December 2010

AK Position Paper

Assessment and comment on the consultation to the „White Paper on Insurance Guarantee Schemes"

www.akeuropa.eu

About us

The Federal Chamber of Labour is by law representing the interests of about 3.2 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community- and military service - of the 3.2 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Herbert Tumpel
President

Werner Muhm
Director

Executive Summary

The AK welcomes the intention of the European Commission to propose the establishment of an EU-wide Insurance Guarantee Scheme.

The AK welcomes the intention of the European Commission to propose the establishment of an EU-wide Insurance Guarantee Scheme. The financial crisis has shown that similar to the banks, the insurance sector is also severely exposed to the risks of the financial market. Several major European insurance companies have recorded exceptionally heavy losses; some had to call for state aid. There are a number of protective mechanisms at national or European level; however, these are not adequate to reduce the risk of insurance insolvencies and the potential impact on consumers. Apart from capital requirements and adequate supervisory powers, effective risk management and comprehensive governance structures form the centre of these protective mechanisms. However, from the point of view of the AK, these instruments have to be complemented by a harmonised depository system to protect consumers directly against potential losses. The objective formulated in the White Paper to create equal conditions of competitions between insurance companies has to be welcomed from a competitive point of view. However, an effective Insurance Guarantee Scheme must also be suitable to avoid that in the end the taxpayer and the consumer have to bear the costs of the mismanagement of an insurance company. Therefore incentives have to be created, which reduce the temptation to take excessive risks, such as the insurance companies themselves contributing to financing the Insurance Guarantee Scheme and using the funds used exclusively for the Insurance Guarantee Scheme.

From the point of view of the AK, an effective and at the same time budget-conscious Deposit Guarantee Scheme should consist of several components. Basically, corresponding coverage funds have to be established for all Insurance Guarantee Schemes, which have to be treated as separate assets in case of insolvency and can therefore be transferred to other insurers. In addition, a harmonised Deposit Guarantee Scheme should be developed, which is economically appropriate and efficient on the one hand and does not develop any procyclical effect on the other.

In respect of the quality of the standards, the AK can only imagine an Insurance Guarantee Scheme, which has been built on clear and binding standards. 'Soft law' instruments such as recommendations, guidelines or codes of conduct are not suitable for establishing a Deposit Guarantee Scheme.

The AK position in detail

Issue 1: Nature of possible EU action, Item 3.1.

In the opinion of the AK, the development of a Deposit Guarantee Scheme requires a legally binding framework, which has to apply to all policyholders and beneficiaries. Issuing a Directive is therefore considered appropriate.

Harmonising the geographical scope is crucial to ensure that policyholders have clarity and comprehensibility in terms of their rights and the practical handling of a deposit guarantee case.

Issue 2: Level of centralisation and role of Insurance Guarantee Schemes for insurance companies, Item 3.2.

The AK welcomes the proposal of the Commission to establish an Insurance Guarantee Scheme as a last-resort protection mechanism in each Member State. Having said that, it is necessary to introduce clear rules for this system to run smoothly. Clear provisions for example should prevent competition between Member States. The intention of creating such a set of rules is also to clearly define the procedure for a possible insurance insolvency.

Issue 3: Geographical scope, Item 3.3.

Harmonising the geographical scope is crucial to ensure that policyholders have clarity and comprehensibility in terms of their rights and the practical handling of a deposit guarantee case. It is unreasonable to expect the average policyholder to make time consuming investigations prior to signing a contract, whether the deposit guarantee is based on the home country or the host country principle.

The AK would welcome the existence of expressly formulated cross-border cooperation between national Deposit Guarantee Schemes. The AK advocates that each EU citizen or policyholder can use the Deposit Guarantee Scheme of his country of residence at least as a point of contact or settling and paying agent. This facilitated access to the law would strengthen consumer confidence in the internal market.

Issue 4: Policies covered, Item 3.4.

A Deposit Guarantee Scheme should not only cover life insurances. In general, the loss to policyholders concerning non-life insurers is smaller than in case of life insurance policies, because it is usually limited to prepaid premiums. This is different for those policyholders with outstanding claims at the time of insolvency, for example from claiming an insurance benefit. In some cases, these claims might be substantial. That is why all policies should be subject to deposit guarantee measures.

The AK welcomes the funding of Insurance Guarantee Schemes on the basis of ex ante contributions.

Issue 5: Eligible claimants, Item 3.5.

Deposit Guarantee Schemes should cover all natural persons. The AK also considers it conceivable to protect small undertakings; however, this requires narrow restrictions. Classifying holding companies also as "small undertakings" should be avoided, as they have no turnover and only a small number of employees, but very high cover requirements. Covering these requirements would probably result in a massive rise in cost of the deposit guarantee.

Issue 6: Funding, Item 3.6.

The AK welcomes the funding of Insurance Guarantee Schemes on the basis of ex ante contributions. These shall in particular avoid procyclical effects associated with ex-post funded schemes.

The options, which were assessed with regard to the coverage level of existing Insurance Guarantee Schemes, resulted in a preliminary target level of 1.2 % of gross written premiums. Applying this target level over a period of 10 years would, based on calculations of the Commission, translate into an annual contribution of 0.12 % of gross written premiums from each contributing member of the scheme. It might be worth considering a combination of guarantee instruments (ex-ante, complementary ex post funding as well as transfer of sums insured). This could also reduce or limit the costs of ex ante funding. This would also be in accordance with the aimed at appropriate protection - which is a central target of the future EU framework for Insurance Guarantee Schemes - of policyholders and beneficiaries if an insurer fails.

In order to limit the loss in case of an insurer's insolvency, one should also consider additional ex post funding arrangements or other sources of funding (external credit facilities or reinsurance).

In the event that an insurer becomes insolvent, the AK supports a portfolio transfer to a solvent insurer.

Issue 7: Portfolio transfer and/or compensation of claims, Item 3.7.

In the event that an insurer becomes insolvent, the AK supports a portfolio transfer to a solvent insurer. However, it must be ensured that the contracts governed by private law remain in effect and that policyholders do not end up with a contract that is worse. In particular life insurances are usually long-term and are taken out for a variety of reasons. One should also mention that for instance life cover and endowment policies are not only taken out for private provision but also used in connection with mortgages and for loan repayments (so-called bullet variants with assigned or pledged insurance contracts to the bank).

A safe portfolio transfer is particular crucial in these cases because the lending bank might in the event of legal or other factual deteriorations of the insurance contract call the loan agreement itself into question or at least request the policyholder to take out expensive subsequent insurance (new insurance policies).

Should you have any further questions
please do not hesitate to contact

Heinz Leitsmüller
T: +43-(0)1-501 65 2640
heinz.leitsmüller@akwien.at

Christian Prantner
T: +43-(0)1-501 65 2640
christian.prantner@akwien.at

or

Robert Samsinger
T: +43-(0)1-501 65 2640
robert.samsinger@akwien.at

as well as

Frank Ey
(in our Brussels Office)
T +32 (0) 2 230 62 54
frank.ey@akeuropa.eu

Bundesarbeitskammer Österreich
Prinz-Eugen-Strasse, 20-22
A-1040 Vienna, Austria
T +43 (0) 1 501 65-0
F +43 (0) 1 501 65-0

AK EUROPA
Permanent Representation to the EU
Avenue de Cortenbergh, 30
B-1040 Brussels, Belgium
T +32 (0) 2 230 62 54
F +32 (0) 2 230 29 73