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Orig. EN

**SISTEMI DI GARANZIA DEGLI ASSICURATI IN CASO DI
LIQUIDAZIONE DI UN'IMPRESA DI ASSICURAZIONE**

Domande per i membri del Comitato delle assicurazioni

I membri sono invitati gentilmente a rispondere alle domande seguenti:

- 1. Ritenete che l'attuale mancanza di armonizzazione dei sistemi di garanzia nel settore assicurativo ponga problemi?***
- 2. Quale delle quattro opzioni presentate nel documento irlandese considerate la più appropriata per la Comunità?***
- 3. Ritenete che la Commissione debba costituire un gruppo di lavoro che inizi ad occuparsi di questa questione?***

1. La delegazione irlandese ha preparato il documento allegato che descrive i problemi dovuti alla mancanza di armonizzazione e coordinamento comunitari in materia di sistemi di garanzia volti a tutelare i titolari di polizze in caso di liquidazione di un'impresa di assicurazione. Il documento presenta inoltre le opzioni che potrebbero essere attuate a livello comunitario, descrivendone i relativi vantaggi e svantaggi.
2. I servizi della Commissione condividono pienamente le preoccupazioni espresse dalla delegazione irlandese. Effettivamente la mancanza di armonizzazione della legislazione comunitaria riguardante i sistemi di garanzia delle assicurazioni fa sì che la protezione di cui beneficia un assicurato in caso di liquidazione di un'impresa di assicurazione possa variare ampiamente a seconda di dove quest'ultima abbia luogo. Queste differenze possono determinare confusione nella mente del consumatore, il quale sovente ignora quale sia la sua reale situazione.
3. Per tentare di stabilire quale sia la situazione dei diversi assicurati, ovvero se siano o meno coperti dai sistemi di garanzia assicurativa, presentiamo in appresso un esempio. Per ragioni di semplicità, l'esempio è limitato a tre diversi tipi di situazioni possibili:
 - Stato membro nel quale non esiste alcun sistema di garanzia (SM di tipo I);
 - Stato membro nel quale il sistema di garanzia copre tutte le imprese autorizzate in tale stato, le loro succursali stabilite in altri Stati membri nonché le operazioni svolte in regime di libera prestazione dei servizi (SM di tipo II);
 - Stato membro in cui il sistema di garanzia copre tutte le imprese di assicurazione (ma non le loro succursali stabilite in altri Stati membri) e le succursali stabilite sul suo territorio (SM di tipo III).

Assicurato residente in uno Stato membro di tipo I

- Non è coperto se acquista un prodotto assicurativo dall'assicuratore di uno SM di tipo I (tramite una succursale o in regime di prestazione di servizi transfrontalieri) o dalla succursale di uno SM di tipo III stabilita nel suo SM di residenza,

- ma è coperto se acquista un prodotto assicurativo da un assicuratore di uno SM di tipo II (tramite una succursale o in regime di prestazione di servizi transfrontalieri) o da un assicuratore di uno SM di tipo III (su base transfrontaliera).

Assicurato residente in uno SM di tipo II,

- non è coperto se acquista un prodotto da un assicuratore di uno SM di tipo I (tramite una succursale o su base transfrontaliera) o da una succursale di uno SM di tipo III stabilita nel suo SM di residenza,
- ma è coperto se acquista un prodotto assicurativo da un assicuratore di uno SM di tipo II (tramite una succursale o su base transfrontaliera) o da un assicuratore di uno SM di tipo III (su base transfrontaliera).

Assicurato residente in uno SM di tipo III

- non è coperto se acquista un prodotto da un assicuratore di uno SM di tipo I (su base transfrontaliera),
- ma è coperto se acquista un prodotto dalla succursale di uno SM di tipo I stabilita nel suo SM di residenza o da un assicuratore di uno SM di tipo II (tramite una succursale¹ o su base transfrontaliera).

4. Inoltre, a seconda della legislazione nazionale di ciascuno Stato membro, la copertura del sistema può dipendere dal fatto che il credito di assicurazione insorga in virtù di un'operazione vita o non vita o in funzione del fatto che l'assicurato abbia o meno carattere professionale. Alcuni sistemi non vita si applicano solo ai crediti pendenti, altri includono i premi persi. Ovviamente il livello della garanzia varia notevolmente a seconda dello SM in questione. Anche la modalità di finanziamento è variabile.
5. Si noti che la mancanza di armonizzazione comunitaria in materia di fondi di garanzia non interessa gli altri settori finanziari. Nei settori bancario e mobiliare sono state adottate direttive specifiche rispettivamente nel 1994² e nel 1997³.
6. L'adozione di una direttiva in materia di risanamento e di liquidazione delle imprese di assicurazione ha effettivamente rafforzato la protezione dei creditori di assicurazione in caso di liquidazione, introducendo un sistema alternativo di privilegi generali o speciali. Questa direttiva migliora la situazione dei creditori di assicurazione qualora, dopo la liquidazione dell'impresa di assicurazione, non restino fondi sufficienti per pagare i crediti di assicurazione. Tuttavia, quando l'impresa di assicurazione non dispone di riserve tecniche sufficienti o quando i crediti "superprivilegiati" (imposte, previdenza, salari, diritti reali) assorbono una quota rilevante dei proventi derivanti dalla liquidazione, i fondi potrebbero essere insufficienti per pagare tutti i creditori di assicurazione. In tal caso solo un sistema di garanzia può coprire le perdite di tutti gli assicurati.

¹ Se la succursale è inclusa nel campo di applicazione del sistema di garanzia nello SM di tipo III, l'assicurato è coperto due volte.

² Direttiva 94/19/CE relativa ai sistemi di garanzia dei depositi (GU L135 del 31.5.1994).

³ Direttiva 97/9/CE relativa ai sistemi di indennizzo degli investitori (GU L84 del 26.3.1997).

7. Il documento irlandese allegato alla presente nota contiene diverse opzioni in merito a possibili iniziative comunitarie riguardanti i fondi di garanzia per le assicurazioni. Tali opzioni, di cui vengono illustrati i vantaggi e gli svantaggi, sono elencate in funzione del grado crescente di armonizzazione che essi comportano. Ricordiamole:

- Opzione 1: astenersi da qualunque iniziativa;
- Opzione 2: stabilire principi generali (due alternative: modello 1 “Principi comunitari” e modello 2 “Principi nazionali”);
- Opzione 3: prescrivere condizioni di garanzia minime per gli assicurati;
- Opzione 4: Sistema comunitario armonizzato per la protezione degli assicurati.

8. ***Domande ai membri del Comitato delle assicurazioni***

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3. ***Ritenete che la Commissione debba costituire un gruppo di lavoro che inizi ad occuparsi di questa questione?***

NOTE PREPARED BY THE IRISH DELEGATION

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SOME THOUGHTS ON AN EU FRAMEWORK FOR POLICYHOLDER PROTECTION WHEN A CROSS-BORDER INSURER FAILS

Background

The framework provided by the EU insurance directives permits an insurance company, once authorised in a Member State, to write business throughout the European Economic Area. The common prudential standards set out in the Directives are designed to ensure, in so far as possible, that companies are always in a position to meet claims. Various measures – including notification of other Supervisors – are prescribed when a company experiences financial difficulties.

If an insurance company is wound up, the 3rd Insurance Framework Directives prescribe that:

commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of that undertaking's other insurance contracts, without distinction as to nationality as far as the persons insured and the beneficiaries are concerned.

The Insurance Winding Up Directive¹, which is due to be transposed into Member States legislation by 20 April 2003, provides that, in the event of the winding-up of an insurance undertaking, policyholders must be assigned a degree of priority as creditors.

The Directives do not lay down a common framework for dealing with policyholder claims in the event of failure of an insurance undertaking. The situation of a policyholder in a host Member State in such circumstances is determined by:

1. The extent of the assets available for distribution to creditors
2. The degree of priority which the law of the home Member State assigns to policyholders as creditors
3. The existence of permanent or ad-hoc arrangements for compensation of policyholders² and the extent to which these extend to all EEA policyholders

The recent failure of an EU insurance undertaking³ with significant cross-border business has highlighted the difficulties that can arise in relation to policyholders outside the home Member State.

The lack of a common framework for dealing with policyholder claims could lead to measures being taken by individual Member States to protect their policyholders which could damage the single European market in insurance.

¹ Directive 2001/17/EC of 19 March 2001 on the reorganisation and winding-up of insurance undertakings.

² Member States are authorised under the 3rd Non-Life Framework Directive (Article 45(2)) to require undertakings carrying on business in their territories to join/participate in any scheme designed to guarantee the payment of insurance claims to insured persons and injured third parties.

³ Independent Insurance Company Limited (IICL).

This issue was last examined by the Insurance Committee at its meeting on 22 November 2000, based on a Commission paper (MARKT/2107/00). The paper – which in turn was based on responses from Member States to a questionnaire – indicated that most Member States did not have a policyholder guarantee scheme and that there were wide disparities between the schemes operated by the remaining 6 Member States⁴ [an extract from the Commission paper is annexed to this document].

The Options

There are 4 broad options:

1. Do Nothing
2. Lay down general principles only
3. Prescribe minimum policyholder guarantees to apply when an undertaking fails (minimum harmonisation)
4. Harmonise the policyholder guarantees that Member States must provide (full harmonisation)

1. Do Nothing

This would involve leaving matters as they are, with no EU-level action.

FOR

1. Important that policyholders recognise that the EU insurance regulatory system does not guarantee that there will be no failures
2. Any guarantee system could encourage irresponsible behaviour on the part of insurance undertakings and those seeking insurance
3. The small number of instances of failure of undertakings with significant cross-border operations does not justify the effort involved in reaching EU-level agreement
4. Undertakings based in Member States with superior systems of policyholder protection can use this fact as a selling point, thus encouraging pressure on other Member States to improve their systems

⁴

Though not covered in the questionnaire or Commission paper, the degree of effective policyholder protection is fundamentally linked to the issue of whether a Member State, in practice, is willing to allow an insurance undertaking to fail. A number of Member States have an explicit or implicit ‘no failures’ policy, with national legislation providing mechanisms for official intervention to ensure that an undertaking in difficulty can meet any claims against it from policyholders.

AGAINST

1. Policyholders – especially personal policyholders – assume that State supervision of insurance undertakings is effectively a guarantee that their claims will be met
2. Doing nothing involves tolerating situations of discrimination between policyholders which are incompatible with the spirit, and possibly the letter, of EU law
3. Doing nothing may encourage Member States to introduce additional ‘common good’ measures which would make it more difficult for insurers from other Member States to operate on their markets
4. Leaving policyholder protection up to each Member States is contrary to the trend towards home-country consumer protection (notably in the E-Commerce Directive)

2. Lay down General Principles

MODEL 1: ‘Communautaire’ Principles

This would involve agreement at EU level on general principles such as:

- Member States must ensure that the same level of compensation is available to all EEA policyholders of a failed insurer under their supervision
- (possibly) Member States must ensure that the principle of preferential treatment for policyholders contained in the Winding Up Directive is made effective in all circumstances of failure of an insurer⁵
- (possibly) Each insurance policy must include a statement of the provisions that apply if an insurance undertaking fails⁶

FOR

1. Would eliminate the most objectionable practices from the perspective of the single market
2. Minimum legislative change involved (a Declaration or Protocol might suffice)
3. Would not increase the danger of irresponsible behaviour on the part of insurers or those seeking insurance

⁵ The present legal arrangements in at least one Member State are such that the obligatory preferential treatment for policyholders provided for in the Winding-Up Directive will probably never apply in practice. This is because the arrangements in that Member State for dealing with the policyholders and other creditors of a failed insurer do not formally constitute a ‘winding-up’, even though the claims from policyholders will not be met in full.

⁶ In the interests of consumer transparency, it might be desirable to lay down this as a requirement in relation to any option adopted at EU level

AGAINST

1. Would not encourage policyholders (or intermediaries) to confidently seek cover outside of their home Member State
2. Policyholders would need to consider the individual provisions in each Member State that would apply when an insurer failed
3. Would probably be criticised as an inadequate response by bodies representing consumers
4. Where guarantee funds were financed by levies on policies, would involve an unfair price advantage for undertakings based in Member States without such funds

MODEL 2: 'National' principles

This would involve agreement at EU level on general principles such as:

- It is the responsibility of each Member State to make any arrangements it considers appropriate for the protection of its citizens/permanent residents in the event of failure of an insurance undertaking
- (possibly) The same level of protection must be provided irrespective of the 'home' Member State of the undertaking
- (possibly) Member States must ensure that the principle of preferential treatment for policyholders contained in the Winding Up Directive is made effective in all circumstances of failure of an insurer
- (possibly) Each insurance policy must include a statement of the provisions that apply if an insurance undertaking fails

FOR

1. Would allow each Member State to decide on the form of policyholder protection most appropriate to its national circumstances
2. Would be easy for policyholders to understand
3. Follows the principle of subsidiarity
4. Minimum legislative change involved (a Declaration or Protocol might suffice)
5. Can be applied equally (including funding mechanism) to all undertakings operating on the national market (thus providing certainty to the policyholder that the same compensation applies irrespective of the 'home' Member State)

AGAINST

1. Would tend to contribute to the fragmentation of the single insurance market
2. Would impose a heavy compliance burden on companies operating cross-border

3. Where there was significant penetration of cross-border insurers in a Member State, could impose a considerable policyholder protection burden on that State
4. As the policyholder protection scheme would probably be based mainly on the circumstances of domestic undertakings, this could act as a de facto discouragement to others to enter the market
5. Could encourage supervisory authorities to adopt a less rigorous approach to undertakings under their supervision operating primarily on a cross-border basis

3. Prescribe Minimum Policyholder Guarantees

This would involve agreement at EU level on minimum levels of payment of claims that Member States would be obliged to guarantee in the event of the failure of an undertaking under their supervision. The agreement would need to cover:

- The classes of claims that would be covered⁷
- The percentage of individual claims⁸ that would be covered
- The time-scale within which guaranteed claims would have to be paid
- (possibly) Funding mechanism/s

FOR

1. Would provide an agreed minimum of policyholder protection throughout the EU
2. Would encourage policyholders to consider taking out cover with undertakings based in other Member States
3. Would contribute to the better achievement of the single European market in insurance
4. Would encourage a prudent approach to supervision by Member State authorities
5. Need not exclude more extensive policyholder protection measures in individual Member States⁹
6. Should be easier to reach agreement on than a fully harmonised system

⁷

E.g.
 Non-Life: 3rd party motor insurance, which is compulsory throughout the EU; possibly policies that are compulsory under national law; possibly personal policyholders; possibly claims by individuals against a corporate policyholder.

⁸

Life: matured claims on individual protection policies

⁹

The focus on this note is on claimants. It would also be possible to include refund of premium under such a scheme (including premiums paid on foot of investment-type life assurance policies).

Including a continuation of existing practices in certain Member States that effectively guarantee that insurance undertakings are not allowed to fail.

AGAINST

1. Difficult to reach agreement on
2. Could encourage irresponsible behaviour on the part of insurers and those seeking insurance
3. Would impose an additional burden on insurance undertakings (and policyholders if funded through a premium tax)
4. Lack of full harmonisation would mean that the policyholder desiring certainty would need to check the situation applying in the home Member State of the undertaking

4. Harmonised EU Policyholder Protection Scheme

This would involve a fully harmonised system of policyholder protection. The elements of the system would cover the same areas outlined above (including funding).

FOR

1. Would provide a standardised guarantee and full certainty to policyholders throughout the EU wherever they and their insurer were located
2. Would encourage policyholders to consider taking out cover with undertakings based in other Member States
3. Would contribute significantly to the better achievement of the single European market in insurance
4. Would be in line with the trend towards home-country consumer rules (e.g. in the context of the E-Commerce Directive)

AGAINST

1. Very difficult to reach agreement on
2. Could encourage irresponsible behaviour on the part of insurers and those seeking insurance
3. Would impose an additional burden on insurance undertakings (and policyholders if funded through a premium tax)
4. Arguably contrary to the Subsidiarity principle

Choosing between Options

The approach of Member States to the options outlined above will probably be influenced by factors such as:

- History of insurance failures in the domestic market
- Existence and nature of a national guarantee scheme¹⁰
- Extent of the involvement of EEA insurers operating on a branch or services basis in the domestic market
- Degree to which individuals are dependent on private insurance (as opposed to State provision) for key services (e.g. health, disability support, pensions)

As there have been very few examples of failure of EEA insurers operating on a cross-border basis, most Member States will not have been obliged to deal with the practical issues that arise when such an insurer is wound up. This may result in limited enthusiasm for significant change – especially among the majority of Member States who do not at present have a national policyholder protection scheme.

On the other hand, failure to act seems certain to diminish consumer enthusiasm for the single market in insurance. It is also likely to force Member States who have been affected by failure of a cross-border insurer to take action which could restrict the activities in their market of non-domestic insurers. This suggests that ‘**Do Nothing**’ (**Option 1**) should not be considered a valid option.

Laying down General Principles (Option 2) would offer the clear advantage of agreement at EU level on where responsibility lies for policyholder protection in the event of failure of a cross-border insurer: with the ‘home’ or ‘host’ Member State. A consensus in favour of ‘home’ rather than ‘host’ country responsibility would be more compatible with the principles underlying the single insurance market. A consensus in favour of ‘host’ country responsibility would probably be more readily acceptable to policyholders, who tend to look to national authorities in exceptional situations such as failure of an insurer.

Prescribing Minimum EU Policyholder Guarantees (Option 3) would be a clear advance in terms of an integrated, consumer-friendly European insurance market. By confining EU legislative action to minimum guarantees and otherwise leaving details to Member States, it should be easier (but still challenging) to reach agreement.

A fully **Harmonised Policyholder Protection Scheme (Option 4)** would be the ideal in terms of the single insurance market; but full harmonisation would carry a price in terms of difficulty in reaching agreement.

¹⁰

Including the guarantee implicit in an effective ‘no failures’ policy.

One Way Forward

The following is a development of the option of prescribing minimum EU policyholder guarantees (Option 3).

Basic Ideas

1. The home (supervising) Member State of a failed insurer would be responsible for arranging the minimum level of policyholder protection agreed on at EU level
2. The minimum guaranteed levels would be the same throughout the EEA
3. Member States could, if they wished, exceed the minimum levels; if they chose to do so, the extra benefits would be available to all EEA policyholders of the failed undertaking
4. The manner of delivering the minimum agreed level of policyholder protection would be left to the discretion of Member States¹¹, including the funding mechanism

Guaranteed Levels

Non-Life

1. 100% payment of claims arising from insurance that is compulsory under EU law (at present, 3rd party motor vehicle insurance)
2. 100% payment of claims arising from insurance that is compulsory under the laws of the host Member State
3. A percentage (to be decided) refund of un-expired premium in respect of the preceding two categories
4. A percentage (to be decided) of claims from personal¹² policyholders insured in non-commercial classes¹³
5. A percentage (to be decided) of personal claims against commercial policyholders¹⁴

¹¹ This would include the manner in which the policyholder protection scheme would interact with the policyholders' entitlements as creditors in the winding-up process. It would allow Member States to deliver guaranteed payments through the body charged with winding up the undertaking or through a separate body. It would also allow Member States with an effective 'no failures' policy to continue with this policy.

¹² The scope of 'personal policyholder' would need to be defined, particularly in the 'grey area' of sole traders and partnerships.

¹³ This would exclude e.g. marine, aviation, railway, goods in transit, suretyship.

¹⁴ This would cover e.g. claims from employees injured at work. It could be restricted to cases where the commercial policyholder was unable to pay the claim e.g. due to insolvency.

Life

1. 100% payment of claims arising from insurance that is compulsory under the laws of a Member State
2. A percentage (to be decided) refund of un-expired premium in respect of the preceding category
3. A percentage (to be decided) of claims from personal policyholders with protection-type policies
4. A percentage (to be decided) of premiums¹⁵ paid in respect of investment/savings-type products

Time Limits

The Member State would be obliged to ensure that guaranteed payments were made within a specified time-limit – for example, 12 months from the date on which the company ceased to be able to meet its obligations to policyholders.

***Insurance Division
Department of Enterprise, Trade & Employment
Dublin***

5 September 2001

¹⁵

Possibly subject to a maximum amount.

EXTRACT FROM COMMISSION DOCUMENT MARKT/2107/00 “INSURANCE COMPANIES IN DIFFICULTY AND INTERVENTION BY THE SUPERVISORY AUTHORITIES – REPLY TO QUESTIONNAIRE”

Question 5a – Existence of a guarantee scheme

Of the sixteen countries considered, ten did not have a dedicated guarantee scheme to compensate policyholders in the event of their insurer's insolvency (A, B, D, DK, I, IS, L, NL, P and S). However, B, D, I and L indicated that the motor vehicle guarantee scheme, which compensated victims of accidents caused by an unidentified or uninsured vehicle, also intervened in the event of insolvency.

In the same connection, FIN has set up a guarantee scheme for mandatory life and non-life insurance.

The same applies to France, which in addition recently established a guarantee scheme covering individuals (i.e. life insurance and personal injury).

IRL and NO have a guarantee scheme which covers non-life insurance only.

Only E and UK have a guarantee scheme (or, in the case of Spain, equivalent arrangements) which covers both life and non-life insurance.

The following analysis is restricted to those countries which have set up specific guarantee schemes in addition to the motor vehicle guarantee scheme (E, F, IRL, NO, FIN and UK):

- Most of the guarantee schemes reviewed cover individuals only, to the exclusion of firms (and as such do not cover reinsurance and large exposures);
- Only the bodies set up in E and F cover all policyholders, irrespective of their place of residence or risk location; in particular, the guarantee schemes of the other countries do not cover policies sold abroad under the law of the host country;
- The financing mechanism for guarantee schemes consists of a posteriori financing as required in the form of a levy on annual premiums restricted to 1% or 2% (IRL, NO and UK) or of a priori financing in the form of a regular annual contribution (E and F). The guarantee scheme in IS is a special case: companies set up a dedicated reserve to finance the guarantee scheme if necessary, with payments being made only a posteriori as required. It would have also been useful to know whether the levies or contributions are mandatory for foreign insurers operating locally by way of freedom of establishment or freedom to provide services.

Question 5b – Intervention of the guarantee scheme (where appropriate)

The replies indicate that, where guarantee schemes exist, they have had to intervene at least once in the recent past (except in France, where the life insurance guarantee scheme was set up only very recently).