

Resolution funding

On 22 September 2021, the Commission published a proposal for an Insurance Recovery and Resolution Directive (IRRD), which does not directly tackle funding issues. One of the key questions of the proposed resolution framework relates to its funding, as no specific requirement is currently included in the proposal. Indeed, resolution of a failed undertaking entails costs that can be substantial. Those costs can relate to operational costs (e.g. human and administrative expenses of the resolution authority), to the use of resolution powers and to compensate the potential breach of the no creditor worse off than in liquidation principle (NCWO). Member states (MS) should therefore have in place credible funding arrangements that would internalize the cost of resolution actions in order to avoid on the one hand the use of public external funding and on the other hand an adverse impact on policyholders, both elements being resolution objectives laid down within the IRRD proposal (Article 18).

Several Member States have mentioned the issue of resolution funding during previous working parties, thereby highlighting the necessity to enhance the Commission's proposal. As to the way forward, Member States expressed divergent views. Some key elements we have distilled from the discussion are the following:

- **Internal funding requirements would create a competitive disadvantage for the European Union** and it should be noted that such requirements have not been recommended by EIOPA in its Opinion as potential sources to finance the resolution.
- **Resolution funding is however a key aspect of the resolution framework** and is of the utmost importance for a comprehensive framework protecting policyholders.
- **External funding requirements should respect the spirit of the Commission's proposal.** Consequently, amendments should (i) on the one hand be aligned with the minimum harmonization principle that would leave to national discretion specific features related to funding (in particular the possibility to rely exclusively on ex-post contributions) and; (ii) on the other hand foster European convergence and level playing field, thereby reaching the right level of a privately funded amount ensuring that there would be no misuse of public funds and no undue home-host arbitrage within the European Union.
- External funding arrangements cover mainly two avenues: resolution fund and insurance guarantee schemes (IGS) interventions. The IRRD should not anticipate discussions about IGS harmonization as it may be subject of a possible future legislative proposal by the Commission and Member States have not had an opportunity to finalize their positions on IGS. Regarding resolution funding, **a possible solution would be to insert minimum obligations in the directive as regards national financing arrangements.**

A balanced proposition could be to include in the text the obligation to establish national financing arrangements. To achieve the objective of reinforced policyholder protection across MS without gaps deriving from the combined application of home and host principles, a minimum harmonization of its features could be included.

The financing arrangements would as a minimum:

- (i) be entitled to pay compensation to shareholders, creditors or policyholders in accordance with Article 55 in the event of a NCWO breach ;
- (ii) be subject to the home-country principle, which entails that the home resolution fund would be responsible for compensating shareholders, creditors or policyholders in host MS where the undertaking operates under free provision of services or right of establishment.

Those additional provisions would not require to detail all features of the financing arrangements in the directive, which can be left to the discretion of the MS. In particular, no target for the financing of the fund should be defined, and the option to recourse exclusively to ex-post funding could also be foreseen.