FG

FONDS DE GARANTIE

EUROPEAN MEETING of INSURANCE GUARANTEE SCHEMES

13th May 2014

Paris, France

Role of the compulsory casualty insurance guarantee fund

Protecting insureds in the event of an insurer defaulting

History

A role that has been extended over the years

1951 - Creation of the FGA (*Fonds de Garantie Automobile*)

In addition to its role in compensating traffic accident victims, Parliament decides that the fund should intervene in the event of a motor insurance company defaulting.

1966 - Extension of the fund's role to hunting cover

The fund's role is extended to defaulting by insurers covering hunting third party liability

2003 - The Financial Security Act, No. 2003-706, of 1st August 2003

The FGAO's role in the event of an insurer defaulting is extended to compulsory cover aside from motor insurance: construction, guarantees, professional liability, etc.

Principles applying to the FGAO's intervention

Managing the liquidation of insurance companies

Principles

- The FGAO compensates the victims of prejudice caused by the liquidated company's insureds.
- Prejudice compensated:
  - The guarantee fund covers the compulsory third party liability compensation that would have been paid by the insurance company (the forms of compulsory cover for which the FGAO may intervene are specified in Article A344-2 of the Insurance Code).
  - The fund does not invoke the subsidiary aspect of its obligation (in particular, it is obliged to pay debts owed to third party payers).
  - The fund may not be joined in court proceedings as a third party by victims (Article R421-24-7 of the Insurance Code).

Conditions applying to the fund 's intervention

Managing the liquidation of insurance companies licensed in France and subject to the supervision of the French state

Licence withdrawn by the supervisory authority

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Publication in the official journal

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Policy cover ceases automatically at noon on the fortieth day

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Guarantee fund intervenes

Conditions applying to the fund 's intervention

- **Managing the liquidation of European insurance companies not licensed in France**

(Articles L421-1, L326-20, R326-1 and R326-4 of the Insurance Code)

- Companies licensed in another EU state that operate in France under the free provision of services or freedom of establishment are covered by the FGAO for motor insurance only.
- Withdrawal of the licence by the state concerned entails the withdrawal of the licence in France.
- Only claims predating the termination of policies in the state of issue of the liquidated company are covered.

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The Convention on Recourse between EU guarantee funds

- **Phase 1 - 1995** (fourteen signatory countries)

  The EU guarantee funds decided that in the event of a motor liability insurance company's insolvency the financial burden should be borne by the home state of the defaulting company rather than the state of establishment or free provision of services so in the event of liquidation the home country's fund reimburses the fund of the country of establishment or free provision of services for the liquidation costs.

- **Phase 2 - 2007 - Addendum 1**

  Eight more countries signed the agreement.

The Convention on Recourse between EU guarantee funds

- ## Phase 3 - 2012 - Ineas and Addendum 2

Following the Ineas insurance company going into liquidation, the Netherlands stated that it wished to withdraw from the agreement so the the conditions were revised. To remedy the difficulties, the signatories decided to apply the agreement in two ways, by:

- limiting a guarantee fund's annual exposure to 0.5% of annual gross MTPL premium income;
- providing a legal framework for compensation in cases where no respective national legislation exists.

Claims management in practice

Covering liable parties insured with liquidated companies

Risks covered

Motor third party liability and hunting: ten companies in liquidation since 1991 (including GAE, Independant Insurance, CGA and Ineas) - 27,000 files opened.

Other forms of compulsory cover (2003)

An enforcement decree dated 17th February 2004 meant that the guarantee fund had to intervene retroactively for companies still in liquidation on 1st August 2003: five companies in liquidation.

Claims management in practice

- The role of the liquidator is to:
  - refer claims by creditors entitled to the benefit of the provisions of the 2003 Financial Security Act to the guarantee fund;
  - carry out the investigations and formalities necessary to exercise recourse on request by the guarantee fund and on its behalf.
- The role of the guarantee fund is to:
  - examine the files sent to it by the liquidator and check the admissibility of the claims according to the rules defining the scope of its intervention;
  - make payments into the account of the liquidator, which sends the funds to the beneficiaries or pays them into their accounts.

All creditors are entitled to send claims directly to the guarantee fund.

Claims management in practice

Claims are managed by agreement with the liquidator by either:

- the liquidator with the remaining staff of the liquidated company under the supervision of guarantee fund staff; or:
- directly by the guarantee fund; or:
- service providers chosen by the liquidator and approved by the guarantee fund under the supervision of guarantee fund staff.

How the FGAO is financed

- **Contributions**

  - **Rate: Article R421-27-1 of the Insurance Code**

    The contribution to the guarantee fund's operations resulting from insurance companies defaulting is proportional to the premium income from compulsory insurance for the latest financial year.

  - **Upper limit: Article R421-28 of the Insurance Code**

    The contribution is limited to 12% of the guarantee fund's costs for liquidation operations.

How the FGAO is financed

- **Contributions**

  - **Article R421-27-2 of the Insurance Code**

    If the amount of provisions recorded under liabilities for the FGAO's operations resulting from the defaulting of general insurance companies falls below €250 million for more than six months in a row, insurance companies are sent a demand to make an extraordinary contribution increasing the provisions to more than this minimum threshold for the long term.

How the FGAO is financed

ALL THE CONTRIBUTIONS

	Base	Rate	Procedure
Insureds' contribution collected directly by the guarantee fund	Motor third party liability premium	2% of the third party liability premium since 20th June 2013	
Insureds' contribution collected directly by the guarantee fund	Motor third party liability premium	1.2% of the third party liability premium since 1st August 2010	Set by Ministerial Order
Insurance companies' contribution collected directly by the guarantee fund - For compensation in general - For liquidations	Percentage of the guarantee fund's costs	1% of the guarantee fund's costs since 1st January 1997	Collected after approval of the annual accounts by the board of directors
State contribution	Percentage of traffic accident compensation paid by the state	5% of the compensation paid	

How the FGAO is financed

ALL THE CONTRIBUTIONS (continued)

	Base	Rate	Procedure
Contribution by uninsured liable parties that should have had insurance	Percentage of compensation borne by them	10% of the compensation borne by them	Collected by the tax authorities on notification by the guarantee fund
Contribution by parties subject to an excess clause	Percentage of the compensation borne by them under their policy excess clause	5% of the compensation borne by them	
Criminal fines for not having insurance	The 50% surcharge is paid to the guarantee fund		

In addition to the contributions, the guarantee fund that has compensated a victim is subrogated to the latter's rights against the liable party or his/her insurer so some of the proceeds of the recourse exercised go to the guarantee fund.

How the FGAO is financed

Recourse: specific characteristics of liquidations

- Against the liquidator
- Against the executives of the liquidated company (liability actions)
- Against the reinsurer (application of the reinsurance treaty)
- Against the insurers of the other liable parties
- Against the guarantee fund of the country of the defaulting company (Convention of Recourse between foreign guarantee funds already referred to)
- Unlike other claims covered by the FGAO, there is no recourse against a party directly liable for the accident that had insurance except for the part corresponding to the contractual excess clauses or cover forfeiture.

Thank you for listening.

Contacting us

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