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## **MODELS OF ORGANISATION OF GUARANTEE FUND**

### REVIEW ARTICLE

#### **Abstract**

The concept of guarantee fund was regulated under the Law on Compulsory Traffic Insurance that came into force in 2009, with the aim of protecting passengers on public transport and third party claimants in traffic in precisely defined cases. More than seven years has passed and the guarantee fund is still not organised as envisaged, which is a topic highly debated in professional circles.

The first and shorter part of the paper deals with the models of organising the protection of third party claimants against specific risks in traffic which are regulated under the EU Directives, recognised as European standards in that field. They are compulsory in all European Union member states, but are applied in exactly the same way in all other European countries, which had also been the case in our country until 2009 when these operations were divided in two parts: one part of operations to be conducted by the guarantee fund as an independent legal entity and another part of operations to be carried out by the guarantee fund as an organisational part within the Association of Serbian Insurers. This manner of separation of operations is a significant deviation from the European standards and a decades-long national experience which, justifiably enough, arouses broad interest.

The second and longer part of the paper analyses factors which affect the choice of the guarantee fund organisation method with a special emphasis on and

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a more detailed analysis of the national practice, which should basically determine the choice of the guarantee fund organisation model in our country with entrusting the National Bank of Serbia with the monitoring and auditing activities.

**Key words:** *insurance, motor vehicles, motor third party liability, guarantee fund, organisation models.*

## **1. Introduction**

Guarantee fund was established owing to the development of compulsory insurance lines in traffic so as to ensure equal rights to all third parties who suffer a loss in a traffic accident. Originally envisaged to protect victims against uninsured and unidentified motor vehicle users, it soon started to provide coverage of liabilities of insolvent insurance companies, liabilities arising from the insurance of owners of aircrafts and vessels (boats), green card-related liabilities in a small number of countries, whilst in some countries it included coverage of some other types of losses incurred in traffic accidents (animal-drawn cart, animals and the like).

In our country, motor third party liability was first introduced under the Law on compulsory property and personal insurance in 1965.<sup>2</sup> In a specific way, without previously generating assets, protection against uninsured and unidentified transport means was successfully provided, unlike the protection against bankruptcy of insurance companies. Total protection was regulated under the Law on the basics of property and personal insurance system from 1976, later included both in the Law on the basics of property and personal insurance system from 1990,<sup>3</sup> and the Law on property and personal insurance from 1996, bearing in mind that the protection against insurer's bankruptcy could be exercised only upon completion of bankruptcy proceedings. In the same way, the protection was regulated under the Insurance Law adopted in 2004. The Law on compulsory traffic insurance from 2009 (hereinafter: ZOOS)<sup>4</sup> regulated compulsory traffic

<sup>2</sup> It was changed in 1967 due to the cancellation of compulsory insurance of socially-owned property. Consolidated text of the Law on Compulsory Traffic Insurance was published in the *Official Gazette of the SFRY*, no. 11/68.

<sup>3</sup> The right of a claimant to be reimbursed from an insurance company on which territory the loss occurred has been provided. Insurance company which paid for the loss was reimbursed from other insurers through the Association of Insurance Companies of Yugoslavia, in proportion to the share of the amount of realised premium and the number of insured transport vehicles in the total premium realised on the territory of the republic where the damage occurred.

Insurance company which settled a claim had the right of recourse against other insurers through the Association of insurance companies of Yugoslavia, in proportion to the share of amount of realised premium and number of transport means in the total premium realised in the republic wherein the insured event occurred.

<sup>4</sup> Law on Compulsory Traffic Insurance, *Official Gazette of the RS*, nos. 51/2009, 78/2011, 101/2011,

insurance, establishment of a guarantee fund as an independent legal entity, its jurisdiction, manner of funding and entrustment of public authorities to the Association of Serbian Insurers, which include operations of the guarantee fund relating to bankruptcy-related liabilities of insurance companies that terminated their business before ZOOS came into force.

The guarantee fund institute has a very long tradition in our country. Ever since the establishment of the Association of Insurance Companies of Yugoslavia in 1968, renamed in the Association of Serbian Insurers (hereinafter: the Association or UOS) in 2006, all activities of the guarantee fund have been conducted by the Association, since until the conclusion of this paper the guarantee fund has not been established as an independent legal entity (Law, 2009, Article 2 on Law amendment).

## **2. Forms of Organisation of the Guarantee Fund**

Guarantee fund is established with the aim to provide financial protection to passengers on public transport and third party claimants, for damages caused by uninsured or unidentified motor vehicles, aircrafts, boats or other means of transport as well as for damages for which an insurance company against which bankruptcy proceedings have been initiated is liable (hereinafter: company or insurer). Under the national applicable legislation, the coverage of bankruptcy is regulated in two ways, namely from the moment of completion of bankruptcy proceedings (Law, 1996, Art. 99 para 2 item 3 and Art. 106) and (Law, 2009, Art 110 para 2), and from the moment of initiation of bankruptcy proceedings (Law, 2009, Art. 76 item 3).

Models of organising the activities relating to the insurance of civil liability in respect of the use of motor vehicles conducted by the guarantee fund in the EU countries (hereinafter: EU), have been established under the five previously adopted EU Directives later replaced by a consolidated Directive which integrated solutions of the previous five (Directive, 2009, Art. 51.10 and 51.11).<sup>5</sup> First model envisages incorporation of the guarantee fund as a legal entity. The second model provides for an EU member state to authorise a body to settle damages resulting from the use of motor vehicles for which purpose the guarantee fund was envisaged under the national legislation. If a member state opts for the second model, it means it entrusts the guarantee fund activities to some other legal entity within which a separate organisational part for performance of the GF activities is established. In the majority of European countries these organisations are national associations of

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93/2012 and 7/2013 Decision of the Constitutional Court.

5 EU Directives solely refer to the insurance of civil liability due to the use of motor vehicles without insurance of passengers on public transport, owners of aircrafts and owners of vessels.

insurance companies (Association of Insurers) or national green card bureaux for MTPL insurance which also conduct other operations pursuant to the law.<sup>6</sup>

In European countries, GF was organised according to the EU Directives in one of the following ways, namely, as an independent legal entity (hereinafter: *independent GF*) or as an organisational part within the Association of Insurers, Green Card Bureau or other form of insurers' association (hereinafter: *GF within the Association*).

Except Bosnia and Herzegovina, mostly due to certain specificities conditioned by political system, in all other former Yugoslav republics the GF was organised as a form of insurers' association. In Montenegro and Slovenia it was established within the Association of Insurers, in Croatia within Croatian Insurance Bureau whereas in Macedonia it was established within the National Green Card Bureau.

As regards other surrounding countries, Hungary for example, GF was established within the Association of Insurers, whilst in Bulgaria and Romania it was established as an independent legal entity. In Bulgaria, GF was introduced in 2005 and started its operations on 1.1.2006, that is, from Bulgaria's accession to the European Union. In this country, it also conducts the operations of the Information Centre.

In the majority of other European countries, GF is incorporated within the Association of Insurers or Green Card Bureau which also carries out the activities of the Information Centre, Claims Bureau and other shared insurance operations of insurers (Austria, Germany, Great Britain etc). Germany represents a specific case since its national legislation envisages GF to be established as an independent legal entity with the authority to entrust its operations to some other legal entity qualified for the conduct of its activities, what has been actually done by entrusting GF operations to the German Association of Insurers.

Under the existing Law on Compulsory Traffic Insurance has been effective since 2009, harmonisation of MTPL insurance as well as the scope and manner of coverage of the guarantee fund liabilities is in line with the European standards prescribed under the EU Directives.

There is a great difference in respect of the manner of the GF organisation between our country and other European countries. According to the Law on Compulsory Traffic Insurance, the GF operations are divided in two parts. One part of operations is conducted by GF as an independent legal entity and another one is performed by GF as an organisational part of the Association of Serbian Insurers. This kind of organisation and separation of GF operations does not exist anywhere else in Europe. Without engaging in further analysis of the present legal solution, the very fact that this kind of organisation is not recognised in the practice of

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<sup>6</sup> Cerović M: Role and aim of the guarantee fund organisation in the surrounding countries and some EU countries, Proceedings from X Conference of the Association for Insurance Law, Serbia, Palić 2009, p 261.

European countries is enough reason to abandon it, as the analysis of the past business results and impact of a group of factors which significantly determine the model and method of organising the guarantee fund clearly show.

### **3. Factors of the Guarantee Fund Organisation**

Considering the fact that the guarantee fund institute is of compulsory character since it is prescribed by the state, that it covers precisely defined liabilities under compulsory insurance in traffic, that its assets are generated by the contributions of insurance companies through allocations from the compulsory insurance premiums collected from a large number of insureds, and that it offers protection to the significant number of third party claimants, it is necessary to make sure it operates in the most economical and efficient way. If we exclude the existing solution in our country, where legally, there are two guarantee funds, the practice of the European countries shows that the guarantee fund is organised either as an independent entity or as an organisational part within the Association of insurers or some other form of insurers' association. Which method will be considered more acceptable depends on several factors, of which, according to our opinion, the most significant are:

1. Scope and structure of operations,
2. Internal organisation,
3. Guarantee fund management,
4. Financing and
5. Monitoring and audit.

#### **3.1. Scope and Structure of Guarantee Fund Operations**

Scope and structure of the guarantee fund operations depend on the type and amount of obligations related to the payment of sum insured, that is, payment of indemnity to third party claimants on account of uninsured and unidentified motor vehicle, aircraft, vessel or other means of transport, as well as for which an owner, i.e. user has concluded contract on compulsory insurance with an insurance company against which bankruptcy proceedings have been initiated.

Due to the character of this paper, with regard to the consideration of the impact of the scope and structure of obligations on the choice of the GF organisation model, their classification per types of transport means is not relevant. It is enough to analyse aggregate data for all means of transport in accordance with the classification given below. The abbreviations have the following meanings:

NS= claim on account of uninsured means of transport,

NN = claims on account of unidentified means of transport,

ST = claims on account of bankruptcy and

U = along with stated abbreviations, it denotes the sum of indemnity claims submitted to the guarantee fund directly or via mail in regular proceedings and indemnity claims filed with the competent court.

Conduct of operations and discharge of liabilities from the guarantee fund assets is carried out by the technical service according to criteria and standards applied in compulsory insurance lines in traffic pursuant to the law. The size of operational part of the GF technical service that receives and handles claims for indemnity (hereinafter: claim, case or damage), primarily depends on the number of filed claims (hereinafter: PZ), number and amount of settled claims (hereinafter: LZ) and number and amount of outstanding claims (hereinafter: RZ), and is adjusted in time accordingly. Data analysis for the three above mentioned groups and their sum is important for the GF organisation model, which is presented in the tables and figures herein.

### **3.1.1. Indemnity Claims Filed with Guarantee Fund**

For the purpose of providing economic protection to passengers on public transport and third party claimants, in cases when damage is inflicted by the use of uninsured or unidentified means of transport, as well as for damage for which settlement an insurance company against which bankruptcy proceedings have been initiated is responsible for, GF receives indemnity claims, makes assessments thereof and effects settlement and payment of sum insured, i.e. indemnity. Claims are filed in regular proceedings in person or by mail and in judicial proceedings by bringing an action against GF. In this paper NN, NS and ST claims in regular and judicial proceedings are presented collectively.

*Table 1: Number of indemnity claims filed with the guarantee fund 1997-2015*

Year	NN			NS			ST			Total PZ	
	Number	% increase	% NN	Number	% increase	% NS	Number	% increase	% ST	Number	% increase
97	17	100,0	6,3	155	100,0	57,8	96	100,0	35,8	268	100,0
98	53	211,8	7,7	453	192,3	65,5	186	93,8	26,9	692	158,2
99	59	11,3	7,9	489	7,9	65,6	197	5,9	26,4	745	7,7
00	77	30,5	7,3	626	28,0	59,7	346	75,6	33,0	1.049	40,8
01	89	15,6	5,3	761	21,6	45,5	821	137,3	49,1	1.671	59,3

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## **M. Cerović: Models of Organisation of Guarantee Funds**

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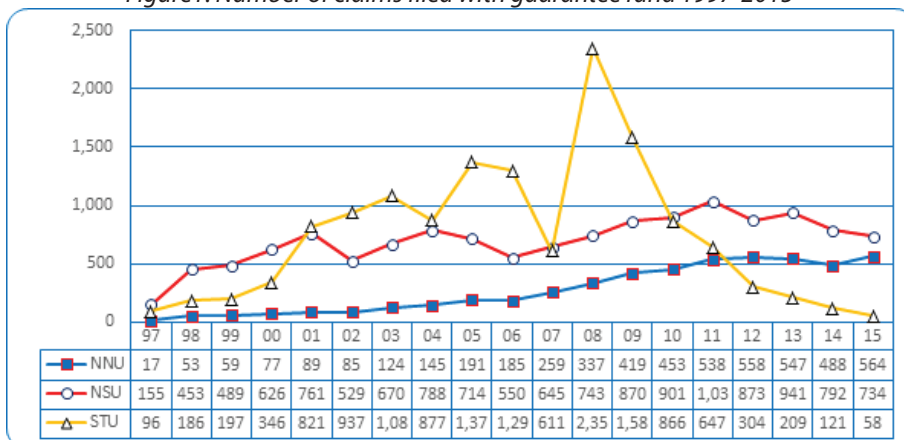
Year	NN			NS			ST			Total PZ	
	Number	% increase	% NN	Number	% increase	% NS	Number	% increase	% ST	Number	% increase
02	85	-4,5	5,5	529	-30,5	34,1	937	14,1	60,4	1.551	-7,2
03	124	45,9	6,6	670	26,7	35,7	1.085	15,8	57,7	1.879	21,1
04	145	16,9	8,0	788	17,6	43,5	877	-19,2	48,5	1.810	-3,7
05	191	31,7	8,4	714	-9,4	31,3	1.375	56,8	60,3	2.280	26,0
06	185	-3,1	9,1	550	-23,0	27,1	1.298	-5,6	63,8	2.033	-10,8
07	259	40,0	17,1	645	17,3	42,6	611	-52,9	40,3	1.515	-25,5
08	337	30,1	9,8	743	15,2	21,7	2.350	284,6	68,5	3.430	126,4
09	419	24,3	14,6	870	17,1	30,3	1.581	-32,7	55,1	2.870	-16,3
10	453	8,1	20,4	901	3,6	40,6	866	-45,2	39,0	2.220	-22,6
11	538	18,8	24,2	1.036	15,0	46,6	647	-25,3	29,1	2.221	0,0
12	558	3,7	32,2	873	-15,7	50,3	304	-53,0	17,5	1.735	-21,9
13	547	-2,0	32,2	941	7,8	55,5	209	-31,3	12,3	1.697	-2,2
14	488	-10,8	34,8	792	-15,8	56,5	121	-42,1	8,6	1.401	-17,4
15	564	15,6	41,6	734	-7,3	54,1	58	-52,1	4,3	1.356	-3,2
Total	5.188	xxx	16,0	13.270	Xxx	40,9	13.965	xxx	43,1	32.423	xxx

Source: ASI, Guarantee Fund.

Data in table 1 show that 43,1% of the total submitted claims refer to bankruptcy-related claims from GF, 40,9% refer to uninsured means of transport and 16% to unidentified users of means of transport.

Except for decrease in 2004, 2006 and 2007, the number of submitted bankruptcy-related claims rose from 96 cases in 1996 to 2.350 cases in 2008, after which a significant decline was recorded until 2015.

**Figure 1: Number of claims filed with guarantee fund 1997-2015**



Source: ASI, Guarantee Fund.

When choosing a model and method of guarantee fund organisation, it is very important to know the number of claims submitted on account of uninsured and unidentified means of transport and on account of bankruptcy of insurers. Movement of the number of filed bankruptcy-related claims shown in figure 1 indicates that it has been significantly decreasing since 2008, what has been particularly distinctive over the last few years. In a few years time, these claims will completely cease to exist, except for a small number of annuities that are still going to be paid out throughout a longer period of time, although they do not account for a major part of business activities or liabilities.

### **3.1.2. Claims Settled from Guarantee Fund**

Settled claims include cases where payment of sum insured i.e. payment of indemnity or annuity was approved and cases where indemnity was rejected due to the lack of cover or other necessary documentation for the establishment of legal grounds and amount of indemnity.



*Table 2: Number of claims settled from guarantee fund 1997-2015*

Year	NN			NS			ST			Total LZ	
	Number	% increase	% NN	Number	% increase	% NS	Number	% increase	% ST	Number	% increase
97	0	100	0,0	0	100	0,0	0	100	0,0	0	100
98	18	0,0	8,3	137	0,0	63,4	61	0,0	28,2	216	0,0
99	33	83,3	8,2	307	124,1	76,0	64	4,9	15,8	404	87,0
00	39	18,2	9,2	297	-3,3	70,4	86	34,4	20,4	422	4,5
01	63	61,5	7,9	447	50,5	56,1	287	233,7	36,0	797	88,9
02	54	-14,3	6,6	544	21,7	66,7	218	-24,0	26,7	816	2,4
03	114	111,1	8,1	688	26,5	48,9	605	177,5	43,0	1.407	72,4
04	111	-2,6	6,0	766	11,3	41,5	971	60,5	52,5	1.848	31,3
05	116	4,5	7,0	708	-7,6	42,7	833	-14,2	50,3	1.657	-10,3
06	222	91,4	8,6	814	15,0	31,4	1.557	86,9	60,0	2.593	56,5
07	176	-20,7	9,4	750	-7,9	40,0	947	-39,2	50,6	1.873	-27,8
08	275	56,3	10,5	735	-2,0	28,1	1.603	69,3	61,3	2.613	39,5
09	350	27,3	10,7	819	11,4	25,0	2.104	31,3	64,3	3.273	25,3
10	361	3,1	16,6	795	-2,9	36,5	1.025	-51,3	47,0	2.181	-33,4
11	420	16,3	20,6	854	7,4	41,9	763	-25,6	37,5	2.037	-6,6
12	661	57,4	26,8	1.014	18,7	41,1	791	3,7	32,1	2.466	21,1
13	575	-13,0	27,8	925	-8,8	44,7	568	-28,2	27,5	2.068	-16,1
14	511	-11,1	30,5	923	-0,2	55,1	241	-57,6	14,4	1.675	-19,0
15	585	14,5	38,0	808	-12,5	52,4	148	-38,6	9,6	1.541	-8,0
Total	4.684	xxx	15,7	12.331	xxx	41,3	12.872	xxx	43,1	29.887	xxx

Source: ASI, Guarantee Fund.

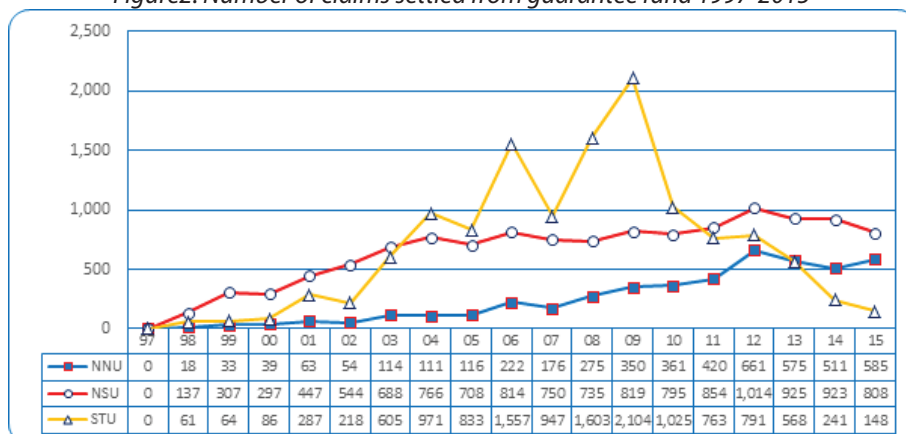
Similarly to the number of settled claims is indicated by the movement of the scope of activities observed through the number of settled claims. The biggest share in the total number of settled claims is accounted for by bankruptcy-related claims in the amount of 43,1%, followed by uninsured means of transport with 41,3% and unidentified users of transport means with 15,7%. In the last few years, in all types of claims the number of settled claims exceeded the number of submitted claims indicating that the efficiency of business performance and discharging of liabilities has been steadily increasing to which a continuous decrease of bankruptcy-related claims has particularly contributed.

It is important to point to the fact that in some years the sum of settled claims arising from uninsured and unidentified users of transport means was lower

than the number of bankruptcy-related claims, as in the period from 2004 to 2009, when as much as 2.104 claims were settled, which is much more than the sum of the claims arising from uninsured and unidentified users of transport means in any year within the observed period.

Movement of the number of settled claims shows that the scope of guarantee fund operations is decreasing and that in the following period it will decrease by around 40% compared to the total scope of operations in the observed period, as presented in figure 2.

*Figure 2: Number of claims settled from guarantee fund 1997-2015*



Source: ASI, Guarantee Fund.

Movement of the number of settled NN, NS and ST claims confirms a realistic expectation of a significant decrease in the scope of operations in the following period since only claims arising from uninsured and unidentified transport means will be handled.

Amount of settled claims of the guarantee fund in euro is shown in the mean exchange rate of the NBS as at 31.12 of each year.

*Table 3: Amount of claims settled from guarantee fund 1997-2015 in eur*

Year	NN			NS			ST			Total LZ	
	Amount	% increase	% NN	Amount	% increase	% NS	Amount	% increase	% ST	Amount	% increase
97	0	0,0	0,0	0	0,0	0,0	0	0,0	0,0	0	0,0
98	14.218	100,0	8,3	140.075	100,0	82,1	16.392	100,0	9,6	170.685	100,0
99	73.237	415,1	15,8	340.980	143,4	73,7	48.558	196,2	10,5	462.775	171,1
00	56.173	-23,3	18,5	160.939	-52,8	53,0	86.573	78,3	28,5	303.685	-34,4
01	170.745	204,0	20,7	403.209	150,5	48,8	252.110	191,2	30,5	826.064	172,0
02	172.358	0,9	12,2	786.891	95,2	55,8	451.709	79,2	32,0	1.410.957	70,8
03	407.373	136,4	17,7	1.066.211	35,5	46,4	823.619	82,3	35,9	2.297.202	62,8
04	406.183	-0,3	11,6	1.414.644	32,7	40,2	1.693.968	105,7	48,2	3.514.794	53,0
05	349.298	-14,0	6,6	1.517.249	7,3	28,6	3.441.670	103,2	64,8	5.308.218	51,0
06	594.509	70,2	7,9	1.744.798	15,0	23,1	5.199.127	51,1	69,0	7.538.434	42,0
07	604.402	1,7	9,5	1.893.333	8,5	29,7	3.883.626	-25,3	60,9	6.381.361	-15,3
08	821.983	36,0	10,6	1.691.617	-10,7	21,8	5.243.765	35,0	67,6	7.757.365	21,6
09	1.106.843	34,7	10,1	2.310.742	36,6	21,2	7.498.333	43,0	68,7	10.915.918	40,7
10	963.842	-12,9	13,4	2.199.902	-4,8	30,5	4.049.783	-46,0	56,1	7.213.526	-33,9
11	1.560.969	62,0	21,7	1.926.700	-12,4	26,8	3.701.636	-8,6	51,5	7.189.306	-0,3
12	1.086.979	-30,4	19,9	2.022.201	5,0	37,0	2.349.735	-36,5	43,0	5.458.915	-24,1
13	1.275.744	17,4	25,2	2.617.782	29,5	51,8	1.159.327	-50,7	22,9	5.052.853	-7,4
14	1.095.797	-14,1	23,8	2.375.366	-9,3	51,6	1.131.898	-2,4	24,6	4.603.061	-8,9
15	1.195.138	9,1	33,0	1.900.764	-20,0	52,5	522.043	-53,9	14,4	3.617.945	-21,4
Total	11.955.792	xxx	14,9	26.513.404	xxx	33,1	41.553.870	xxx	51,9	80.023.065	Xxx

Source: ASI, Guarantee Fund.

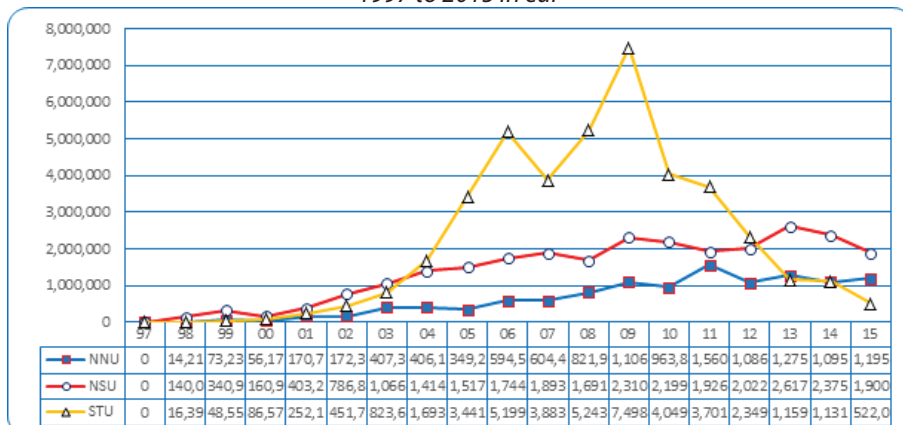
It is characteristic that as much as 51,9% of the total amount of all claims from GF is accounted for by bankruptcy-related claims, 33,1% by claims arising from uninsured transport means and 14,9% by claims arising from unidentified transport means. In the period from 2004 to 2011, the amount of settled bankruptcy-related claims exceeded the sum of claims arising from uninsured and unidentified owners of transport means. Since 2009 when on account of bankruptcy 7,5 million euros were paid, i.e. 68,7% of the total amount of settled claims, their amount was decreasing each year to amount to 0,5 million eur i.e. 14,4% in 2015. Once the remaining bankruptcy-related liabilities are paid, the amount of contributions will decrease because liabilities on account of uninsured and unidentified transport means total around 3,5 million euros per annum. From the beginning of the observed period until 2006 the share of bankruptcy-related claims in the total amount of settled

claims was increasing. In 2007 it recorded a decrease whilst in the next two years it notably increased due to the early settlement of claims through buy-outs that continued to date, but regardless of that fact the share of bankruptcy-related settled and claims and paid indemnities has recorded a steady decrease, which is expected since this kind of guarantee fund obligation is soon to be terminated.

The amount of needed contribution to the guarantee fund mostly depends on the amount of settled claims because it is determined based on the claim settlement date. Due to the fact that all existing claims refer to the bankruptcy cases from the period before 2006 after which there have not been any new cases nor are they expected in the following period, by settling the remaining claims this kind of obligation will cease to exist and burden the guarantee fund assets.

Liabilities on account of uninsured and unidentified means of transport which mostly relate to MTPL insurance of owners i.e. users of motor vehicles remain a regular activity of the guarantee fund. Liabilities on account of uninsured means of transport are twice bigger than liabilities on account of unidentified means of transport. In the following period these two kinds of liabilities, predominantly liabilities on account of uninsured means of transport will constitute an entire operation of the guarantee fund which should be taken into consideration when choosing the GF organisation model.

*Figure 3: Amount of claims settled from guarantee fund in the period from 1997 to 2015 in eur*



Source: ASI, Guarantee Fund.

Movement of bankruptcy-related claims shown in figure 3 confirms the fact that in 2015 the amount significantly decreased relative to the amounts in the period from 2003 to 2014 with the tendency of a marked continuous decrease since 2009.

**3.1.3. Outstanding Claims of Guarantee Fund**

The number of outstanding claims at the end of each year even more pronouncedly than the movement of number of submitted and settled claims indicates a downtrend, since from 2005 none of the insurance companies engaged in compulsory insurance in traffic have gone bankrupt.

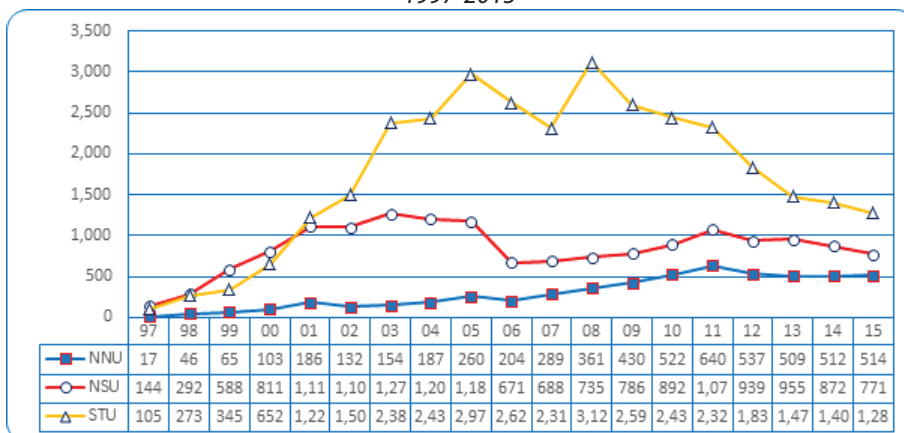
*Table 4: Number of outstanding claims to be indemnified by guarantee fund 1997-2015*

Year	NN			NS			ST			Total RZ	
	Number	% increase	% NN	Number	% increase	% NS	Number	% increase	% ST	Number	% increase
97	17	100,0	6,4	144	100,0	54,1	105	100,0	39,5	266	100,0
98	46	170,6	7,5	292	102,8	47,8	273	160,0	44,7	611	129,7
99	65	41,3	6,5	588	101,4	58,9	345	26,4	34,6	998	63,3
00	103	58,5	6,6	811	37,9	51,8	652	89,0	41,6	1.566	56,9
01	186	80,6	7,4	1.112	37,1	44,1	1.223	87,6	48,5	2.521	61,0
02	132	-29,0	4,8	1.101	-1,0	40,3	1.501	22,7	54,9	2.734	8,4
03	154	16,7	4,0	1.273	15,6	33,4	2.381	58,6	62,5	3.808	39,3
04	187	21,4	4,9	1.207	-5,2	31,5	2.432	2,1	63,6	3.826	0,5
05	260	39,0	5,9	1.181	-2,2	26,7	2.975	22,3	67,4	4.416	15,4
06	204	-21,5	5,8	671	-43,2	19,2	2.624	-11,8	75,0	3.499	-20,8
07	289	41,7	8,8	688	2,5	20,9	2.318	-11,7	70,3	3.295	-5,8
08	361	24,9	8,6	735	6,8	17,4	3.121	34,6	74,0	4.217	28,0
09	430	19,1	11,3	786	6,9	20,6	2.598	-16,8	68,1	3.814	-9,6
10	522	21,4	13,5	892	13,5	23,2	2.439	-6,1	63,3	3.853	1,0
11	640	22,6	15,9	1.074	20,4	26,6	2.323	-4,8	57,5	4.037	4,8
12	537	-16,1	16,2	939	-12,6	28,4	1.836	-21,0	55,4	3.312	-18,0
13	509	-5,2	17,3	955	1,7	32,5	1.477	-19,6	50,2	2.941	-11,2
14	512	0,6	18,4	872	-8,7	31,3	1.405	-4,9	50,4	2.789	-5,2
15	514	0,4	20,0	771	-11,6	30,0	1.283	-8,7	50,0	2.568	-7,9
Total	5.668	0,0	10,3	16.092	0,0	29,2	33.311	0,0	60,5	55.071	0,0

Source: UOS, Guarantee Fund.

Out of all types of outstanding claims to be indemnified by the guarantee fund, by far the largest number of claims 33.311 or 60,5% refer to bankruptcy-related claims, 16.092 or 29,2% refer to claims arising from uninsured means of transport whereas 5.668 claims or 10,3% refer to unidentified users thereof.

**Figure 4: Number of outstanding claims to be indemnified by guarantee fund 1997-2015**



Source: ASI, Guarantee Fund.

It is important to point to the constant downtrend of the number of outstanding bankruptcy-related claims from 2008, when 3.121 outstanding claims were recorded to 2015 when that number dropped to 1.283 claims which should be taken into consideration when deciding on the choice of guarantee fund organisation. Movement of the number of claims arising from uninsured and unidentified users of transport means which remain within the competence of GF in the following years, has become quite stable since 2006 which is also a significant factor.

**Table 5: Amount of outstanding claims to be indemnified by guarantee fund 1997-2015 in eur**

Year	NN			NS			ST			Total RZ	
	Amount	% increase	% NN	Amount	% increase	% NS	Amount	% increase	% ST	Amount	% increase
97	22.852	100	4,6	188.020	100	38,2	281.773	100	57,2	492.645	100
98	191.446	737,8	16,1	437.686	132,8	36,8	560.365	98,9	47,1	1.189.497	141,5
99	389.007	103,2	11,7	2.148.693	390,9	64,9	774.451	38,2	23,4	3.312.152	178,4
00	192.518	-50,5	9,0	1.059.624	-50,7	49,7	879.075	13,5	41,2	2.131.217	-35,7
01	388.481	101,8	8,9	1.408.142	32,9	32,1	2.590.848	194,7	59,1	4.387.470	105,9
02	854.566	120,0	10,7	2.554.896	81,4	32,1	4.561.751	76,1	57,2	7.971.213	81,7
03	750.839	-12,1	6,5	3.404.104	33,2	29,4	7.432.162	62,9	64,1	11.587.104	45,4
04	969.726	29,2	7,1	3.869.776	13,7	28,4	8.783.658	18,2	64,5	13.623.160	17,6
05	1.339.170	38,1	8,3	4.559.448	17,8	28,2	10.253.039	16,7	63,5	16.151.656	18,6

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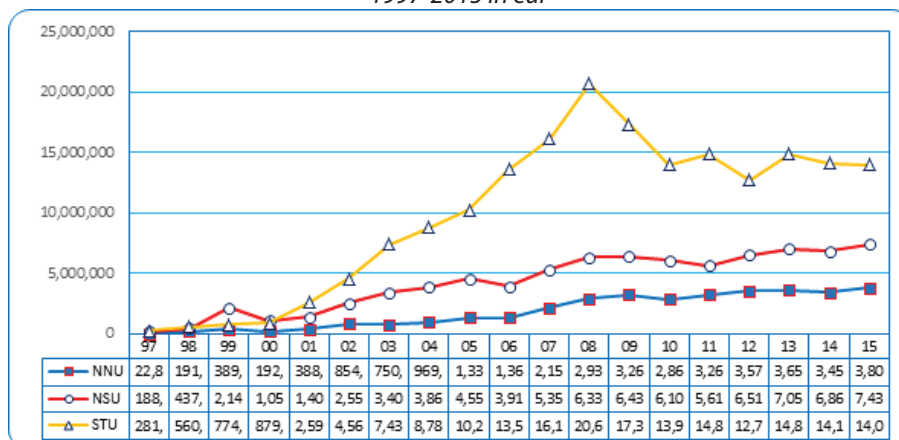
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Year	NN			NS			ST			Total RZ	
	Amount	% increase	% NN	Amount	% increase	% NS	Amount	% increase	% ST	Amount	% increase
06	1.361.975	1,7	7,2	3.916.202	-14,1	20,8	13.578.757	32,4	72,0	18.856.933	16,7
07	2.155.092	58,2	9,1	5.350.095	36,6	22,7	16.111.288	18,7	68,2	23.616.476	25,2
08	2.931.834	36,0	9,8	6.333.087	18,4	21,1	20.692.125	28,4	69,1	29.957.046	26,8
09	3.262.825	11,3	12,1	6.431.774	1,6	23,8	17.314.610	-16,3	64,1	27.009.209	-9,8
10	2.861.664	-12,3	12,5	6.104.479	-5,1	26,6	13.977.224	-19,3	60,9	22.943.368	-15,1
11	3.261.554	14,0	13,7	5.611.759	-8,1	23,6	14.891.391	6,5	62,7	23.764.704	3,6
12	3.574.791	9,6	15,7	6.518.565	16,2	28,6	12.706.435	-14,7	55,7	22.799.790	-4,1
13	3.650.433	2,1	14,3	7.059.396	8,3	27,6	14.848.225	16,9	58,1	25.558.055	12,1
14	3.456.769	-5,3	14,2	6.860.370	-2,8	28,1	14.109.686	-5,0	57,8	24.426.825	-4,4
15	3.801.709	10,0	15,1	7.430.876	8,3	29,4	14.008.673	-0,7	55,5	25.241.258	3,3

Source: ASI, Guarantee Fund.

Observed per years, the share of the bankruptcy-related outstanding claims in the total outstanding amount is slightly higher than the share in the total number of all outstanding claims. In difference from the movement of the number, the amount of outstanding claims in euros, shown in figure 4, indicates a slightly decelerated downtrend. At the same time, it should be borne in mind that the average amount of outstanding claims of 10.919 euros is significantly bigger than 3.527 eur which was the average amount of settled claims in 2015, and that it is reasonable to expect that the average amount of these outstanding claims will be probably lower once they are settled.

*Figure 5: Amount of outstanding claims to be indemnified by guarantee fund 1997-2015 in eur*



Source: ASI, Guarantee Fund.

Similarly to the number of outstanding claims is indicated by their amount at the end of each year of the observed period, but with somewhat decelerated decrease in bankruptcy-related claims and slight increase in uninsured and unidentified means of transport.

It should be pointed out that claims handling procedure starts from the rule and principle that GF liabilities have the same character and treatment as if there was an insurance concluded according to the law.

This predominantly refers to the activities such as claim receipt, assessment, determination of legal grounds and amount thereof, settlement and payment. Due to this, GF technical service is instructed to collaborate very closely with insurers' technical services, which is defined and harmonised via competent bodies ranging from the Assembly to the commissions for particular operations within the Association. Regarding GF operations, these bodies are Motor Vehicle Commission, Actuarial Operations Commission, Green Card Commission, GF Commission, IT Commission and other commissions that are formed when needed. This type of cooperation is impossible or very hard to be established by the guarantee fund as an independent entity, but if GF is established within the Association, then it is completely and automatically established without any additional costs.

Presented data on business volume per filed, settled and outstanding claims to be settled from the guarantee fund assets confirm the fact that bankruptcy-related claims accounted for the biggest share in total liabilities, and that it is reasonable to expect they will decrease and cease to exist in a few years time. It is a very significant factor that affects the selection of the guarantee fund organisation model. It is



certain that the scope of GF operations will be very quickly and significantly decreased. It will result in the decrease of contributions and the number of employees engaged in receiving and handling indemnity claims which will consequently result in decrease of other GF operations.

If GF is organised as an independent legal entity, a disproportion between a number of employees carrying out *operational activities* and a number of employees carrying out *other activities* can be expected soon. This will not happen if GF is organised as an organisational part within the Association.

### **3.1.4. Indemnity Claims in Bankruptcy Proceedings**

Similar is illustrated by the data of the Deposit Insurance Agency (hereinafter: Agency) for June 2016, on insurance companies against which bankruptcy proceedings have been initiated and which liabilities have still not become payable from the GF assets. Liabilities which after the completion of the bankruptcy proceedings will be settled from the guarantee fund for four bankrupt companies, where the hearing on the main distribution has been held (Balkan, Ekos, Sim and Strela), amount to 1.125.449.715 RSD for 4.801 acknowledged claims, whereas for the two companies for which the hearing on the main distribution has not been held (Evropa and Imperijal), they amount to 1.123.379.243 RSD for 5.480 filed claims (Agency, 2016). Regarding these liabilities, it should be borne in mind that in the period from 2008 to 2015, 4.788 claims were filed with GF within the Association, out of which 4.204 claims in the amount of 1.440.463.065 RSD (11.843.371 euros per mean exchange rate of the NBS as at 31.12.2015) were bought-out or paid according to the Decision on the main distribution, which means that future bankruptcy-related liabilities of these companies are proportionally lower.

All types of presented data of GF within the Association (Law, 1996, Article 143)<sup>7</sup> from 1997 to 2015, indicate that the main problem and the biggest scope of activities referred to bankruptcy-related liabilities of insurance companies, that were significantly bigger than the liabilities arising from uninsured or unidentified users of transport means together.

There were no indemnity claims arising from the use of aircrafts in the observed period, whereas as regards the use of vessels the coverage became effective in 2009 when first claims were submitted. Very small number of claims related to insurance of passengers on public transport. Like in all other European countries, the biggest scope of GF activities relates to MTPL insurance.

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<sup>7</sup> When Insurance Act came into force (Official Gazette of the RS, no. 55/2004 and 70/2004) Law on compulsory property and personal insurance ceased to be effective (Official Gazette of the FR Y, no 30/96, 57/98, 53/99, 55/99), except for provisions on compulsory insurance (Art. 73-108, Art. 111 and 112) and provisions on entrusting public powers (Art 143-146) that had been valid before coming into force of the Law on compulsory insurance in traffic, *Official Gazette of RS*, no. 51/2009, 78/2011, 101/2011, 93/2012 and 7/2013 Decision of the Constitutional Court.

It should be noted that the existing separation of GF operations into two legal entities resulted in unequal treatment of claimants who filed bankruptcy-related claims before the Law on compulsory insurance in traffic became effective. These claimants could not exercise their right even after ten years of waiting, unlike the claimants who filed these claims after the mentioned Law was adopted, who were able to exercise their right immediately upon initiation of bankruptcy proceedings.

### ***3.1.5. Structure of Claims for Indemnity from Guarantee Fund***

As regards the guarantee fund operations, it is very important to analyse the structure of indemnity claims and expectations for the following period. Regardless of the fact that differences among countries are great, it must be borne in mind that the uninsured owners of transport means, and before all, uninsured owners of motor vehicles, pose a big problem to the insurers and account for the biggest part of operations of the guarantee funds in all European countries. In certain countries, number of uninsured users of motor vehicles exceeds 30% of the registered motor vehicles.<sup>8</sup> It should be mentioned that in many European countries the number of uninsured motor vehicles is bigger or close to the number of registered vehicles in our country, such in Bulgaria, Italy, Ukraine, Great Britain etc. Despite taking a number of measures, in a majority of European countries problems related to uninsured users of motor vehicles are still present, whilst in certain countries they are very noticeable. They mostly burden guarantee funds of the European countries and affect the models of their organisation, management, funding, audit and monitoring accordingly. The best situation is in countries with around one to two percent of uninsured motor vehicles. Serbia belongs to this group of countries for a longer period of time with the share of around 1,5% of uninsured motor vehicles, which is, except Slovenia, the best result in the region.<sup>9</sup>

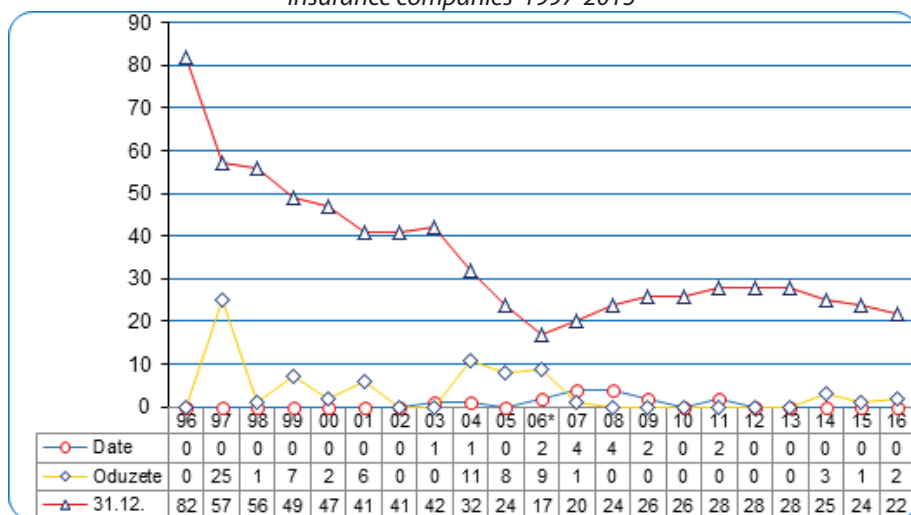
Ever since the introduction of compulsory insurance in traffic in 1965, until 1996 in our country and all other Yugoslav republics there were no problems with the coverage of the guarantee fund liabilities whose function except for a short period from 1965 to 1968, was performed by the Association. Problems appeared in our country in early 90s of the last century, not because of the uninsured and unidentified users of transport means but because of the situation in the MTPL insurance market and a large number of bankruptcy proceedings instituted against insurance companies, such an event being unprecedented in European countries by then.

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<sup>8</sup> As regards countries that originated from former Yugoslavia, the number of uninsured motor vehicles is as follows: around 1% in Slovenia, 30% in Macedonia, 20% in Bosnia and Herzegovina, 5% in Montenegro and 3% in Croatia, which is considerably lower than 11% that was recorded in 2007..

<sup>9</sup> For a country to become a member of the registration number subsystem in the green card system, it must not have more than 2% of uninsured users of motor vehicles, which is what made possible for Serbia to become a member in 2010.

Figure 6: Overview of the number of granted and revoked operating licences of insurance companies 1997-2015



Source: Federal Ministry of Finance and the National Bank of Serbia.

Based on the data of the Federal Ministry of Finance (hereinafter: SMF) and the National Bank of Serbia (hereinafter: NBS), in the period from 1996 to 2007, 66 insurance companies in Serbia were revoked their operating licences and against the majority of them bankruptcy proceedings were initiated. The biggest number of companies carried on only MTPL insurance activities, and upon completion of the bankruptcy proceedings their outstanding liabilities arising from insurance of passengers on public transport and MTPL were transferred to the guarantee fund.

From 82 insurance companies in 1996, their number went down to 24 in 2015. Bankruptcy-related liabilities mostly burdened the guarantee fund within the Association, but despite numerous challenges they were successfully discharged. Now, their end is approaching, what will create more favourable circumstances for the guarantee fund. It is certain that the previous period cannot be repeated, that the bankruptcy of an insurer is highly unlikely as well as that the guarantee fund will focus in the following period on discharging liabilities on account of uninsured and unidentified users of transport means the scope of which is considerably lower than the scope of liabilities in the observed period which comprised a large number of bankruptcy-related claims. It should be borne in mind that after 2007 four insurance companies carrying on compulsory insurance in traffic terminated their operations (Top gan, Prizma, Takovo and AS), and that their liabilities were not transferred to the guarantee fund.

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Age structure of pending claims according to the year of their submission and expectations regarding the settlement and payment thereof also affect the GF organisation model. Table 6 shows the number and amount of outstanding claims to be settled from the guarantee fund in euro according to the mean exchange rate of the NBS as of 31.12.2015 in aggregate for claims in regular and judicial proceedings as well as for other claims.

*Table 6: Outstanding claims to be indemnified by the guarantee fund  
per year of their submission  
Amounts in euros as of 31.12.2015*

Year	NN		NS		ST		Other claims		Total	
	N°	Amount	N°	Amount	N°	Amount	N°	Amount	N°	Amount
97	0	0	0	0	3	7.400	0	0	3	7.400
98	0	0	7	2.467	9	12.744	0	0	16	15.211
99	2	0	11	22.480	13	47.276	0	0	26	69.756
00	2	4.933	11	68.900	55	407.763	1	0	69	481.596
01	0	0	24	173.962	91	473.551	0	0	115	647.513
02	5	31.061	37	244.800	132	1.030.541	0	0	174	1.306.402
03	4	4.111	17	165.807	109	1.030.620	3	822	133	1.201.361
04	4	39.465	23	115.753	78	603.175	1	2.467	106	760.859
05	6	60.020	28	213.799	155	1.073.897	3	0	192	1.347.717
06	5	86.315	24	366.675	112	619.384	8	0	149	1.072.374
07	8	87.152	27	247.054	105	884.142	2	0	142	1.218.349
08	15	185.613	26	441.623	146	1.475.231	3	0	190	2.102.468
09	15	134.645	28	288.697	118	1.589.824	1	0	162	2.013.166
10	7	44.974	34	436.647	66	849.231	0	0	107	1.330.852
11	26	269.051	40	339.129	39	542.564	1	0	106	1.150.744
12	36	387.084	59	523.036	38	449.081	0	0	133	1.359.201
13	74	610.702	99	684.453	33	427.489	1	0	207	1.722.644
14	95	358.558	100	601.951	15	56.032	3	31.243	213	1.047.785
15	221	886.734	253	1.314.875	20	162.528	5	9.455	499	2.373.592
Total	525	3.190.418	848	6.252.108	1.337	11.742.475	32	43.987	2.742	21.228.988

Source: ASI, Guarantee Fund.

These data point to the conclusion that there are a lot of claims registered in the books of the GF but still not handled due to the lack of certain documents

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or failure to reinstitute judicial proceedings, regardless of the fact they were submitted ten or more years ago. This implies that in many cases general limitation period is approaching, which means it is very likely that a significant part of these liabilities will not have to be discharged from the guarantee fund assets.

Similar to the age structure per years of claims submission is illustrated in the breakdown of the claims per insurance companies that terminated their business and in respect of which bankruptcy proceedings are completed or are still pending. The amount of provisions in table 7 is established in the same manner as in conversion of dinar amounts into euro shown in table 6.

*Table 7: Breakdown of outstanding claims to be indemnified by the guarantee fund per insurance companies in euro as of 31.12.2015*

N°	Insurance company	Regular		Before court		Total	
		Number	Amount	Number	Amount	Number	Amount
1	Agroosiguranje	0	0	1	0	1	0
2	Auto Nena	0	0	1	0	1	0
3	Balkan	0	0	8	91.674	8	91.674
4	Dinara	0	0	11	115.107	11	115.107
5	Drini	0	0	1	0	1	0
6	Ekos	4	19.733	158	1.626.460	162	1.646.193
7	Evropa	4	1.932	29	266.144	33	268.076
8	Imperijal	11	103.906	197	1.718.381	208	1.822.287
9	Jug legrap	0	0	2	12.333	2	12.333
10	Kosmet	0	0	7	108.163	7	108.163
11	Krajina	0	0	24	142.239	24	142.239
12	MBO	0	0	1	0	1	0
13	Metalkop	0	0	12	127.472	12	127.472
14	Mond	0	0	15	39.876	15	39.876
15	NIOS	1	6.938	23	181.584	24	188.522
16	Omega	0	0	33	197.630	33	197.630
17	Omnia	2	7.083	32	205.605	34	212.688
18	Oplenac	0	0	23	167.930	23	167.930
19	Osiguranje plus	0	0	2	0	2	0
20	Panonija	0	0	14	177.530	14	177.530
21	Peštermont	0	0	2	0	2	0
22	Plava tačka	0	0	30	42.836	30	42.836
23	Prizma	0	0	5	4.111	5	4.111

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N°	Insurance company	Regular		Before court		Total	
		Number	Amount	Number	Amount	Number	Amount
24	Sandžak broker	0	0	5	45.221	5	45.221
25	Sava	0	0	9	150.403	9	150.403
26	Sim	7	150.050	172	2.475.115	179	2.625.165
27	Sombor	0	0	1	30.224	1	30.224
28	Srbos	5	88.886	109	763.580	114	852.465
29	Stari grad	3	40.028	236	1.965.957	239	2.005.985
30	Strela	2	6.413	67	334.961	69	341.374
31	Šumadija	0	0	26	243.406	26	243.406
32	Talija	0	0	7	16.444	7	16.444
33	Takovo	2	0	0	0	2	0
34	Timok	0	0	10	43.689	10	43.689
35	Top gan	0	0	14	0	14	0
36	Vitas metalkop	0	0	1	16.444	1	16.444
37	Winer broker	0	0	2	2.467	2	2.467
38	Other companies	0	0	6	4.522	6	4.522
	<b>Total</b>	<b>41</b>	<b>424.968</b>	<b>1.296</b>	<b>11.317.507</b>	<b>1.337</b>	<b>11.742.475</b>

Source: ASI, Guarantee Fund.

Apart from six insurance companies against which bankruptcy proceedings have already been instituted (Balkan, Ekos, Evropa, Imperijal, Sim and Strela), bankruptcy proceedings are completed for all other of the insurance companies. There are no obstacles for settlement and payment of their remaining liabilities from the guarantee fund assets provided that necessary documentation for establishing legal grounds and amount of indemnity is submitted. As regards claims in judicial proceedings, if the judicial proceedings were stayed, their reinitiation is necessary. It should be pointed out that settlement of these liabilities does not depend on the technical service of the guarantee fund but on claimant's further actions. It is important to have in mind that there are many cases in respect of which claims for indemnity have been withdrawn for various reasons (ungrounded claims, death of a claimant etc), and that in particular cases, in time, such right will become time-barred and thus certain claims will be removed from the GF books.

Presented movement and a realistic expectation of a decrease of the number and amount of bankruptcy-related claims in the following period will necessitate a decrease of the number of employees who carry out activities of claims receiving and handling, i.e. operational activities, since only claims arising

from uninsured and unidentified users of transport means will be handled. In case of establishing GF as an independent legal entity, in a few years time the number of employees carrying out administrative, technical and general i.e. *other affairs* will be significantly higher than the number of employees carrying out operational activities which is, economically speaking, very costly and unjustified.

Good long-term national and foreign experience confirms that the operational costs of GF within the Association are notably lower, which points to the conclusion that such a solution is not just more economical, efficient and more advantageous to insurance companies, insureds and third party claimants as insurance beneficiaries, but in the interest of wider community as well.

### **3.2. Internal Organisation of the Guarantee Fund**

Organisation of the guarantee fund primarily depends on the volume of activities measured by the number of claims for indemnity and amount of liabilities settled from the GF assets.

As an independent legal entity, guarantee fund includes all functions through which goals and liabilities for which it was originally established are fulfilled. It means that internal organisational structure requires engagement of various types of employee profiles, in some cases regardless of the volume of activities. For successful discharge of liabilities per submitted claims for indemnity, internal organisational structure includes the claims receipt and handling function for the purpose of establishing legal grounds and amount of indemnity (hereinafter: *operational activities*) and functioning of the administrative, financial, technical and general affairs departments, IT maintenance and providing conditions for external audit and monitoring (hereinafter: *other activities*).

Internally, guarantee fund is organised into sectors, departments or services carrying out *operational activities*, and the number of employees therein depends on the amount of activities i.e. number and type of submitted claims. In time, it adjusts accordingly, whilst basically it remains the same regardless of whether GF acts as independent entity or as a part of the Association. It is the same case with persons engaged for the position of a medical examiner, actuary or some other positions depending on the specificity and type of claims. Costs of *operational activities* are variable and depend on the scope and type of performed operations. As regards *other activities of the GF* and related costs, the situation is completely different.

As an independent legal entity, apart from the above mentioned organisational *operational part* and the number of employees therein, the guarantee fund must have employees who perform executive, administrative, legal, general, financial, technical and IT maintenance functions, that is, must have one or more organisational parts that will carry out *other activities*. In best case, around

10 persons should be engaged for these activities (GF director, 1 lawyer for legal, administrative and general affairs, 1 accountant, 1 cashier, 1 technical secretary, 1 hygienist, 1 person for serving beverages, 1 courier, 1 archivist, 1 person for IT maintenance). Operating costs with respect to *other activities* are predominantly fixed, do not or very little depend on the scope of operational activities, amount of contributions and other elements regarding the operations of the guarantee fund.

If GF is established as an organisational part within the Association, all above mentioned *other activities* are performed by persons who work or will work in the Association. In case GF is within the Association, they will also be assigned activities that are, within their scope of competence, related to GF. In addition, it should be taken into account that there will be no need for separate business premises and maintenance thereof, which implies that GF operating costs would be significantly lower. Joint costs of the Association are distributed among organisational parts (Green Card, Information Center, Occurrence Register, GF, Claims Bureau, and other activities of the Association). Apart from GF, almost all other activities conducted by the Association relate to MTPL insurance. It should be taken into account that over 98% of all GF activities relate to MTPL. Joint costs are distributed among organisational parts of the Association per certain keys, but it is almost irrelevant how accurate these keys are since more than 98% of all operating costs of the Association are covered from the MTPL insurance premium. Because of this, the most important thing is to cover actual costs and ban unauthorised use of these assets, which should be the subject of internal monitoring, external audit, but before all, all-encompassing, thorough and professional monitoring and audit of the National Bank of Serbia, what will be mentioned at a later point in the text.

The guarantee fund organisation model should enable efficient and economical operation which is not achieved by separating operations into guarantee fund as an independent legal entity and guarantee fund within the Association, namely, by merely separating bankruptcy-related indemnity claims as regulated under the current legislation.<sup>10</sup>

By connecting the analysed scope of activities and internal organisation, it is well grounded and justified to retain the present organisation model of the Guarantee Fund within the Association, because in that way more efficient and economical operation is being provided. This statement is also confirmed by the fact that the author of this paper could not find even one paper propagating the organisation of the Guarantee Fund as an independent legal entity, unlike all other papers arguing for the organisation of the GF within the Association.

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<sup>10</sup> Slavnić J: Flaws in the method of organisation of the guarantee fund and prescribed monitoring measures in the new Law on Compulsory Traffic Insurance, Insurance Law Review, no. 3/2010 p. 12.



### **3.3. Guarantee Fund Management**

Management of an independent guarantee fund requires an executive body and assembly or managing board, which is envisaged under the present legislation (Act, 2009 Art. 81) but contrary to the practice of the most European countries. In European countries, the guarantee fund is managed by insurance companies and in most cases each company has one voting right, plus the number of votes depending on the amount of contributions that are paid to the GF. The insurance companies are denied such right under the present legislation (Act, 2009, Art 86 para 1), so in terms of management the GF has become something like parastate institution which is totally contrary to European standards. Without going any further into this issue we will point to the economic aspect of differences in management of GF as an independent legal entity and GF as an organisational part within the Association.

*Independent GF* has a director and a collective managing body (assembly or managing board) which should be composed of, based on the experience of European countries, at least one representative of each insurance company engaged in compulsory insurance in traffic, with one voting right, plus a number of votes obtained depending on the amount of contributions payable to the GF. In some countries, GF's collective managing body has a representative of certain ministries with the voting right like in France, or without the voting right like in Greece. In any case, the GF must have a collective body of 5, 7 or more members, if it is composed of representatives of all insurers that carry on compulsory insurance in traffic. Costs related to the managing function (a director and a collective body) are fixed and fully chargeable to the GF.

If GF is *within the Association*, these costs are incomparably lower since the Association already has, and regardless of whether the GF is its part or not, and will have a general secretary, assembly, managing board, supervisory board and commissions for particular types of activities, thus encompassing all GF operations as well. Only a part of the managing costs will be borne by the GF, depending on the key per which they are allocated. Besides, it should be added that in this case management is more comprehensive because almost all insurance companies are in more ways included as the Association members and if needed, it is very easy to make certain adjustments.

### **3.4. Guarantee Fund Financing**

Guarantee fund financing is based on the assets paid by insurance companies as contributions from the compulsory traffic insurance premium and other proceeds according to the law.

In case of incorporation of *an independent GF*, it is necessary to provide initial assets for business premises, equipment and initial operations which necessitates employment of budgetary funds as defined under the existing legislation (Act 2009, Art. 73 para. 4 and Art. 75 para 1. item 2).

If *GF is established as an organisational part within the Association*, no initial assets are required nor is there a need to employ budgetary funds.

The amount of needed contribution depends on the maturity of liabilities per indemnity claims and the amount of costs related to the guarantee fund operations. Under the existing legislation, costs of operations of the GF within the Association are covered through a part of special contribution paid by insurance companies to the Association for carrying out entrusted operations. Regardless of that circumstance and the manner of coverage of costs related to GF operations in the future, it is very important for the GF organisation model to be as economical as possible.

According to regulations on compulsory insurance in traffic, until the date of entry into force of the Law from 1996 (Art. 102) and after entry into force of the Law on compulsory traffic insurance (Art. 87) the overs, i.e. the shorts of proceeds over expenditures of the guarantee fund are transferred to the next year and are factored in when establishing the required amount of contribution for the following period, depending on the maturity of liabilities. This solution has become universal and it should be retained since it is based on good national experience and experience of the European countries.

### **3.5. Guarantee Fund Monitoring and Audit**

Monitoring of the guarantee fund operations requires a very professional and responsible approach as it concerns the protection of interest of a large number of insureds under compulsory liability insurance in traffic and a large number of third party claimants whose protection is ensured through the GF. It is realistic to expect that number to constantly increase in the following period.

Beside internal and external audit, it is very important that monitoring and audit of the GF operations and other activities that the Association carries out pursuant to the law is entrusted to the National Bank of Serbia, along with

curing certain deficiencies.<sup>11</sup>All those activities are funded through compulsory insurance in traffic and comprise a significant portion of insurance industry as a whole, the monitoring and audit of which is performed by the NBS. It should be also borne in mind that the NBS, in difference from any other body, is the only one qualified for this in terms of organisation, personnel and expertise. Because of this, it should be legally regulated that the Association conducts the GF operations and other activities relating to compulsory insurance in traffic, but not in the legal form of public authorities. Such a solution is not recognised in comparative law nor is it applied by other European countries, all of which entrusted certain activities related to compulsory insurance in traffic to the Association or some other form of association of insurance companies. In case of the guarantee fund operations it was done by Austria, Montenegro, Croatia, Hungary, Macedonia, Germany, Slovenia, Great Britain and the like, which was also regulated in our country from 1968 to date.

Monitoring and auditing of the Association's operations should be performed by the National Bank of Serbia. There are several reasons for that, but we will point out only three. First, because it is the case of compulsory insurance prescribed by the state the monitoring of which is regulated in more detail than other insurance lines. Second, in terms of scope of business this insurance segment includes over 1/3 of total premium of all non-life insurance lines, and according to some other business elements more than 50%. Third, the last 5-6 years showed that the former monitoring of the operations of the GF within the Association has not been on the needed level which resulted in certain irregularities, before all in unauthorised use of contributions and other assets, which are before all, the consequence of subjective factors and inappropriate monitoring. If the NBS had the right to monitor, these omissions and irregularities would not happen or would be quickly removed. It should be also noted that other activities of the Association too constitute a considerable part of activities related to compulsory insurance in traffic which have greater social, and in some segments international, importance.

#### **4. Conclusion**

Organisation model of the guarantee fund primarily depends on the scope of activities and operational costs related to discharging liabilities payable from the guarantee fund assets as well as on some other factors.

The analysed results of the guarantee fund operations in our country, shown in this paper, confirm the fact that the scope of bankruptcy-related operations is constantly decreasing, that soon they will no longer exist, except for annuities and

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<sup>11</sup> Slavnić J: Mentioned article, pages 13 and 14.

recourses the volume of which is also decreasing. In a few years time, only liabilities arising from the uninsured and unidentified transport means will remain. It will lead to the decrease in the number of employees in the operational part of the GF internal organisation, engaged in receiving and handling claims for indemnity, which will affect the decrease in the number of employees performing other duties and the decrease in the operational costs of the GF and eventually, the decrease in the amount of required contribution to the guarantee fund.

If the guarantee fund is organised as an independent legal entity, the disproportion between the number of employees in the operational part and the number of employees engaged in other activities should be expected, which increases the operational costs of the guarantee fund, and consequently the amount of contribution compared to contribution that would be taken for the coverage of liabilities per claims and operational costs of the guarantee fund within the Association.

We support the opinion that good traditions should be preserved and that the model of organising the guarantee fund within the Association in our country should be kept. We are of the opinion that such a solution is in every way more economical, cost-effective, productive and efficient, that it is in the interest of a large number of insureds, third party claimants, other insurance beneficiaries and insurance companies conducting compulsory insurance in traffic, and in any case, in the interest of a wider community.

It is very important to bear in mind the fact that the guarantee fund within the Association has been functioning for nearly 50 years, that it is organised in the same way, except Bosnia and Herzegovina, in countries formed from the former Yugoslav republics, and the fact that it is organised in the same or similar way in most of the other European countries.

As regards the monitoring and audit of the guarantee fund operations and other activities of the Association of Serbian Insurers, they must be carried out by the National Bank of Serbia, since they comprise a significant part of operations related to compulsory insurances in traffic that is regulated under the law more closely than the other insurance lines.

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