



EUROPEAN COMMISSION

Internal Market and Services DG

FINANCIAL INSTITUTIONS

Insurance and pensions

MARKT/2534/12 - EN

WORKING PAPER ON INSURANCE GUARANTEE SCHEMES

MEETING ON 12 DECEMBER 2005

1. Introduction

At the last meeting of the Commission Experts Group on 01.06.2005 the Working Paper on Insurance Guarantee Schemes, Markt/2512/05-EN, was discussed. In this paper the Commission Services presented an up-date of the Articles which had already been presented in Markt/2529/05-EN.

There was broad support to differentiate the coverage between life and non-life in order to clarify that there might be different levels of protection needed and to differentiate between life and non-life claims in a more appropriate way. The inclusion of small businesses in the cover of IGS was discussed as well as the inclusion of an absolute limitation per claim. As far as those issues were concerned, it was concluded that further discussions are needed. New Articles on third country branches, Cooperation between insurance guarantee schemes, Good governance and disclosure, Information requirements, Advertising and Triggering of intervention were also presented. Generally speaking, these Articles found broad support, but details remained to be discussed.

Member States were asked to send their comments on the document Markt/2512/05-EN by 1 August 2005. The Services have received comments from 12 Member States (CZ, DK, EL, FIN, FR, IE, LV, MT, PT, SE, SK and UK) and the CEA. A discussion paper entitled "Framework for Guarantee Schemes in the EU" was submitted by the UK.

2. Aim of the Meeting

The meeting of 12 December 2005 has been scheduled to discuss some outstanding issues. Therefore not all the Articles which have already been discussed will be presented again. The focus should be on out-standing issues such as the powers of the insurance guarantee scheme to exclude an insurance undertaking, the time-frame for compensation, compulsory insurance and third party liability, the exclusion from coverage, the inclusion of small businesses in the cover of the IGS and the treatment of third country branches.

3. Powers of the insurance guarantee scheme to exclude an insurance undertaking

The proposed Article deals with the situation where an insurance undertaking fails to comply with the rules and obligations of the insurance guarantee scheme. The competent authorities must be given appropriate discretion in dealing with this eventuality. Only the competent authorities who issued the firm's authorisation can decide on its revocation. Similar rules can be found in Art. 3 para 2 and 3 of Directive 94/19/EC and Art. 5 of directive 97/9/EC.

However, it seems questionable, whether it would be feasible to apply the rules laid down in Art. 12 para 3 and 4 to insurance guarantee schemes. Alternative compensation arrangements might not be feasible for insurance undertakings. Besides, the checking of the equivalence between the protection provided for by the insurance guarantee scheme and the protection provided for by the alternative compensation arrangement will put much more burden on the competent authorities than within the other financial sectors.

Article 12

Powers of the insurance guarantee scheme to exclude an insurance undertaking

- 1. If an Insurance undertaking required by Article 1 (2) to belong to a scheme does not meet the obligations incumbent on it as a member of that scheme, the competent authorities which issued its authorization shall be notified and, in cooperation with the insurance guarantee scheme, shall take all measures appropriate, including the imposition of penalties, to ensure that the insurance undertaking meets its obligations.*

- 2. If those measures fail to secure compliance on the part of the insurance undertaking, the scheme may, where national law permits the exclusion of a member, with the express consent of the competent authorities, give not less than 12 months' notice of its intention of excluding the insurance undertaking from membership of the scheme. The scheme shall continue to provide cover under this Directive in respect of insurance claims arising during that period. If, on expiry of the period of notice, the insurance undertaking has not met its obligations, the scheme may, again having obtained the express consent of the competent authorities, exclude it.*

(3. Where national law permits, and with the express consent of the competent authorities which issued its authorization, an insurance undertaking excluded from an insurance guarantee scheme may continue to carry on insurance business if, before its exclusion, it made alternative compensation arrangements which ensure that insurance claimants will enjoy cover that is at least equivalent to that offered by the officially recognized scheme and has characteristics equivalent to those of that scheme.)

(4. If an insurance undertaking the exclusion of which is proposed under paragraph 2 is unable to make alternative arrangements which comply with the conditions imposed in paragraph 3, the competent authorities which issued its authorization shall withdraw it forthwith.)

Article 13

After the withdrawal of an insurance undertaking's authorization, cover under this Directive shall continue to be provided in respect of insurance claims arising up to the time of that withdrawal.

Member States are invited to comment

4. Time-frame for compensation

One key goal of an insurance guarantee scheme is to ensure that insurance claimants receive quicker compensation than under winding-up procedures. Compensation should be paid within a reasonable time-span. Insurance claimants must be compensated without excessive delay once the validity of their claims has been established. The guarantee scheme itself must be able to fix a reasonable period for the presentation of claims. However, the fact that such a period has expired may not be invoked against an insurance claimant who for good reason has not been able to present his claim within the time allowed. Similar rules can be found in Art. 9 of Directive 97/9/EC and Art. 10 of Directive 94/19/EC.

Article 14

Time-frame for compensation

1. The insurance guarantee scheme shall take appropriate measures to inform insurance claimants of the determination or ruling referred to in Article 2 (2) and, if they are to be compensated, to compensate them as soon as possible. It may fix a period during which insurance claimants shall be required to submit their claims. That period may not be less than five months from the date of the aforementioned determination or ruling or from the date on which that determination or ruling is made public.

The fact that that period has expired may not, however, be invoked by the scheme to deny cover to an insurance claimant who has been unable to assert his right to compensation in time.

2. The scheme shall be in a position to pay an insurance claim as soon as possible and at the latest within three months of the establishment of the eligibility and the amount of the claim.

In wholly exceptional circumstances and in special cases an insurance guarantee scheme may apply to the competent authorities for an extension of the time limit. No such extension may exceed three months.

3. Notwithstanding the time limit laid down in paragraph 2, where an insurance claimant has been charged with an offence arising out of or in relation to money laundering as defined in Article 1 of Directive 91/308/EEC, the insurance guarantee scheme may suspend any payment pending the judgment of the court.

Member States are invited to comment

5. Compulsory insurance and third party liability insurance

The issue of compulsory insurance and third party liability insurance has already been addressed.

a) Regarding claims arising from compulsory non-motor Insurance, the majority of Member States favoured during the meeting in March 2004 the approach that the general insurance guarantee scheme of the home Member State should cover these claims in case of winding-up of the insurance undertaking. Some Member States pointed out that a flexible system would be 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 Commission Services propose that insurance claims from compulsory non-motor insurance should be covered by a future directive on insurance guarantee schemes. According to our approach Member States should be free to decide whether these claims should be paid out by the general Guarantee Scheme or the Motor Guarantee Fund.

Member States are invited to comment

b) Regarding claims arising from compulsory Motor Insurance, the majority of Member States favoured during the meeting in March 2004 the extension of the scope of the current Motor Guarantee Fund in order to cover these claims in case of winding-up of the insurance undertaking. However, some Member States felt it necessary to consider whether the Motor Guarantee Fund which paid the claim should be able to be subrogated 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 would be 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.

The Commission Services propose that insurance claims arising from compulsory motor insurance should be covered by a future directive on insurance guarantee schemes. However, Member States should be free to decide whether these claims should be paid out by the general Guarantee Scheme or the Motor Guarantee Fund. If insurance claims arising from compulsory motor insurance would be dealt with by an amendment of the respective motor directives, other insurance claims against the same company could be dealt with in a different way (Motor insurance claims being covered by the rules established for the Motor Guarantee Funds and other insurance claims being dealt with by the General Guarantee Scheme).

Member States are invited to comment

- c) At the EIOPC meeting on 29 June 2005 it was agreed that it would be useful to have a picture of the situation regarding mandatory liability insurances in the EEA States and in Bulgaria and Romania. Delegations were asked to send their lists of compulsory insurances to the Commission by 1 September. Replies were received from Bulgaria and all Member States, except Malta and Italy. Ireland noted that it was unable to answer the question as there is no Government agency that kept such a central record as regards compulsory liability insurances. The results have been discussed in the EIOPC meeting of 30 November 2005. The results are in line with the findings of "Evaluation of the answers to the questionnaire on motor insurance and other compulsory insurance and the questionnaire on the costs/financing of guarantee schemes", Annex 1 to MARKT/2501/04. The situation as regards the number, classes and conditions of compulsory liability insurances differs widely from country to country. For this reason it does not seem appropriate to foresee a special treatment for third party liability insurance and compulsory insurance in general as there would be different starting points in the different Member States.

With a view to the differing situation in the Member States it was discussed to provide full coverage for claims arising out of compulsory insurance and third party liability insurance foreseen under European legislation. In order to provide a full list of such European legislation the Commission Services carried out an internal review. The results are attached in the Annex.

However, the Commissions Services believe that with a view to achieving a minimum harmonization with this Directive it would be advisable to apply the general scope of coverage also for compulsory insurance and third party liability insurance. Member States would always be free to enhance the protection and to cover these claims in full. As a consequence Art. 5 para 2 would be amended:

Article 5

Coverage Non-Life

- 1. Member States shall ensure that insurance guarantee schemes cover not less than [90] % of non-life insurance claims which are above 100 Euro.*
- 2. Notwithstanding paragraph 1 of this Article Member States may provide full coverage ~~shall be provided~~ for claims arising out of compulsory insurance and third party liability insurance.*
- 3. This Article shall not preclude the Member States from maintaining or adopting provisions which afford greater or more comprehensive protection of non-life insurance claims.*
- 4. The amount of a non-life insurance claim shall be calculated in accordance with the legal and contractual conditions that are applicable to the assessment on the date of the determination or ruling referred to in Article 11.*

Member States are invited to comment

6. Third country branches

In the last meeting on 1 June 2005 the treatment of third-country branches was discussed. The approach taken in the Deposit Guarantee schemes Directive (third country branches are only obliged to belong to the EU guarantee schemes when the guarantee scheme of the third country does not provide appropriate cover) and the approach laid down in Art. 2a of the working paper (third country branches are obliged to join the EU insurance guarantee scheme) were controversially discussed. Several arguments were raised in favour of Art. 2a of the working paper: an assessment whether equivalent cover is provided by the guarantee scheme of the third country is very difficult in the case of insurance claims (more difficult than for deposits); consumer protection (the consumer should not need to address a guarantee scheme outside the EU; the competent supervisor and the IGS should be in the same Member State; third country undertakings should fall under the same regime as EU-undertakings. A few delegations were in favour of the approach taken in the DGS Directive. The reason for this being that the rule as laid down in Art. 2a could impose a barrier to entry to the EU market and possible political problems. In order to reflect the concerns of these delegations the Commission Services propose the following:

Art. 2 a
Third country branches

1. Each Member State shall ensure that a branch of an insurance undertaking whose head office is outside the Community shall only be granted an official authorisation if it belongs to the insurance guarantee scheme of that Member State. Each Member State shall also ensure that no such branch authorized in its territory may continue to carry on insurance business unless it belongs to the insurance guarantee scheme of that Member State.

2. Notwithstanding paragraph 1, Member States may allow a branch of an insurance undertaking whose head office is outside the Community to be covered by a non-EU insurance guarantee scheme as long as the protection provided by the non-EU insurance guarantee scheme is equivalent to that of this Directive.

Member States are invited to comment

7. Coverage of insurance claims

During the last meeting the issue of group insurance, workmen's compensation insurance and insurance covering accidents at work was raised, as in those cases the beneficiary is a natural person but not the policyholder. In light of the definition of "insurance claims" it should be stressed that insurance claims by insured persons, policyholders, beneficiaries or any injured party having direct right of action against the insurance undertaking are covered. Even if the policyholder were to be a business the claim of the beneficiary being a natural person would be covered.

Regarding the definition of insurance claim the definition of small businesses was discussed. The discussions showed that this issue depends strongly on the situation in the respective markets. In order to reflect this problem the Commission Services propose a new definition of small business as was suggested by Finland:

"small business" business which in terms of the nature, the scope of its operations or other circumstances can be compared to a consumer

Member States are invited to comment

8. Exclusion from coverage – Life and Non-Life

During the last meeting the scope of coverage was discussed with respect to the definition of insurance claims.

The Commission Services concluded that the majority of delegations taking the floor were in favour of covering small businesses but the scope of the definition of small businesses should be clarified. Member States were asked to send their written comments and should also provide cost-benefit analysis on this issue. Regarding the unearned premiums the Commission asked Member States who want to exclude this premium to send their written arguments and cost/benefit analysis. The definition will be kept in line with the winding-up Directive as long as no convincing arguments for deviation are presented. In order to reflect the concerns raised by some Member States the Commission Services propose to give Member States the option to exclude such claims from the cover:

Art. 4a

Exclusion from coverage – Life insurance

Member States may provide that certain insurance claims shall be excluded from the coverage of the insurance guarantee scheme or shall be granted a lower level of protection:

- 1. Insurance claims by directors, managers and personally liable members of the insurance undertaking, persons holding 5 % or more of the capital of the insurance undertaking, persons responsible for carrying out the statutory audits of the insurance undertaking's accounting documents and insurance claims by persons with similar status in other undertakings included within the scope of the supplementary supervision of the insurance undertaking in an insurance group according to Directive 98/78/EC.*
- 2. Insurance claims by other undertakings included within the scope of the supplementary supervision of the insurance undertaking in an insurance group according to Directive 98/78/EC*
- 3. Insurance claimants who have any responsibility for or have taken advantage of certain facts relating to an insurance undertaking which gave rise to the undertaking's financial difficulties or contributed to the deterioration of its financial situation.*
- 4. Insurance claims by close relatives and third parties acting on behalf of insurance claimants referred to in point 3.*
- 5. Insurance claims by small businesses*
- 6. The premiums owed by an insurance undertaking as a result of the non-conclusion or cancellation of these insurance contracts and operations in accordance with the law applicable to such contracts or operations*

Art. 5a
Exclusion from coverage – Non-Life insurance

Member States may provide that certain insurance claims shall be excluded from the coverage of the insurance guarantee scheme or shall be granted a lower level of protection:

- 1. Insurance claims arising out of:
 - a. marine and transport insurance¹ and*
 - b. aviation insurance².**
- 2. Insurance claims by directors, managers and personally liable members of the insurance undertaking, persons holding 5 % or more of the capital of the insurance undertaking, persons responsible for carrying out the statutory audits of the insurance undertaking's accounting documents and insurance claims by persons with similar status in other undertakings included within the scope of the supplementary supervision of the insurance undertaking in an insurance group according to Directive 98/78/EC.*
- 3. Insurance claims by other undertakings included within the scope of the supplementary supervision of the insurance undertaking in an insurance group according to Directive 98/78/EC.*
- 4. Insurance claimants who have any responsibility for or have taken advantage of certain facts relating to an insurance undertaking which gave rise to the undertaking's financial difficulties or contributed to the deterioration of its financial situation.*
- 5. Insurance claims by close relatives and third parties acting on behalf of insurance claimants referred to in point 4.*
- 6. Insurance claims by small businesses.*

¹ According to the Annex of Directive 73/239/EEC "Marine and Transport Insurance" covers the classes Nos. 1 (fourth indent) (injury to passengers), 4 (All damage to or loss of railway rolling stock), 6 (All damage to or loss of river and canal vessels, lake vessels, sea vessels), 7 (Goods in transit: All damage to or loss of goods in transit or baggage, irrespective of the form of transport) and 12 (All liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals).

² According to the Annex of Directive 73/239/EEC "Aviation insurance" covers the classes Nos. 1 (fourth indent) (injury to passengers), 5 (Aircraft: All damage to or loss of aircraft), 7 (Goods in transit: All damage to or loss of goods in transit or baggage, irrespective of the form of transport) and 11 (Aircraft liability: All liability arising out of the use of aircraft (including carrier's liability)

7. The premiums owed by an insurance undertaking as a result of the non-conclusion or cancellation of these insurance contracts and operations in accordance with the law applicable to such contracts or operations.

Member States are invited to comment

9. Questions to Member States:

- a. **Do you support the idea of harmonizing the rules for insurance guarantee schemes in a European Directive?**
- b. **Do you agree that the Directive should aim for minimum harmonization?**
- c. **Do you agree that the financing and organisation of the insurance guarantee scheme should be left to Member States?**
- d. **Do you support the idea of differentiating between life and non-life?**
- e. **Do you agree that only partial coverage should be provided and that a self-retention should be foreseen?**
- f. **Do you think small businesses should be protected by the Directive?**
- g. **Do you agree that compulsory motor insurance should be covered by a future Directive on Insurance Guarantee Schemes?**

10. The way forward

The meeting of 12 December is the 9th meeting of the Working Group. The work of the working group has considerably changed since 2001. The work has changed considerably since the start of the group in 2001. Discussions were rather political and general in the beginning, but have become more technical in the end, focussing on specific aspects of insurance guarantee schemes.

The Commission Services believe that time is now ripe to decide about the way forward. The time has come to decide about the way forward on this file. The Commission Services will evaluate the work carried out up to now in order to decide whether or not to come forward with a formal Commission proposal.

Contact:

Susanne Rosenbaum, Telephone : (32-2) 295 66 61,
Susanne.Rosenbaum@cec.eu.int

ANNEX

ARTICLES MARKT/2512/05 – EN

Definitions:

"Consumer": any natural person, who is acting for purposes which are outside his trade, business or profession

"Small businesses": enterprise which employs fewer than 10 persons and whose annual turnover and/or balance sheet does not exceed EUR 2 million

"Insurance claims" means any amount which is owed by an insurance undertaking to consumers or small businesses whether they are insured persons, policyholders, beneficiaries or any injured party having direct right of action against the insurance undertaking and which arises from an insurance contract or from any operation provided for in Article 2(2) and (3), of Directive 2002/83/EC in direct insurance business, including amounts set aside for the aforementioned persons, when some elements of the debt are not yet known. The premiums owed by an insurance undertaking as a result of the non-conclusion or cancellation of these insurance contracts and operations in accordance with the law applicable to such contracts or operations shall also be considered insurance claims."

Article 1

“Obligation to create a scheme”

1. Each Member State shall ensure that, within its territory, there is one or more insurance guarantee schemes in operation which fulfil the conditions set out in this Directive.
2. Each Member State shall ensure that no insurance undertaking shall be authorized in its territory unless it belongs to an insurance guarantee scheme and that no insurance undertaking authorized in its territory may continue to carry on insurance business unless it belongs to an insurance guarantee scheme.
3. Where an insurance guarantee scheme is competent for the protection of life and nonlife insurance claims, the relevant activities of the scheme shall be separately managed and accounted for to ensure that the respective interests of life and non-life insurance claimants are not prejudiced by any cross-subsidisation.

Article 2
“Home Member State Principle”

1. The insurance guarantee scheme operating in the Home Member State of the insurance undertaking shall ensure the protection provided for in this Directive.
2. The insurance guarantee scheme of the Home Member State shall cover, within the conditions set out in this Directive, the insurance claims arising from all insurance contracts and from all insurance operations of the insurance undertaking concluded in the Home Member State, or in another Member State through branches or under the free provision of services.

Art. 2 a
Third country branches

Each Member State shall ensure that a branch of an insurance undertaking whose head office is outside the Community shall only be granted an official authorisation if it belongs to the insurance guarantee scheme of that Member State. Each Member State shall also ensure that no such branch authorized in its territory may continue to carry on insurance business unless it belongs to the insurance guarantee scheme of that Member State.

Article 3
“Tasks of the scheme”

The insurance guarantee scheme shall provide cover for insurance claims in accordance with Article 4/4a – Article 5/5a of this Directive and/or secure the continuity of all or part of the insurance portfolio in accordance with Article 6.

Article 4
Coverage Life

1. Member States shall ensure that insurance guarantee schemes cover not less than [90] % of life insurance claims which are above 100 Euro.
3. This Article shall not preclude the Member States from maintaining or adopting provisions which afford greater or more comprehensive protection of life insurance claims.
4. The amount of a life insurance claim shall be calculated in accordance with the legal and contractual conditions that are applicable to the assessment on the date of the determination or ruling referred to in Article 11.

Art. 4a
Exclusion from coverage – Life insurance

Member States may provide that certain insurance claims shall be excluded from the coverage of the insurance guarantee scheme or shall be granted a lower level of protection:

1. Insurance claims by directors, managers and personally liable members of the insurance undertaking, persons holding 5 % or more of the capital of the insurance undertaking, persons responsible for carrying out the statutory audits of the insurance undertaking's accounting documents and insurance claims by persons with similar status in other undertakings included within the scope of the supplementary supervision of the insurance undertaking in an insurance group according to Directive 98/78/EC.

2. Insurance claims by other undertakings included within the scope of the supplementary supervision of the insurance undertaking in an insurance group according to Directive 98/78/EC

3. Insurance claimants who have any responsibility for or have taken advantage of certain facts relating to an insurance undertaking which gave rise to the undertaking's financial difficulties or contributed to the deterioration of its financial situation.

4 Insurance claims by close relatives and third parties acting on behalf of insurance claimants referred to in point 3.

Article 5
Coverage Non-Life

1. Member States shall ensure that insurance guarantee schemes cover not less than [90] % of non-life insurance claims which are above 100 Euro.

2. Notwithstanding paragraph 1 of this Article full coverage shall be provided for claims arising out of compulsory insurance and third party liability insurance.

3. This Article shall not preclude the Member States from maintaining or adopting provisions which afford greater or more comprehensive protection of non-life insurance claims.

4. The amount of a non-life insurance claim shall be calculated in accordance with the legal and contractual conditions that are applicable to the assessment on the date of the determination or ruling referred to in Article 11.

Art. 5a
Exclusion from coverage – Non-Life insurance

Member States may provide that certain insurance claims shall be excluded from the coverage of the insurance guarantee scheme or shall be granted a lower level of protection:

1. Insurance claims arising out of:
 - marine and transport insurance and
 - aviation insurance.
2. Insurance claims by directors, managers and personally liable members of the insurance undertaking, persons holding 5 % or more of the capital of the insurance undertaking, persons responsible for carrying out the statutory audits of the insurance undertaking's accounting documents and insurance claims by persons with similar status in other undertakings included within the scope of the supplementary supervision of the insurance undertaking in an insurance group according to Directive 98/78/EC.
3. Insurance claims by other undertakings included within the scope of the supplementary supervision of the insurance undertaking in an insurance group according to Directive 98/78/EC.
4. Insurance claimants who have any responsibility for or have taken advantage of certain facts relating to an insurance undertaking which gave rise to the undertaking's financial difficulties or contributed to the deterioration of its financial situation.
5. Insurance claims by close relatives and third parties acting on behalf of insurance claimants referred to in point 4.

Article 6
Continuity of the insurance portfolio

1. Where a scheme provides assistance for restoring the financial situation of the portfolio, it shall guarantee the continuation of the insurance contracts by assuming and administering the covered portfolio or by facilitating the portfolio transfer.
2. The rules laid down in Art. 4/4a and 5/5a are also applicable.
3. Where the portfolio transfer would affect contracts, concluded under either the right of establishment or the freedom to provide services, the host Member State shall be consulted. The Member State of the commitment shall also be consulted.
4. The competent authorities of the Member States consulted shall give their opinion to the competent authorities of the Home Member State of the guarantee scheme within one month of receiving a request; the absence of any response within that period from the authorities consulted shall be considered equivalent to a favourable opinion.

5. A transfer authorised in accordance with this Article shall be published as laid down by national law in the Member State of the commitment. Such transfers shall automatically be valid against policyholders, the insured persons and any other person having rights or obligations arising out of the contracts transferred.

Art. 7

Cooperation between Insurance guarantee schemes

1. Member States shall ensure that their insurance guarantee schemes cooperate and exchange information in order to facilitate the compensation of insurance claimants who are resident outside the Home Member State of the insurance undertaking. In particular, the insurance guarantee scheme of the Member State of residence of the claimant shall provide administrative support for the presentation of claims to the competent guarantee scheme of the Home Member State of the insurance undertaking as well as for the communications and payments to the claimant.

2. Member States shall ensure that their insurance guarantee schemes cooperate and exchange information in cases of transfer of portfolio. In particular, the insurance guarantee scheme of the Member State of residence of the policyholder shall provide the necessary information to the policyholders' resident in that Member State as well as administrative support for the necessary communication between the policyholders and the insurance guarantee scheme of the Home Member State of the insurance undertaking.

3. This Article shall take effect:

(a) After an agreement has been concluded between the insurance guarantee schemes of the Member States establishing the details of the procedures of cooperation and exchange of information provided for in paragraph 1 of this Article.

(b) From the date fixed by the Commission upon its having ascertained in close cooperation with the Member States that such an agreement has been concluded.”

Art.8

Good Governance and disclosure

1. Each Member State shall ensure that its insurance guarantee scheme has robust governance arrangements in place and that adequate financing arrangements are provided.

2. Each Member State shall ensure that its insurance guarantee scheme conducts its activities in a transparent manner. The guarantee scheme shall at least disclose the following information:

(a) the texts of laws, regulations, administrative rules and general guidance adopted in the Member State in which it is established,

(b) the general criteria and methodologies they use in the evaluation of the insurance claims and

(c) the general rules regarding the transfer of portfolio.

Article 9

Information requirements

1. Member States shall ensure that each insurance undertaking takes appropriate measures to make available to policyholders, before the insurance contract is concluded and throughout the term of the contract, the information necessary for the identification of the insurance guarantee scheme covering the insurance undertaking. Policyholders shall also be informed of the conditions for intervention of the insurance guarantee scheme, including the percentage of the claim covered, as well as, where relevant, the rules relating to the transfer of portfolio.

2. The information provided for in paragraph 1 shall be made available in a clear and accurate manner, in writing, in an official language of the Member State of the commitment in the manner prescribed by national law. However, such information may be in another language if the policy holder so requests and the law of the Member State so permits or the policy holder is free to choose the law applicable.

Art. 10

Advertising

Member States shall establish rules limiting the use in advertising of the information referred to in Art. 9 paragraph 1 in order to prevent such use from affecting the stability of the insurance sector or policyholders' confidence. In particular, a Member State may restrict such advertising to a factual reference to the scheme to which an insurance undertaking belongs.

Art. 11

Triggering of the system

A scheme shall provide cover for insurance claimants in accordance with this Directive whenever one of the following conditions is fulfilled:

- the supervisory authorities have determined that in their view an insurance undertaking appears, for the time being, for reasons directly related to its financial circumstances, to be unable to meet its obligations concerning an insurance claim and has no early prospect of being able to do so or
- a judicial authority or another competent authority has made a ruling, for reasons directly related to an insurance undertaking's financial circumstances, which has the effect of suspending insurance claimants ability to make claims against it or
- the supervisory authority has determined that the insurance undertaking has been unable, within the time allowed, to take the measures specified in the restoration plan or finance scheme referred to in Article 37 of Directive 2002/83/EC and Article 20 of Directive 73/239/EEC.