

ALLEN & OVERY

# Insurance Recovery and Resolution Directive (IRRD)

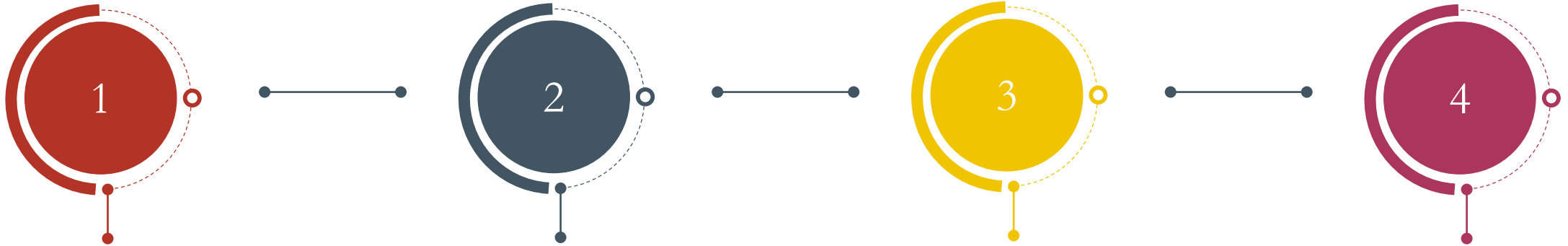
AIDA conference

Helena Finn, Counsel, Insurance & Reinsurance  
Baptiste Aubry, Head of Financial Services

12 July 2023



# Agenda



## Introduction

- Timeline
- Motivations behind and objectives of the IRRD
- Scope of the IRRD
- Current situation under Solvency II

## Main features of the IRRD

- Recovery planning
- Resolution planning
- Recovery phase
- Resolution phase

## Practical impact for (re)insurers

- Measures to be taken
- Penalties

## IRRD and BRRD compared

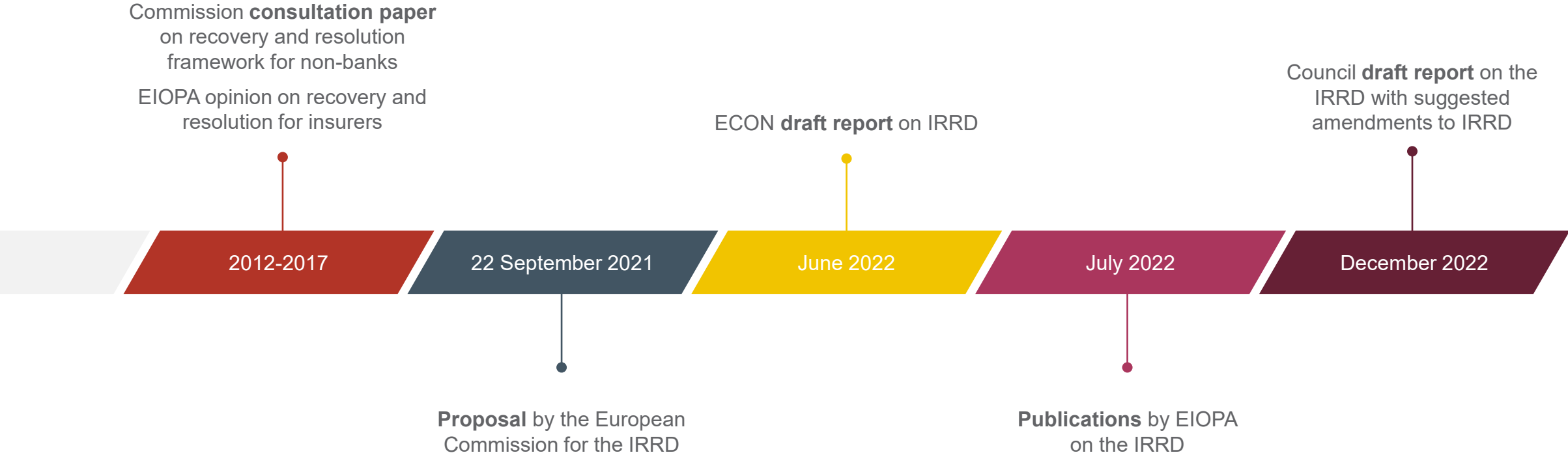
- Similarities and differences
- Examples from BRRD



# Introduction



# Introduction



# Introduction

## Motivations behind the IRRD

### Learnings from 2008 financial crisis

Proper recovery and resolution framework in place helps:

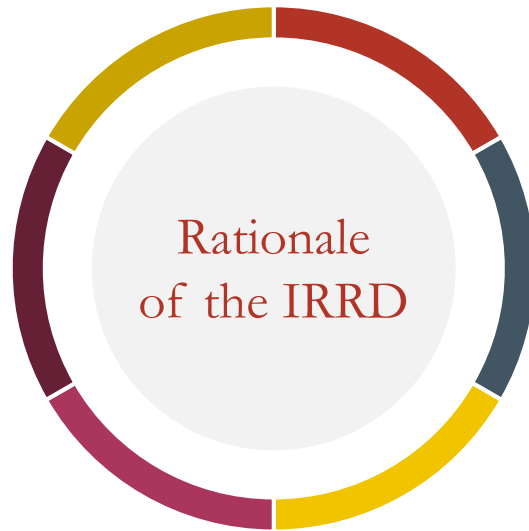
- Reduce the likelihood of failures
- Reduce the impact of failures if they materialize
- Minimalize reliance on taxpayers' money

### Solvency II is not a zero-failure regime

- Insurance failures and near misses are not rare

### Lack of harmonization, against the spirit of the internal market

- Patchwork of national rules and gaps in the toolkit of the respective national rules
- Impedes orderly resolution of cross-border insurers and may result in unequal treatment of policyholders, especially regarding cross-border insurers



## Objectives of the IRRD

### Harmonized framework for recovery and resolution

- Introducing a harmonized framework including i.a. recovery and resolution planning, recovery and resolution measures, cooperation and coordination, and providing a set of specific tools to deal with situations of distress and default of insurers

### Room for national specificities

- Member states may introduce additional measures as long as compatible with objectives and principles of IRRD

### General objectives and principles

- Prevent failures
- Orderly market exit in case of default
- Protection of policyholders
- Maintenance of financial stability
- Continuation of critical functions
- Protection of public funds

# Introduction

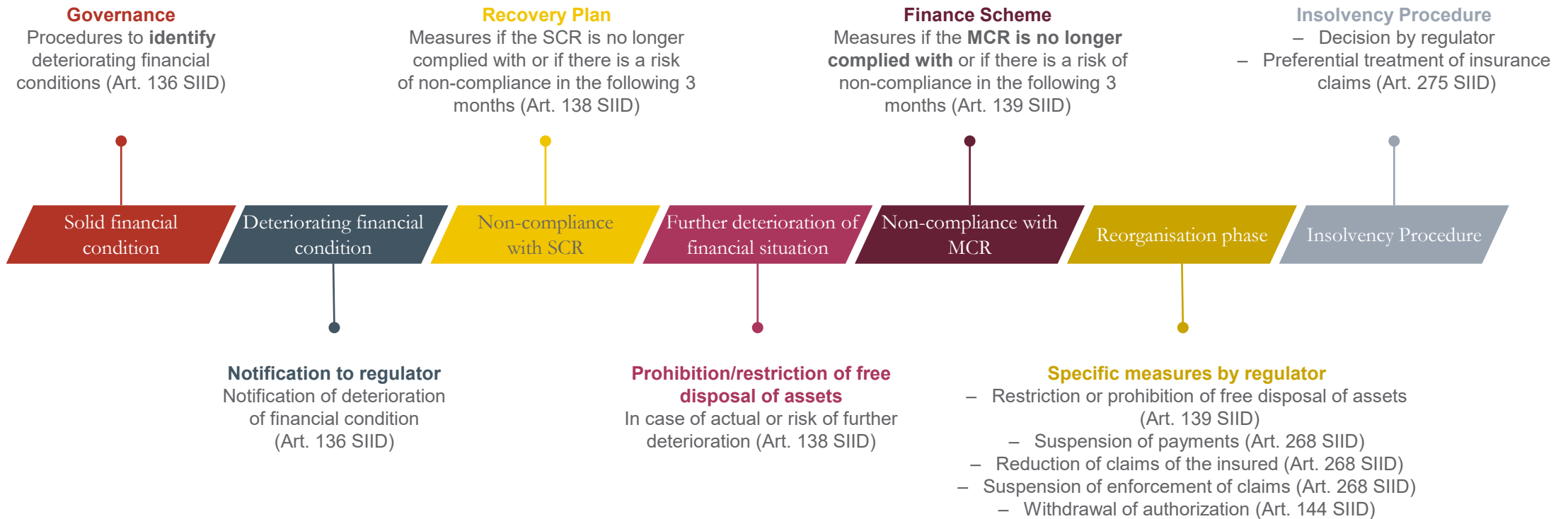
## Scope of the IRRD

- 01 All (re)insurance undertakings in the EU
- 02 Parents (re)insurance undertakings in the EU
- 03 Insurance holdings companies (**IHC**) and mixed financial holding companies (**MFHC**) in the EU
- 04 Parent IHC and MFHCs established in a Member State
- 05 Union parent IHC and MFHC
- 06 Branches of non-EU insurers which meet certain conditions

Authorities may  
apply proportionality  
to IRRD

# Introduction

## Ladder of intervention under Solvency II Directive



# Main features of the IRRD

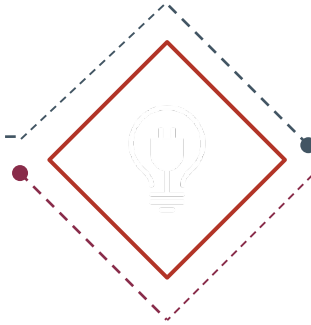




# Focus: Pre-emptive planning

## Pre-emptive recovery planning

- Preparation and submission of **pre-emptive recovery plan** at individual level and/or group level by entities
- Contents of plan is determined by the IRRD (including qualitative and quantitative criteria)
- Assessment of credibility/feasibility by entity
- Approval by management
- Assessment of adequacy of pre-emptive recovery plan by the resolution authority, which has the power to:
  - Ask for a new plan/changes to the plan
  - Ask for/impose changes to the business



## Resolution plans and assessment of resolvability

- **Resolution plan**
  - Preparation by resolution authorities or group resolution authority of individual and/or of group resolution plan
  - Content of plan is determined by the IRRD
  - Obligation for entities to:
    - Cooperate with the drawing up of the resolution plans
    - Provide all necessary information
- **Assessment of resolvability**
  - Resolution authorities will assess the extent to which an insurance group is resolvable without extraordinary public support
  - If needed, the authority will make recommendations to the entity or group on how to address any impediments

# Focus: Recovery phase

Amendments to Solvency II to include additional powers under the recovery phase

## Two situations:

- Notification by the entity that it is failing or likely to fail
- Identification of deterioration of financial conditions by the supervisory authorities

## Supervisory authorities may take necessary measures to restore compliance, including:

- Update of the pre-emptive recovery plan where the circumstances are different from the assumptions set-out in this plan
- Application of the measures set-out in the recovery plan (including any update thereto)
- If no pre-emptive recovery plan in place, identification of the causes of non-compliance/likely non-compliance with regulatory requirements and identify suitable measures/timeframe for the implementation of those regulatory requirements
- Suspension or restriction of variable remuneration and bonuses, distributions on own fund instruments or repayment or repurchase of own fund items

# Focus: resolution phase

## Conditions for IRRD resolution

- **Condition 1:** is the insurer failing or likely to fail?
  - Breach/likely to breach the MCR
  - Failure to meet conditions for authorisation or fails its legal and regulatory obligations
  - Unable to pay debt or other liabilities
  - Requires extraordinary public financial support
- **Condition 2:** is there an alternative condition?
- **Condition 3:** is the resolution in the public interest?

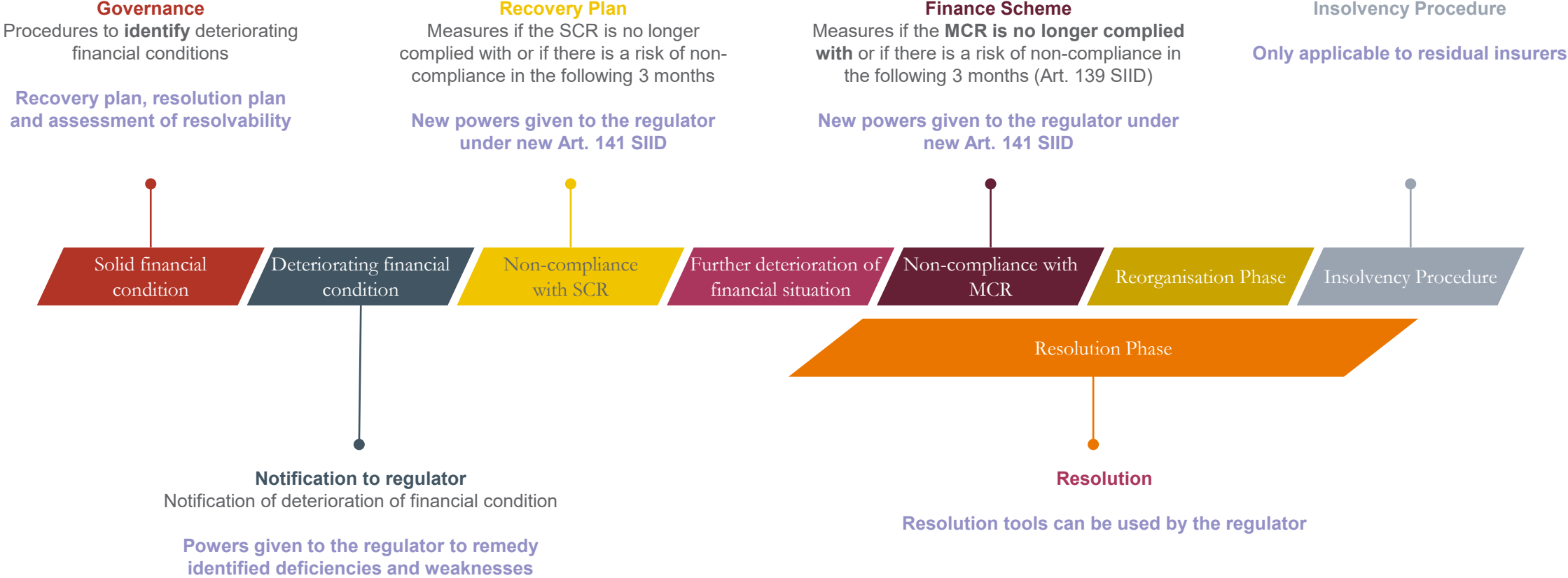
Resolution possible, using the **resolution tools** set out in the IRRD individually or in combination:

- Solvent run-off
- Asset and liability separation tool
- Sale of business tool
- Bridge undertaking tool
- Write down or conversion tool
- Resolution safeguards exist to protect counterparties' position

Resolution under **normal insolvency** proceedings if:

- Only conditions 1 and 2 are met
- Resolution is not in the public interest
- The (re)insurer meets its MCR conditions

# Ladder of intervention under Solvency II Directive



# Practical impact on (re)insurers





# Practical impact of the IRRD

## Practical impact in terms of documentation

- **Determination of in-scope/out of scope status**
  - Preparation of recovery plans at individual and/or group level
  - Assistance in preparation of recovery plan
  - Review of financial contracts governed by third-country law
  - Review of terms of instruments to ensure that they are compliant with IRRD

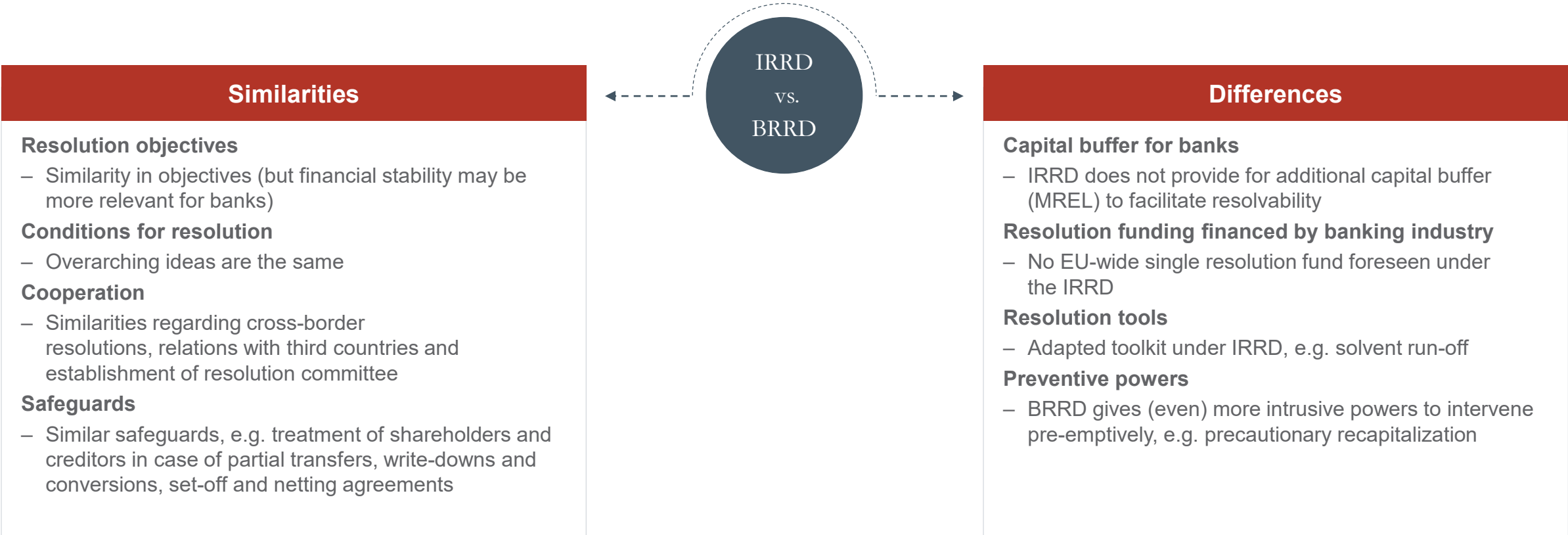
## Penalties

- **Type of breach**
  - Failure to draw-up, maintain and update its pre-emptive recovery plan
  - Failure to provide information necessary for the development of its resolution plan
  - Failure to notify the competent authority when it is failing or likely to fail
- **Type of penalties**
  - Specific penalties provided for, including fines of up to 10% of annual turnover (preceding business year), or EUR 5 million and a temporary ban for members of senior management

IRRD & BRRD:  
drawing from  
BRRD experience



# IRR and BRRD compared





**Helena Finn**

Counsel, Insurance & Reinsurance

[helena.finn@allenovery.com](mailto:helena.finn@allenovery.com)



**Baptiste Aubry**

Head of Financial Services

[baptiste.aubry@allenovery.com](mailto:baptiste.aubry@allenovery.com)

Q&A