

Insurance Recovery & Resolution Directive (IRRД) — development of Technical Standards and Guidelines



The EU's co-legislators – the European Council and Parliament – reached a provisional agreement on the Insurance Recovery and Resolution Directive (IRRД) in December 2023. While the industry welcomes the improvements agreed by the co-legislators, Insurance Europe continues to question the need for such an extensive regulation given the existing regulations and safeguards that are in place.

The next phase of the development of the IRRД is the preparation of 19 technical standards and guidelines. These instruments will include important information on fundamental aspects of the framework, such as the definition of critical functions and details of who will be in the scope of pre-emptive and resolution plans. The European Insurance and Occupational Pensions Authority (EIOPA) is empowered to prepare and submit the technical standards to the EC and issue the guidelines on specific topics within given timeframes. Insurance Europe looks forward to engaging with EIOPA and the EC on the development of these texts.

However, at this stage, there is a lack of clarity in the process foreseen by the co-legislators and the Commission to finalise these instruments and to implement the IRRД in national jurisdictions.

Leveraging the early stages of the development of the technical standards and guidelines, Insurance Europe emphasises the importance of

- establishing clear, comprehensive timelines for the development of technical instruments;
- providing sufficient time for stakeholders to respond to consultations.

Mismatched schedules: IRRД implementation and instrument creation

Insurance Europe is concerned about the overlap between the timelines foreseen for the IRRД implementation and EIOPA empowerments. Therefore, the application date should be postponed. If this is not possible, clarity of how the development of the technical standards and guidelines will affect the implementation of the Directive is needed.

Member States will implement the Directive 24 months after its publication in the Official Journal of the European Union. However, the second and third sets of EIOPA's empowerments should be issued 24 months or 30 months after the Directive's publication. Even the first set of technical standards, which must be developed within 18 months of the Directive's publication, could potentially create timing issues if the EC does not endorse the text or includes amendments¹.

¹ EIOPA should submit these RTS and Implementing Technical Standard (ITS) to the EC within the 18-month timeframe. According to Regulation (EU) No 1094/2010 Article 10, the EC will have three months after receiving the RTS to endorse the text.

Framework fundamentals: EIOPA empowerments

The technical instruments will provide details on key aspects of the IRRD, such as the definition of critical functions or eligibility for simplified obligations. The mismatched schedules discussed above mean that these important details will be finalised at the same time as implementation or during the following months.

The most critical of these framework fundamentals are outlined below.

Regulatory technical Standard (RTS) - Method to determine the market share and pre-emptive recovery plan risk criteria (18 months) Article 5 (4)

These criteria will set the limits of the pre-emptive recovery plan's scope. Therefore, some undertakings will only know if they are in the plan's scope once the EC endorses the RTS and the national supervisor has applied the Directive and RTS.

Guideline - List of qualitative and quantitative indicators and a range of scenarios for pre-emptive recovery plans (24 months) Articles 5 (11), 5 (11c), 5 (11d)

EIOPA shall issue guidelines, partly in cooperation with the European Systemic Risk Board (ESRB), to specify the range of scenarios and the qualitative and quantitative indicators to be considered in the pre-emptive recovery plans. The affected undertakings need the information to prepare the pre-emptive recovery plan, calculate the scenarios, and implement the monitoring processes referring to the qualitative and quantitative indicators.

Guideline - Criteria critical functions definition (24 months) Article 9 (9)

Critical function is one of the main definitions in the Directive. At present, there is no consensus on how critical functions should be defined. In the European Union, we have jurisdictions with similar legislation in place but different approaches when defining critical functions (e.g. France and the Netherlands). On the other hand, the critical function definition:

- will shape the scope of the resolution and pre-emptive recovery plan,
- is one of the elements to consider in the content of the resolution plan,
- is considered in the application of alternative measures,
- is one of the resolution objectives, and
- could limit the application of the resolution tools.

RTS - Content of the pre-emptive recovery plan and resolution plan (18 months) Article 5 (12), Article 9 (8), Article 10 (4)

These criteria will define the content of the pre-emptive recovery and resolution plans. In other words, these RTS will probably increase the workload supported by the undertakings and National Competent Authority (NCA) when drawing and revising the plans. The undertakings and NCA must have this information well in advance to appropriately allocate human and IT resources.

Guideline - Simplified obligations - eligibility criteria (30 months) Article 4 (2)

The simplified obligations could significantly reduce the burden of undertakings under the scope by reducing or simplifying the content of the plan or the amount of information required by the NCA. This guideline could be published six months after the Directive's enforcement, increasing the burden for undertakings that will benefit from simplified requirements. Therefore, limiting the proportional application of the Directive.

ITS Procedures and a minimum set of standard forms and templates for the provision of information for resolution plans, and content of such information (18 months) Article 12 (3)

EIOPA shall develop a draft implementing technical standard to specify procedures and a minimum set of standard forms and templates for the provision of the information referred to in the resolution plan, and to specify the content of such information. The affected undertakings and NCA must have this information well in advance to appropriately allocate human and IT resources to be able to provide the necessary information in due form and time.

Need for increased education on IRRD

Most of the companies affected by the IRRD have no or very little experience with the new IRRD requirements, including the creation of pre-emptive recovery plans. Therefore, these entities require sufficient time to respond to the new regulations, e.g. by training staff and allocating appropriate resources. Similarly, the newly created National Resolution Authorities will also require time to develop their resources, train staff, etc.

In the preparation phase, detailed consultation documents, extensive industry engagement and proper consultation timelines are needed to ensure that all undertakings in scope have the time and ability to provide feedback. In addition, the final technical standards and guidelines should be concise and easily understandable.

If European regulators do not address these issues, there is a significant risk of increased workload for both the undertakings and the NCAs, leading to potential inefficiencies and duplications in planning efforts and resource allocation when implementing the Directive.

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