Reactions

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International Insurance Regulation

current and proposed regulation explained

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A **Reactions** publication

Chapter 9

Austria

1. Market Developments

1.1 Premium income

In 2001 premium income from the Austrian domestic insurance market was EUR 12.479 billion (an increase of 6.6% compared to the previous year) made up of EUR 5.876 billion life insurance, EUR 5.397 billion property/accident insurance (of which EUR 1.413 billion motor third party) and EUR 1.206 billion health insurance.

These figures should be considered in the context of a population of approximately 8 million and a gross domestic product of approximately EUR 210 billion.

1.2 Market participants

As of May 2002 there were 55 Austrian insurance companies registered with the Austrian supervisory authority (small mutual insurance societies are not included in this figure). In addition, 19 branches of insurance companies established in other countries within the EEA and 2 established outside the EEA were also registered in Austria. A further 498 insurers established in other Member States were permitted to carry out business in Austria.

Market shares 2000:

UNIQA	12.64%
Wiener Städtische	11.86%
Generali Versicherung AG	9.88%
Allianz Elementar	6.85%
Raiffeisen	6.25%
Sparkassen Versicherung	5.97%
Interunfall	5.45%

1.3 Principal distribution channels

Insurance is sold in Austria mainly through the following channels:

- employed agents (34.2% overall; property 56.9%; health and accident 54.5%; life with annual premiums 36.3%; life with one payment 22.2%);
- insurance agents (4.2% overall; property 4.0%; health and accident 6.4%; life with annual premiums 7.4%; life with one payment 3.0%);
- insurance brokers (19.82% overall; property 32.7%; health and accident 19.7%; life with annual premiums 20.5%; life with one payment 14.0%);
- banks (38.3% overall; property 2.3%; health and accident 7.8%; life with annual premiums 32.4%; life with one payment 58.2%); and
- direct sale (0.6% overall; property 0.8%; health and accident 3.6%; life with annual premiums 0.4%; life with one payment 0.4%).

The different distribution channels are described below:

- (Independent) insurance agents (*Versicherungsagenten*): self employed vendors committed to one particular (in certain cases more) insurer; a business license is required, the necessities of applicants is set forth in an ordinance (*Versicherungsagenten-Befähigungsnachweisverordnung*).
- (Independent) insurance brokers (*Verrsicherungsmakler*): self employed independent vendors; a business license is required, the necessities of applicants is set forth in an ordinance (*Befähigungsnachweis Versicherungsmakler*); broker activity is governed by the Broker Act of 1996 (*Maklergesetz*) which makes special provisions for insurance brokers concerning their duties to consumers.
- Insurance consultants (*Versicherungsberater*): a business license is required, the necessities of applicants is set forth in an ordinance (*Befähigungsnachweis Berater in Versicherungsangelegenheiten*). In Austria there are almost 2,800 holders of insurance brokers' and consultants' licenses registered.
- Insurers' employees: selling policies either active ("employed agents") or over the counter ("clerks").

Many Austrian banks are involved in selling insurance although this has traditionally been restricted to life insurance. Banks and insurance companies are also forming joint ventures.

2. Framework of Insurance Regulation

2.1 Legislation

The main law regulating transactions of insurance business in Austria is the Insurance Supervisory Act of 1978 (*Versicherungsaufsichtsgesetz* — "the VAG"), which has been amended 37 times. Austria has implemented directive 91/674 through (second) *VAG-Novelle 1991*, directives 73/239/EEC, 79/267/EEC, 88/357/EEC and 90/619/EEC through *VAG-Novelle 1992*, directives 92/49/EEC, 92/96/EEC and 91/674/EEC through (first) *VAG-Novelle 1994* and directive 95/26/EEC through *VAG-Novelle 1996*.

The Insurance Contract Law of 1958 (*Versicherungvertragsgesetz*), re-enacted 1994, governs the relationship between insurer and policyholders and is intended to protect the latter in the increasingly liberal insurance market.

The International Insurance Contract Law Act for the EEA of 1993 (*Internationales Versicherungs-vertragsrecht für den EWR*) determines which law applies to a risk located outside of Austria but within the EEA.

Other general legislation which will also apply to insurers includes the General Civil Code of 1812 (*Allgemeines Bürgerliches Gesetzbuch*), the Commercial Code of 1897 (*Handelsgesetzbuch*), the Stock Companies Act 1965 (*Aktiengesetz*), the Federal Act against Unfair Competition of 1984 (*Gesetz gegen den unlauteren Wettbewerb*) and the Commerce Act 1994 (*Gewerbeordnung*).

Private insurance companies have to be incorporated either as public joint stock companies (*Aktiengesellschaft*) or mutual insurance societies (*Versicherungsverein auf Gegenseitigkeit*).

Companies incorporated in Austria as well as non-EEA companies operating as a branch in Austria must obtain a licence from the supervisory authority. Authorisation is granted for each class of business.

2.2 Regulatory authority

The Austrian Financial Market Authority (*Finanzmarktaufsicht* — "FMA") is an integrated financial supervisory authority (covering banking, insurance and pension funds) which commenced operation on 1 April, 2002.

All supervisory tasks and resources were transferred from the Federal Ministry of Finance (*Bundesministerium für Finanzen*) and the Austrian Securities Authority — (*Bundes-Wertpapier-Aufsicht*) to the FMA, an independent public law body. The FMA is the only statutory supervisory body directly responsible for banking, insurance and pension funds, securities and stock exchange supervision.

The FMA has powers of sanction in addition to its supervisory function, both to issue penalties for lack of compliance and powers of enforcement in respect of its supervisory rulings. The FMA is able to issue ordinances and any rulings made are final and cannot be appealed against (with the exception of administrative penal rulings).

The FMA comprises an executive board and a supervisory board. The executive board consists of two directors appointed jointly by the Federal Minister of Finance and the Austrian Central Bank (the "OeNB"). The executive board is responsible for all of the FMA's operations and the supervisory board oversees the management and conduct of business of the FMA.

The members of the Supervisory Board are appointed by the Federal Minister of Finance. Certain undertakings will need to obtain prior approval from the Supervisory Board (financial planning, purchase of property, annual accounts, rules of procedure).

To foster co-operation and an exchange of views and to provide advice on supervisory matters, a Financial Markets Committee is set up at the FMA, serving as a platform for the institutions jointly responsible for financial stability. This committee, however, is not a decision making body of the FMA.

Companies with a head office situated in Austria and those with a head office outside the EU need to obtain a licence in Austria prior to commencing insurance business there.

In order to obtain a licence the applicant must fulfil certain legal criteria. The undertaking must take the legal form of a joint stock company or a mutual association and possess the requisite solvency margin.

Furthermore, certain corporate governance criteria must be met, such as ensuring fit and proper management. In addition, shareholders must also meet with certain requirements. Finally, a business plan is required which specifies areas covered, activity levels and provides an estimate of future business development.

Insurance supervision goes beyond merely granting a licence. Amendments to the company's by-laws, the transfer of insurance portfolios, certain out-sourcing contracts and other relevant facts also require approval of the FMA. Important changes, such as changes to the board members or to the shareholders must be notified. Since the implementation of EU law, policy conditions are no longer subject to approval by the supervisory board.

The application to obtain a licence to operate an insurance business must be accompanied by a copy of the articles and memorandum of association of the company, a business plan, reinsurance policy and proof of sufficient funds. Supervision of insurance companies comprises all the activities of the insurance company within Austria and the EU and the conducting of any business other than insurance business is prohibited. The acquisition of certain levels of shareholding in an insurance company has to be notified to the FMA which may prohibit the acquisition and may suspend voting rights in certain circumstances. There are also general reporting requirements to the FMA.

2.3 Reinsurance

In order to conduct reinsurance business in Austria a licence is also required from the VAG unless the reinsurance is one of the classes authorised under the direct insurance authorisation. Foreign insurance companies which conduct only reinsurance business in Austria are not subject to the VAG licensing requirements.

Not all provisions of VAG apply to re-insurers. Capital requirements, solvency margins and reserve requirements are the same as those for insurance companies, the only difference being that rules applying to locally established insurance companies, as to where and in what they may invest their reserves, do not apply to reinsurers.

3. Regulation of Marketing/Consumer Protection

The Insurance Contract Law contains provisions aimed at protecting policyholders, including the rights of policyholders to receive information and be informed as to their cancellation rights. It contains provisions relating to the following:

- commencement, duration and termination of insurance contracts;
- certain duties of the insured and sanctions by the insurer if these duties are not met; and
- the use of standard letters and particular forms.

There is no specific compensation fund for policyholders but the VAG does include regulations for policyholder protection in the event of insolvency on the part of an insurance company.

4. Taxation

4.1 General

Austrian insurance companies are in principle subject to the same taxation as other companies, the current rate of corporate income tax being 34%.

The Corporate Income Tax Act contains general regulations governing insurance companies regarding the deductibility of increases in technical reserves and equalisation reserves in so far as these reserves are required by the VAG. Additionally increases in provisions for bonuses and policyholders' shares in profits are deductible.

4.2 Insurance Premium Tax

Under the Insurance Tax Act of 1953 (*Versicherungssteuergesetz*) the premiums of certain insurance contracts are taxable (the taxability depends on whether the insurer is domiciled in the EEA or not). Generally — the provisions are rather laborious — the premium tax is computed as a percentage (between 1 and 11%) of the annual premiums. Insurance contracts with insurance companies which are not domiciled in EEA Member States are subject to an increased premium tax of five times the normal rate up to a maximum of 50% of the net premiums.

Although the premium tax is payable by the policyholders the insurance companies are responsible for its collection.

4.3 Tax reliefs

Subject to certain conditions, income of the policyholder, arising from premiums for personal accident, health and annuity insurance policies are tax deductible for the insured.

5. Financial Supervisory Requirements

5.1 Solvency requirements

The VAG specifies the required solvency margin for Austrian insurers which is calculated from the relevant EU directives.

Insurers must also establish special funds to meet future liabilities on life policies and any potential claims arising from medical cover. These funds must be administered by an independent trustee approved by the FMA.

5.2 Insurance companies' accounts

There are a variety of provisions stipulating the structure of balance sheets and annual profit and loss accounts for insurance companies. An annual report must also be submitted to the FMA.

In general the accounting provisions of HGB apply. However, there are certain provisions in VAG which deviate from HGB: insurance companies are obliged to re-value investments previously written down to cost value if the reason for the devaluation has ceased to exist.

5.3 Insolvency of insurance undertakings

In general, insurers are subject to normal insolvency law. Important exceptions are:

- insolvency proceedings can only be initiated through the FMA, which has to be informed by the management if an insolvency event occurs.

- the insolvency court must appoint a trustee who is the only person to bring claims against the insolvent insurer.

Claims which are documented in the insurer's books do not have to be notified. Other provisions to be noted are that the premium reserve is separated and a certain ranking of claims is stipulated. The VAG includes regulations to minimise the risk of insurers becoming insolvent. By relying on these provisions, the FMA is able to lower certain payments to be made by an insurer who envisages payment difficulties. However, there have been no insolvencies in the Austrian insurance market in the modern era.