚Abwicklung von Versicherungsunternehmen - Die IRRD im Rechtsvergleich' (2024) ZVers 284.
[136] According to Art 1, the BRRD covers credit institutions and investment firms as well as their parent, subsidiary and holding companies.
[137] See Stern and Schiele (n 95) 487.
[138] EIOPA, (n 85).
[139] EIOPA, (n 85).
[140] EIOPA, (n 85) 36 et seq.

The resolution tools are discussed in Chapter III of the IRRD and in Chapter IV of the BRRD. This is where the first major substantive difference arises in the form of a new resolution tool in the IRRD. Article 26 (3) (a) IRRD mentions solvent run-off as a resolution tool, which does not exist in the BRRD.[141] In addition, the resolution tool of 'bail-in' in the IRRD is now referred to as the instrument of write-down or conversion, which covers both the company's liabilities and shares and other forms of ownership instruments. The extent of the provisions regarding this instrument also differs considerably between the two Directives. While the IRRD dedicates Articles 35 to 41 to the instrument of write-down and conversion, the BRRD sets the rules for this tool in Articles 43 to 55. This is due to the BRRD setting more and stricter requirements for the application of the bail-in tool. In Chapter V, the BRRD deals with the write-down of capital instruments, which - in contrast to the IRRD - is a separate power from the bail-in instrument.

Chapter IV, Title III IRRD deals with resolution powers, while these are found in Chapter VI, Title IV BRRD. In both Directives, general powers and additional powers are defined before individual specific powers are dealt with. These correspond to each other in terms of content. The IRRD only adds Art 52, which prescribes the contractual recognition of resolution powers, and Art 53 on the suspension of surrender rights in life insurance.

Provisions on safeguards can be found in Chapter V of the IRRD and Chapter VII of the BRRD. Both concern the treatment of persons affected by the bail-in instrument and the assessment of their treatment. This is followed by protective provisions for these affected persons and for counterparties in the case of partial transfers. Both Directives subsequently also place certain agreements (such as collateral agreements or netting agreements) under protection.

Finally, Chapter VIII of the BRRD sets out the procedural obligations. These can be found in Chapter VI of the IRRD. Here too, the two Directives are in line with each other. Both the notification obligations and the requirements for the resolution authority's decision are essentially the same. The same applies to the procedural obligations, which are regulated in Art 65 IRRD and Art 83 BRRD. Finally, the provisions on confidentiality are also almost identical.

Chapter IX BRRD and Chapter VII IRRD regulate legal remedies and the exclusion of other measures in the resolution phase. These provisions are identical in both Directives.

Title V of the BRRD deals with cross-border group resolution. The IRRD deals with this in Title IV, where both Directives first state general principles on decision-making and then specify the creation of (European) resolution colleges. The exchange of information, the procedure when a subsidiary is included in the group resolution and the resolution of Union parent companies are also regulated parallelly in both Directives.

Title VI of the BRRD and Title V of the IRRD on relations with third countries are also largely identical in terms of content. The same applies to Title VIII of the BRRD and Title VI of the IRRD on sanctions, whereby individual sanctions and penalties are also identical.

Title VII of the BRRD deals with financing arrangements. Although this title has no equivalent in the IRRD, Art 81 IRRD deals with financing arrangements for the purposes of the IRRD. The BRRD deals with this topic in

[141] See Art 37 (3) BRRD for the list of resolution tools. The instrument of orderly resolution management is not mentioned here.

eleven articles (Art 99 to 109 BRRD) in much greater detail than the IRRD. Accordingly, there is more leeway in the implementation of the IRRD with regard to the financing mechanisms to be set up.

Titles IX, X and XI of the BRRD and Titles VII and VIII of the IRRD are not included in the comparison, as those are formal provisions.

Table 1: Structural comparison of BRRD and IRRD

	BRRD	IRRD
Scope, Definitions and Authorities	Title I	
Preparation	Title II	Title II
(Pre-emptive) Recovery and Resolution Plans	Chapter I	Chapter I
Resolvability	Chapter II	Chapter II
Intra-group Financial Support	Chapter III	/
Joint Decision	/	Chapter III
Early Intervention	Title III	/
Resolution	Title IV	Title III
Objectives, conditions and general principles	Chapter I	Chapter I
Special Administrator	Chapter II	/
Valuation	Chapter III	Chapter II
Resolution Tools	Chapter IV	Chapter III
Write down of capital instruments	Chapter V	/
Resolution Powers	Chapter VI	Chapter IV
Safeguards	Chapter VII	Chapter V
Procedural Obligations	Chapter VIII	Chapter VI
Right of appeal and exclusion of other actions	Chapter IX	Chapter VII
Cross-Border Group Resolution	Title V	Title IV
Relation with Third Countries	Title VI	Title V
Financing arrangements	Title VII	/
Penalties	Title VIII	Title VI
Powers of execution	Title IX	/
Amendments to other Directives	Title X	Title VII
Final Provisions	Title XI	Title VIII

3.2.2. Selected differences

EIOPA lists the differences between BRRD and IRRD in a comparative report: Preparation, resolution tools, recovery and resolution funding and institutional set-up.[142] The origin of both Directives in the FSB KA is cited as the reason for the predominant convergence of the two legal acts. At the same time, however, there are differences resulting from the adaptation to the insurance sector.[143]

A key difference between the IRRD and the BRRD that has already been mentioned is the new solvent run-off resolution tool. The solvent run-off management[144] (Art 27 IRRD) is intended to enable the insurance company to wind up existing insurance contracts without concluding new contracts. This procedure is already practiced in the insurance sector, not only when an insurance company is terminated, but also when it changes its business activities.[145]

In the event that the insurance companies authorisation to conduct business is withdrawn, the supervisory requirements must continue to be complied with and monitored during solvent run-off management. At the same time, the resolution authority, in cooperation with the supervisory authority, monitors the company's operational key figures and evaluates intended changes to assets and reinsurance agreements. Finally, the insurance company must be liquidated in solvent run-off management if: a) all or almost all assets and rights and obligations have been sold to a third party; or b) the company's assets have been fully liquidated and the liabilities have been met. In the event that the insurance companies net assets are negative, the resolution authority may decide to liquidate it in regular insolvency proceedings or to use another resolution tool.

Another difference between IRRD and BRRD is the possibility to temporarily nationalise institutions in accordance with Art 58 BRRD. This possibility does not exist in the IRRD.

4. Political deliberations and selected critique

As already mentioned in section 2 on the development of the insurance sector regulation, the background for the creation of the IRRD was the review of the Solvency II Directive. To this end, the Commission instructed EIOPA to prepare technical advice based on an EIOPA opinion report from 2017.[146] In both papers, EIOPA addresses the need for a framework for the recovery and resolution of insurance undertakings. EIOPA sees the fragmentation of Member State regulations as the main problem.[147] In addition, EIOPA has also published a report on the failures

[142] EIOPA, (n 58) 5 f.
[143] Ibid 7.
[144] Art 2 (2) (43) IRRD describes this instrument as the prohibition to conclude new insurance contracts and the restriction of business activities to the management of the existing portfolio until it is wound up and the insurance company can be liquidated.
[145] Michael Reiner, '§ 306' in Stephan Korinek et al (eds), *VAG* (2018 Manz) Rz 9; Oliver Kittner, 'Der Begriff von Run off und Bestandsversicherung in der Lebensversicherung de lege lata und de lege ferenda' (2022) GWR 373.
[146] EIOPA was to advise, among other things, on whether 'there is a need for harmonized minimum rules for the resolution of insurance or reinsurance undertakings, including resolution planning" see EIOPA, (n 8) 622.
[147] EIOPA, (n 146) 625 f.

and near-failures of insurance companies.[148] This report and the (near) failures listed therein also serve as justification for the creation of the IRRD.[149]

Why was a framework for the restructuring and resolution of insurance companies created? The aim is to enable the resolution of insurance companies without severe systemic disruption and exposing taxpayers to loss while safeguarding the continuation of critical functions.[150] This objective is in line with other financial market regulation. EIOPA sets out three reasons for the need to create a framework for the recovery and resolution of insurance undertakings:[151] First, such a framework should reduce the probability of insurance companies' failures, minimise their impact and save public money. Secondly, EIOPA argues that such failures are not rare and that the Solvency II Directive is not a zero-failure regime.[152] Thirdly, a framework for resolution would facilitate the resolution of cross-border failures.[153] In addition, the amendment to the FSB KA should also be applied to insurance companies across all EU Member States.[154] As the comparison of the IRRD with the FSB KA shows, these are largely fulfilled in the IRRD and at least taken into account in most other cases.

However, the creation of the IRRD has also been met with criticism. Apart from the general criticism of excessive regulation and bureaucracy,[155] Perman,[156] for example, is critical of specific content of the IRRD. He criticises the conditions and decision for resolution, as this is to be made jointly by the supervisory and resolution authorities and, due to the discretionary scope in the conditions, is a verdict on the viability of insurance companies.[157] *Van Hulle* also warns against applying banking regulation concepts to the insurance market; the business models would simply be different.[158]

The introduction of the IRRD and its implementation in the Member States and subsequent application to the insurance companies subject to it is undoubtedly associated with considerable effort. Nevertheless, it is based on considerations that work in the banking sector.[159] The resolution framework under the IRRD represents the alternative to insolvency proceedings, which is intended to achieve a better outcome for all parties involved, for example through the continuation of critical functions, thanks to the greater flexibility of the resolution authorities and the NCWO principle, among other things.[160]

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[148] EIOPA, 'Report on Failures and near misses in insurance - Overview of recovery and resolution actions and cross-border issues' EIOPA-BoS-21/394 (2021).
[149] See Proposal for a Directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2009/138/EC, (EU) 2017/1132 and Regulations (EU) No 1094/2010 and (EU) No 648/2012 (COM/2021/582 final), 1.
[150] EIOPA, (n 57) 3; Van den Hurk (n 46) 101.
[151] Ibid, 8.
[152] This is one of the reasons given for the IRRD proposal. See Proposal for a Directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2009/138/EC, (EU) 2017/1132 and Regulations (EU) No 1094/2010 and (EU) No 648/2012 (COM/2021/582 final) 1; see also recital 2 IRRD.
[153] Recital 6 IRRD.
[154] EIOPA, (n 8) 627.
[155] See GDV, 'Trilogue agreement IRRD: Compromise addresses insurers' criticisms - concerns remain' (*GDV*, 14.12.2023) <https://www.gdv.de/gdv/medien/medieninformationen/trilog-einigung-irrd-kompromissgreift-kritikpunkte-der-versicherer-auf-bedenken-bleiben--162252> accessed 8 June 2026.
[156] Perman (n 56) 250.
[157] Perman (n 56) 254.
[158] Karel Van Hulle, 'The 2020 Solvency II Review: Do We Need a Solvency III?' (2022) ZVers 263.
[159] Armin Kammel and Tatjana Payr, '§ 83' in Armin Kammel and Melitta Schütz (eds), BaSAG (Manz 2018) Rz 9.
[160] Recital 7 IRRD.

5. Conclusion

This article has shown that banking and insurance regulation have been developed in parallel. However, with the creation of the BRRD and thus a framework for the recovery and resolution of banks, insurance regulation fell behind. This gap has now been filled and as shown in this article, the parallelism of the supervisory structure of the two sectors has now been restored with the IRRD which follows the KAs and the BRRD in its design. The creation of the IRRD is to be seen as a piece in the puzzle of the supervisory reforms following the financial crisis.

It was also shown that the IRRD is very closely aligned to the FSB KA and its banking equivalent, the BRRD. This can also be seen in the political considerations behind the IRRD and explains some of the criticisms.

The Insurance Guarantee Schemes (IGS) should be seen as the 'final piece of the puzzle' in this context. The introduction of a uniform, European solution was recommended in the *De-Larosière* report and has been acknowledged by the EU Commission[161] and the discussions leading up to the adoption of the IRRD.[162] Further to Art 98 IRRD, an evaluation of whether the creation of a European IGS solution is necessary must take place by end of January 2027. It is widely anticipated that this final 'piece of the puzzle' will be added to the harmonisation of the EU insurance market.

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[161] European Commission, 'Whitepaper on Insurance Guarantee Schemes' COM (2010) 370 (2010).
[162] EIOPA, (n 58) 7; EIOPA, (n 46) 93.