



MARKT/2509/04-EN
Orig.

Insurance Guarantee Schemes

State of play and next steps

Executive Summary

At the 32nd Insurance Committee meeting in April last year, Members agreed that further preparatory work was still required before starting to prepare a draft legislative text. It was agreed that the working group should examine in depth some technical issues such as moral hazard and costs and financing before preparing a legislative text.

This work has been carried out.

As a result of the working group's meeting on 9th July 2003 it appeared that "moral hazard" was not, for the very large majority of delegations, a major difficulty for the establishment of guarantee schemes.

The discussion of the expert's group on the 30th March 2004 focused on cost of the system and compulsory insurance. The large majority of Member States agreed that the findings of the questionnaire and of the research conducted by the Commission Services showed that the benefits of a guarantee scheme would outweigh the costs.

The premise is therefore now fulfilled to start working on a very first issues paper regarding possible legal provisions covering the different aspects of insurance guarantee schemes subject to future EU harmonisation. The majority of the members of the Working Group agreed that future discussions within the Working Group should be based on such a paper.

Question to the Members of the Insurance Committee

Do the members have any comments on the approach suggested by the working group?

Introduction

At its meeting on 9 April 2003 the Insurance Committee had an orientation debate on the provisional results of the work carried out by the ad-hoc group on insurance guarantee schemes. The members of the IC were asked to discuss whether the working group should start to draft a legislative text on this matter. The Committee agreed that further preparatory work was still required before starting to prepare a draft legislative text. It was agreed that the working group should examine in depth some technical issues such as moral hazard and costs and financing before preparing a legislative text.

This work has been carried out. The premise is therefore now fulfilled to start working on a very first issues paper regarding possible legal provisions covering the different aspects of insurance guarantee schemes subject to future EU harmonisation. The majority of the members of the Working Group agreed that future discussions within the Working Group should be based on such a paper.

The present note summarises the progress made since the IC decision on 9 April 2003.

Background:

Following the above mentioned meeting of the IC on 9th April 2003, the working group met on 9 July 2003. The discussion focused on document MARKT/2525/03 which presented the main arguments in favour and against ("moral hazard" and costs) the setting-up of insurance guarantee schemes. The document also considered the tasks and scope of the system.

As a result of the working group's meeting on 9th July 2003 it appeared that "moral hazard" was not, for the very large majority of delegations, a major difficulty for the establishment of guarantee schemes. However, the main concern for a number of delegations was the problem of the cost of the system. Furthermore, the group felt the need to examine the situation of motor guarantee funds and other, similar bodies which may exist in the Member States in the field of compulsory insurance, with regard to the cover of the risk of insolvency of the insurance undertaking.

Therefore a questionnaire (MARKT/2528/03) covering the two afore-mentioned issues – cost of the system and compulsory insurance – was sent by the Commission to the Member States in September 2003. At the same time, in order to examine the issue in more detail, the Commission Services conducted some research in this area. They contacted Dr. Horsch, who is currently working as a research associate at the chair for banking and finance at the Ruhr-Universität Bochum, Germany. He wrote his thesis about Insurance Guaranty Funds for the German Insurance Industry. Furthermore, the Commission Services contacted NOLHGA (National Organisation of Life and Health Insurance Guarantee Associations in America).

The discussion of the expert's group on the 30th March 2004 focused on the Working Paper MARKT/2501/04-EN and its three Annexes. The Annexes included a summary of the replies received to the questionnaire as well as a synopsis of Dr. Horsch's thesis and the American NOLGHA system.

The main conclusions of the meetings were as follows:

- The large majority of Member States agreed that the findings of the questionnaire (MARKT/2528/03) and of the research conducted by the Commission Services showed that the benefits of a guarantee scheme would outweigh the costs. However, some Member States reserved their final position until a first draft of a future Directive would be presented in order to know the exact scope of the harmonisation.
- The large majority of Member States agreed that the working group should start to work on a very first outline of possible legal provisions covering the different aspects of insurance guarantee schemes subject to future EU harmonisation.
- Regarding claims arising from compulsory Motor Insurance, the large majority of Member States favoured extending the scope of the current Motor Guarantee Fund in order to cover these claims in the case of the winding-up of the insurance undertaking. However, some Member States felt it necessary to consider whether the Motor Guarantee Fund, which paid the claims, should be able to subrogate and turn against the general guarantee scheme of the home member state of the insurance company. Some Member States pointed out that a flexible system is desirable: it should be left to the Member States to decide which national Fund (national Motor Guarantee Fund or general insurance guarantee scheme) should finally support the cost of the claim.
- Regarding claims arising from compulsory non-motor Insurance, the large majority of Member States favoured the approach that the general insurance guarantee scheme of the home Member State should cover these claims in the case of the winding-up of the insurance undertaking. Some Member States pointed out that a flexible system is desirable: it should be left to the Member States to decide which national Fund (national Motor Guarantee Fund, special national Guarantee fund for compulsory insurance or general insurance guarantee scheme) should finally support the cost of the claim. The recourse-issue needs to be addressed and some legal issues also need further discussions.

Next steps:

As the majority of the members of the Working Group agreed that the future discussions within the Working Group should be based on a very first issue paper regarding possible legal provisions covering the different aspects of insurance guarantee schemes subject to future harmonisation, the Commission's Services intend to submit a very first outline of possible legal provisions covering the different aspects of insurance guarantee schemes subject to future EU harmonisation in a next meeting of the working group in autumn.

Question to the members of the Insurance Committee:

Do the members have any comments on the approach suggested by the working group?