

AIDA BUDAPEST COLLOQUIUM

Insolvency of Insurance – Insurance of insolvencies

The Policyholders Guarantee Fund – Romania

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1. Legal framework

- Law no. 213/2015 on Policyholders Guarantee Fund
- F.S.A. Norm no. 16/2015 on Policyholders Guarantee Fund
- Law no. 503/2004 on financial recovery, bankruptcy, dissolution and voluntary liquidation in insurance activity, republished, with subsequent amendments
- Law no. 85/2014 on insolvency prevention procedures and insolvency
- Law no. 136/1995 on insurance and reinsurance business in Romania, with subsequent amendments
- Civil Code (Law no. 287/2009, republished)

The Policyholders Guarantee Fund (PGF), as insurance guarantee scheme aims to protect the insurance creditors against the consequences of insolvency of an insurer in winding-up proceedings.

The main destination of the amounts available for PGF is the payment to the insurance creditors of the indemnities/compensations resulting from the voluntary and compulsory insurance contracts concluded according to the law and of the premiums due by the insurer for the period in which the risk was not covered by it, as a result of the termination of the insurance contracts, complying with the guarantee threshold provided by the law (450,000 lei/ insurance creditor).

2. The closing of the financial recovery procedure by special administration

Through motivated decision (the decision for closing of the financial recovery procedure) the Financial Supervisory Authority orders, on the basis of art. 20 letter b). second thesis, corroborated with art. 21 paragraph 1 letter b). and paragraph 2 of Law no. 503/2004:

- the closing of the financial recovery procedure through special administration (in the case where the measures applied during the financial recovery procedure did not lead, for the period of time they were applied, to the fulfillment of the envisioned purpose and the removal of the causes that generated the need for recovery measures);
- revoking and termination of attributions of the special administrator;
- withdrawal of the functioning authorization of the insurance company;
- ascertainment of the insolvency of the insurance company (as defined by art. 3 letter j) of Law no. 503/2004 and by art. 5 point 31 of Law no. 85/2014);
- promotion by the A.S.F of the request for opening the bankruptcy proceedings.

The decision for closing the financial recovery procedure shall be published in the Official Journal of Romania, Part I, as well as in two national newspapers.

3. Ways of challenging the decision for closing the financial recover procedure

The decision for closing the financial recovery is enforceable. The insurance company may contest this decision at the Fiscal and Administrative Contentious Section within the Court of Appeal Bucharest, under the sanction of forfeiture of the right to challenge said decision. The challenge against the decision for closing the financial recovery does not suspend the execution of the decision. The decision of the Court regarding the challenge against the decision for closing the financial recovery procedure may be challenged with recourse (legal basis: art. 21 paragraph 3 corroborated with art. 19 of Law no. 503/2004).

Consequences: F.S.A. informs the competent authorities from other member states regarding the withdrawal of the functioning authorization of an insurer that carries out insurance business on their respective territories (legal basis: art. 14 para. 2 of Law no. 32/2000).

4. Promotion by F.S.A. of the request for opening the bankruptcy procedure against the debtor insurance company

- Following the publishing of the decision for closing the financial recovery and ascertainment of insolvency, F.S.A. lodges a request for opening the bankruptcy proceedings against the debtor insurance company, pursuant of art. 249 para. 1 of Law no. 85/2014.
- On the date of publishing of the decision for closing the financial recovery procedure – the right of insurance creditors for requesting the due payments from the Fund is born (art. 22 corroborated with art. 49 para. 1 of Law no. 503/2004).
- Within 30 days from the date of publishing of the decision for closing the financial recovery procedure, the insurance company is obliged to hand over to the Fund (art. 23 para. 1 of Law no. 503/2004) the evidence of insurance contracts in force and claims files at the moment of closing the financial recovery procedure.
- The responsibility for the failure to meet or for the inappropriate fulfillment of this obligation shall lie with the insurance undertaking's significant persons (failure to fulfill the obligation is sanctioned pursuant to art. 80 of Law no. 503/2004).
- Within 30 days from the date the decision for closing the financial recovery procedure was published, the Fund appoints a special commission, comprising experts of the same Fund, for the purpose of approving amounts requested for payment from its available assets by insurance creditors (art. 23 of Law no. 503/2004).
- Following the expiration of the 30-days the PGF, shall publish the list of potential insurance creditors, beneficiaries of the amounts due from the Fund. (art. 23 of Law no. 503/2004).

5. The main measures taken by the Court

- After the lodging of the request for opening the bankruptcy proceedings, the Court of law shall summon the insurance company and F.S.A., and shall notify the Policyholders Guarantee Fund, pursuant to art. 250 para. 1 of Law no. 85/2014.
- The insurance company may contest the request for opening the bankruptcy proceedings against it within 5 days from the day it received the notification regarding the register of such a request with the Court. The challenge shall be ruled on with expediency and can only be challenged with appeal.
- If the insurance company does not lodge a contest against the F.S.A. request for opening the bankruptcy proceedings, at the first hearing, the syndic-judge shall analyze the request and the attached documents and shall pronounce a **decision for opening the bankruptcy proceedings** (art. 250 para. 3 of Law no. 85/2014).
- The judicial liquidator appointed through the decision for opening the bankruptcy proceedings shall notify the commencement of the procedure to both F.S.A. and the Guarantee Fund (art. 252 para 1 thesis I of Law no. 85/2014).
- The Policyholders Guarantee Fund shall publish, in at least 2 national newspapers, the fact that the Court of law ordered the opening of the bankruptcy proceedings against the insurance company (art. 34 alin. 1 second thesis of Law no. 503/2004).
- F.S.A. informs the supervisory authority from the home-state of the branch on the bankruptcy measure (art. 252 para. 2 of Law no. 85/2014).

6. Main effects of the pronouncement of the Court decision for opening the bankruptcy proceedings

- Nomination of the judicial liquidator – the syndic-judge shall nominate the interim judicial liquidator proposed by the creditor who requested the opening of the bankruptcy proceedings – the nomination shall be done within the decision for opening the bankruptcy proceedings.
- The syndic-judge shall confirm the judicial liquidator elected by the creditors committee or by the creditor who holds more than 50% of the value of claims, as well as the negotiated fee.
- Suspension of enforcements against the debtor.
- Suspension of the statute of limitation for the material right of action against the debtor.
- Suspension of flow of any interests, increases or penalties of any kind.
- Removal of the administrative right of the debtor.
- In the term set by the syndic-judge (maximum 40 days from the date of its nomination, which can be extended with another 40 days), the judicial liquidator shall draft the report providing the causes and circumstances which lead to the insolvency state of the debtor, also indicating the persons liable for the situation.
- After the decision for opening the bankruptcy proceedings remains final and binding, the Policyholders Guarantee Fund is entitled to effect payments from its available assets to insurance creditors (art. 266 para. 2 of Law no. 85/2014).

7. Defining the quality of insurance creditor

The insurance creditors, as defined by law, are the following, as appropriate:

- (a) policyholder – means any natural or legal person having legal relationships with the debtor insurer through the conclusion of the insurance contract;
- (b) insurance beneficiary – means any third party to whom, under the law or the insurance contract, the debtor insurer shall pay the amounts due as result of the occurrence of the insured risk;
- (c) injured party (in the case of the insurance against civil liability) – means any person entitled to compensation in respect of any injury caused as a result of the occurrence of a risk covered by a contract of civil-liability insurance.

The insurance creditors may request payments, according to the Law no. 213/2015, such as:

- the amounts due to the insurance creditors to be paid by PGF for the unexpired period of the contract in the event of termination of the insurance contract,
- the compensations/indemnities due to insurance creditors resulting from voluntary and compulsory insurance contracts concluded with ASTRA. In the event of damages occurred prior to the F.S.A. decision and for which it was opened a claim file to the insurer, but also in the situation of the occurrence in the future of insured risks within the validity period of the insurance contract, the insureds/insurance beneficiaries/injured persons may contact PGF.
- Note that the consumers who have concluded insurance contracts through foreign branches of ASTRA (Germany, Slovakia, Hungary), regardless of residence or nationality, are entitled to file a claim to PGF.

8. Submission of payment requests for obtaining indemnities/compensation from the Fund

- The payment request may be submitted starting from the publication date of the Financial Supervisory Authority's decision to close the financial recovery procedure and within maximum 90 days from the date the decision to initiate the bankruptcy proceedings becomes final. For insurance claims arising after the date when court decision to initiate the bankruptcy proceedings becomes final, the payment request may be submitted within maximum 90 days from the date when the receivable right of the insurance creditor arises.
- In order to collect indemnities/compensation from the Fund, any person who invokes an insurance claim right against the insurer must fill in a documented payment request, in compliance with the standardized form provided by Norm no. 16/2015.
- FGA pays the insurance claims established to be certain, liquid and eligible, within the guarantee threshold, in Romanian currency (leu). In case of the foreign currency claims, the bank commissions are beard by the insurance creditor. The payments are made through regular mail and/ or through a bank authorized by NBR.
- The documents submitted to PGF shall be drafted in Romanian or as certified translations of the documents drafted in another language than Romanian, if the case may be.

9. Aspects regarding the claims that exceed the guarantee threshold provided by law

- The insurance creditor may separately follow the bankruptcy proceedings of the insurer provided by Law No. 85/2014 to recover its claim from the bankrupt insurer's assets, including the amount owed which exceeds the coverage level provided by law, through registering the claim in the statement of affairs of the bankrupt insurer.
- If the claimant followed the bankruptcy proceedings of the insurer prior to the request addressed to the Fund, within the payment request the claimant must provide the amount requested in the statement of affairs of the bankrupt insurer. If, at the moment of submission of the payment request to the Fund, the claimant was distributed an amount during the bankruptcy proceedings, the claimant must provide in the payment request the amount collected. If, after the submission of the payment request to the Fund, the claimant registers in the statement of affairs of the bankrupt insurer, the claimant shall notify the Fund regarding this aspect.

10. The procedure for opening claim files by the Guarantee Fund

- Any person claiming any right of claim against the insurer as a result of the occurrence of the risks covered by a valid insurance policy, between the date of the financial recovery procedure and the termination of insurance contracts, but not later than 90 days from the date of the decision to initiate bankruptcy proceedings, may request the opening of the loss file by a request addressed to the Fund.
- This request is done by completing and signing the Request for opening a claim file provided by Norm no. 16/2015 on Policyholders Guarantee Fund and submission of the request to the Fund. The request shall be submitted directly at the Fund's office or by post, by registered letter with acknowledgement of receipt, electronic mail or other means ensuring transmission of the text of the document and acknowledgment of receipt.
- The establishment of compensation shall be done by the PGF, on the basis of documents existing in the claim file and pursuant to legal provisions and insurance conditions.
- If, from analyzing the claim file, result the need for completing the file with additional documents, the PGF shall transmit to the claimant a written request.
- Following the endorsement of the claim file by the specialized offices of the PGF, the claim file is forwarded to the special commission established according to Law no. 503/2004.

11. The Agreement between the FGA and MABISZ, as manager of the Guarantee Fund, of the Fund for insolvency and of the National Bureau from Hungary

- For the purpose of protecting the rights and interests of insurance creditors with domicile or headquarter in Hungary, The Policyholders Guarantee Fund and MABISZ concluded, on 25th of January 2016, a collaboration Agreement
- The Agreement is structured according to 3 main points:
 - handling of claim files relating to mandatory civil liability insurance (for events occurred on the territory of Hungary) – in this case, the amounts due to insurance creditors with headquarter/domicile/residency on the territory of Hungary are paid by the Romanian Guarantee Fund.
 - handling of claims according to the Green Card System, in which case MABISZ acts as a National Bureau (PGF shall pay within the guarantee threshold of 450.000 lei per one insurance creditor);
 - 4th Motor Directive (Directive 2000/26/EC of the European Parliament and of the Council) – in which case MABISZ acts as a compensation body (for situations when the Green Card System is not applicable).

12. The Agreements between PGF and Romanian Motor Insurance Bureau and Street Victims Protection Fund

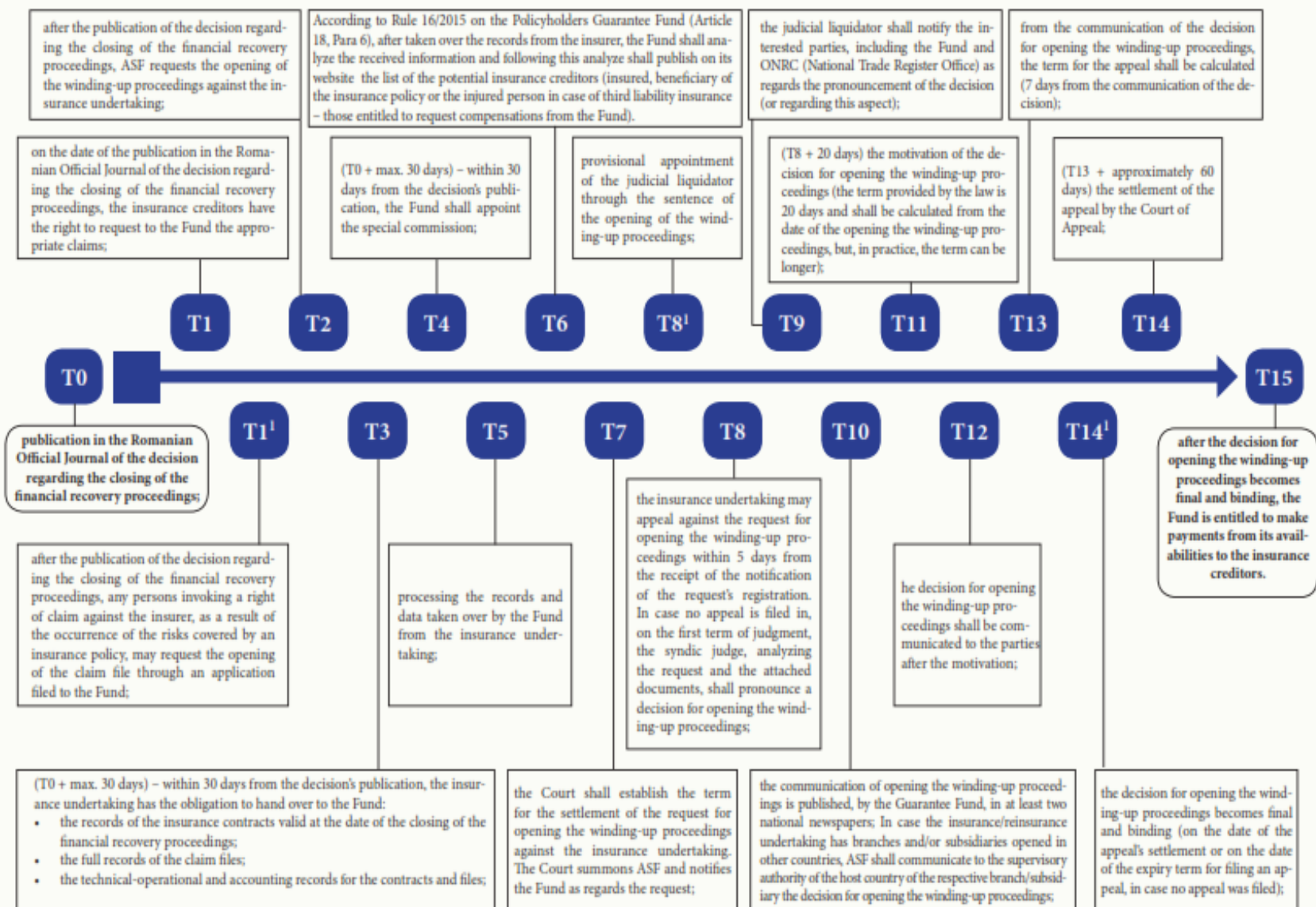
1. BAAR

- A mandate without representation was concluded by PGF with the Bureau. The object of the contract is represented by the handling by the mandatory, in its own name, but on behalf and on account of the mandator, of compensation requests formulated by claimants whose right of claim was born from a Green Card insurance contract validly concluded with ASTRA through its branches in Romania.

2. FPVS

- The Protocol shall be applicable only for requests received from insurance creditors which have residency in those member states of the EEA whose compensation bodies agree, on a voluntary and optional basis, with no legal obligation to this regard, to assist injured persons – insurance creditors – from the respective states, for the purpose of obtaining due compensation from PGF, pursuant to the conditions of the applicable law and to the provisions of the Protocol.
- The Protocol shall be applicable to activities for the ascertainment, evaluation and handling of losses, activities which are necessary for effecting the payment of amounts due to insurance creditors that have headquarter/residency/domicile in a member state of the European Economic Area, other than Romania, and which resulted as a consequence of occurrence of accidents on the territory of Romania, caused by vehicles insured for mandatory civil liability through insurance contracts concluded with ASTRA S.A.

13. Main steps



INSURANCE CONTRACTS (taken over)

Insurance contracts Romania (NonLife)			
	Nr. Ctr. PJ	Nr. Ctr. PF	Nr. total
TOTAL	214.094	1.588.709	1.802.803
Class 10	165.059	666.833	831.892

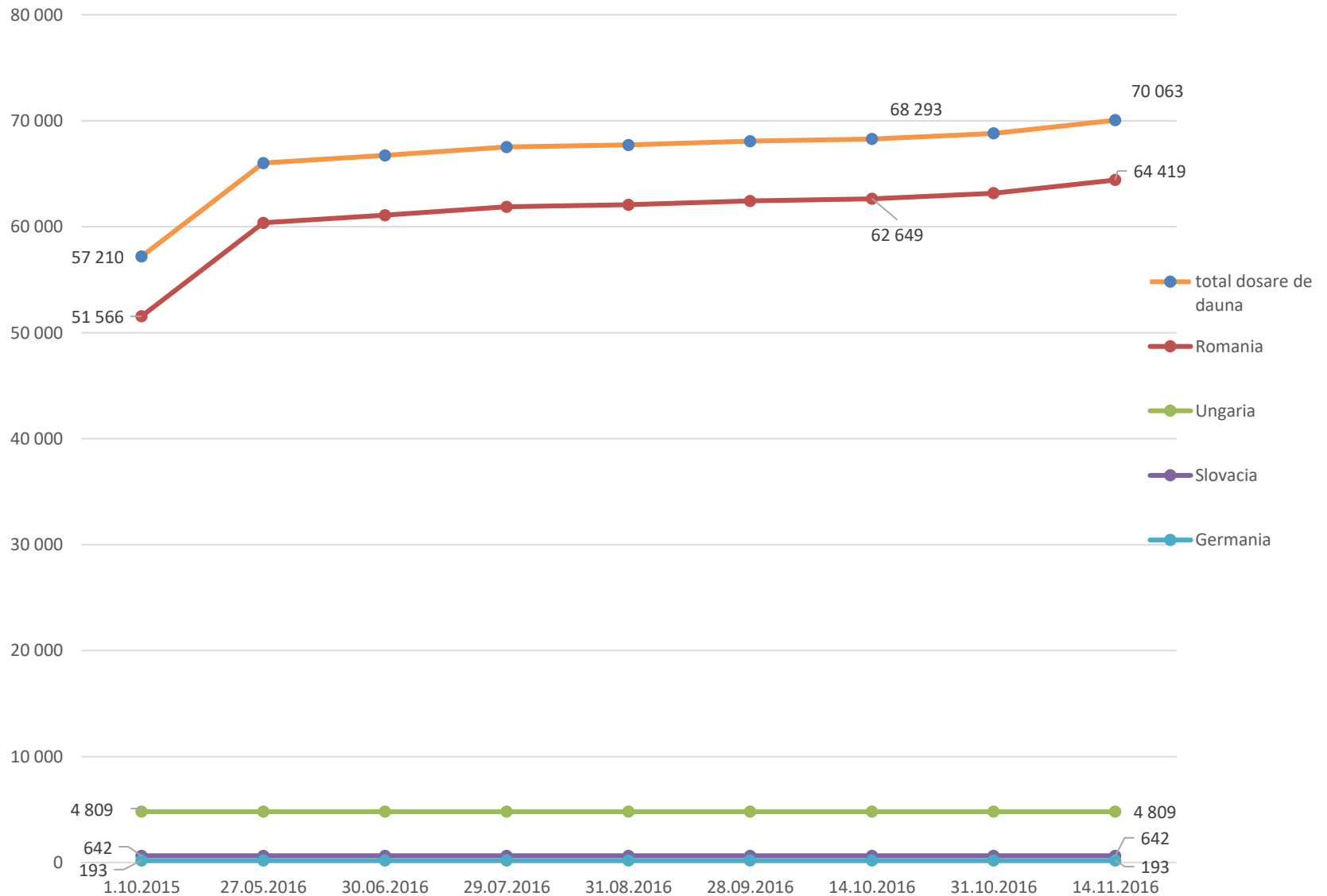
Insurance contracts LIFE (RO)	
	Nr. contracts
TOTAL	24.151

Insurance contracts Germany	
	Nr. contracts
TOTAL	6.128

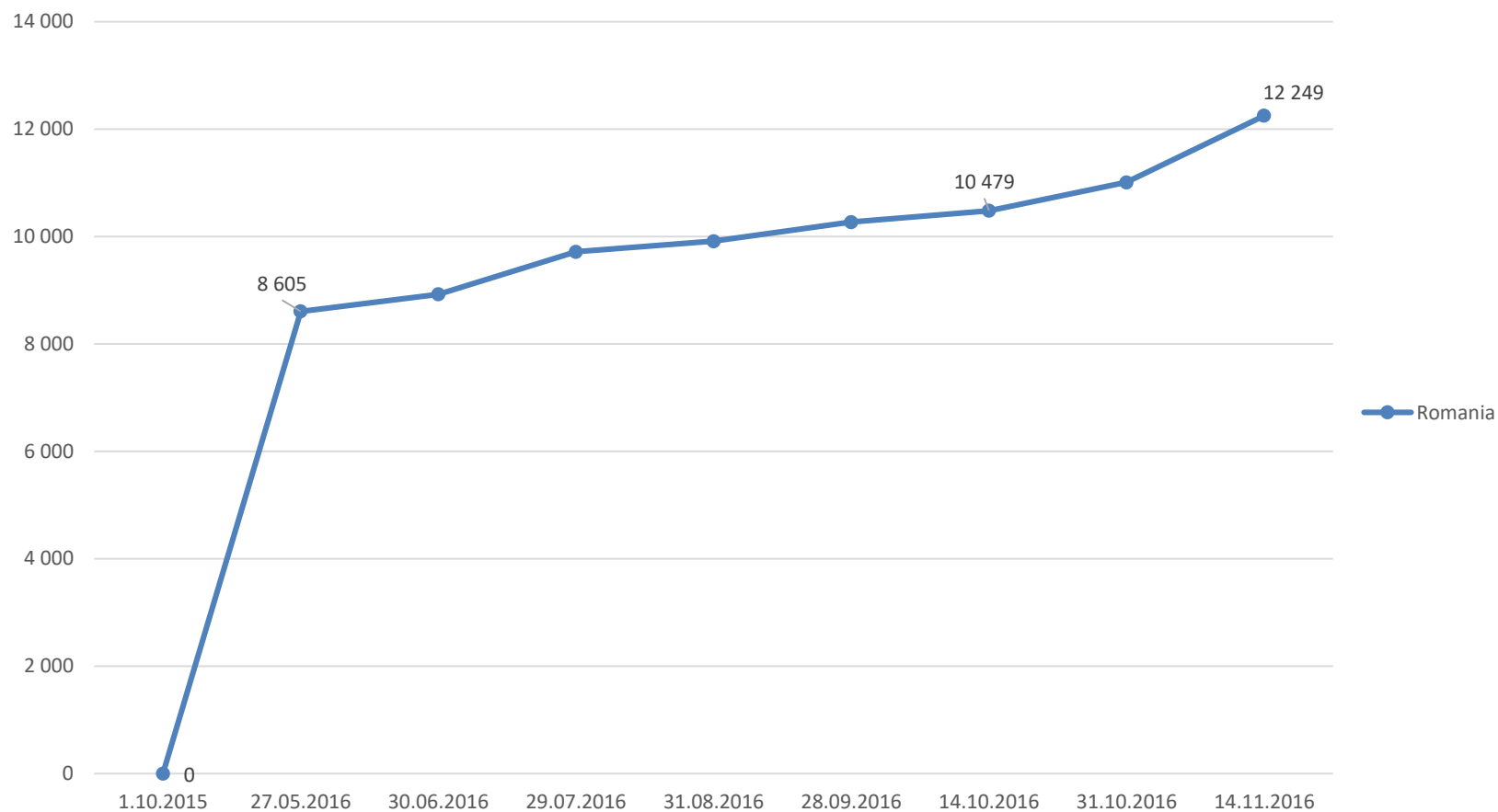
Insurance contracts Hungary	
	Nr. contracts
TOTAL	191.241
Class 10	168.251

Insurance contracts Slovakia	
	Nr. contracts
TOTAL	22.752
Class 10	14.908

Total Claims Files

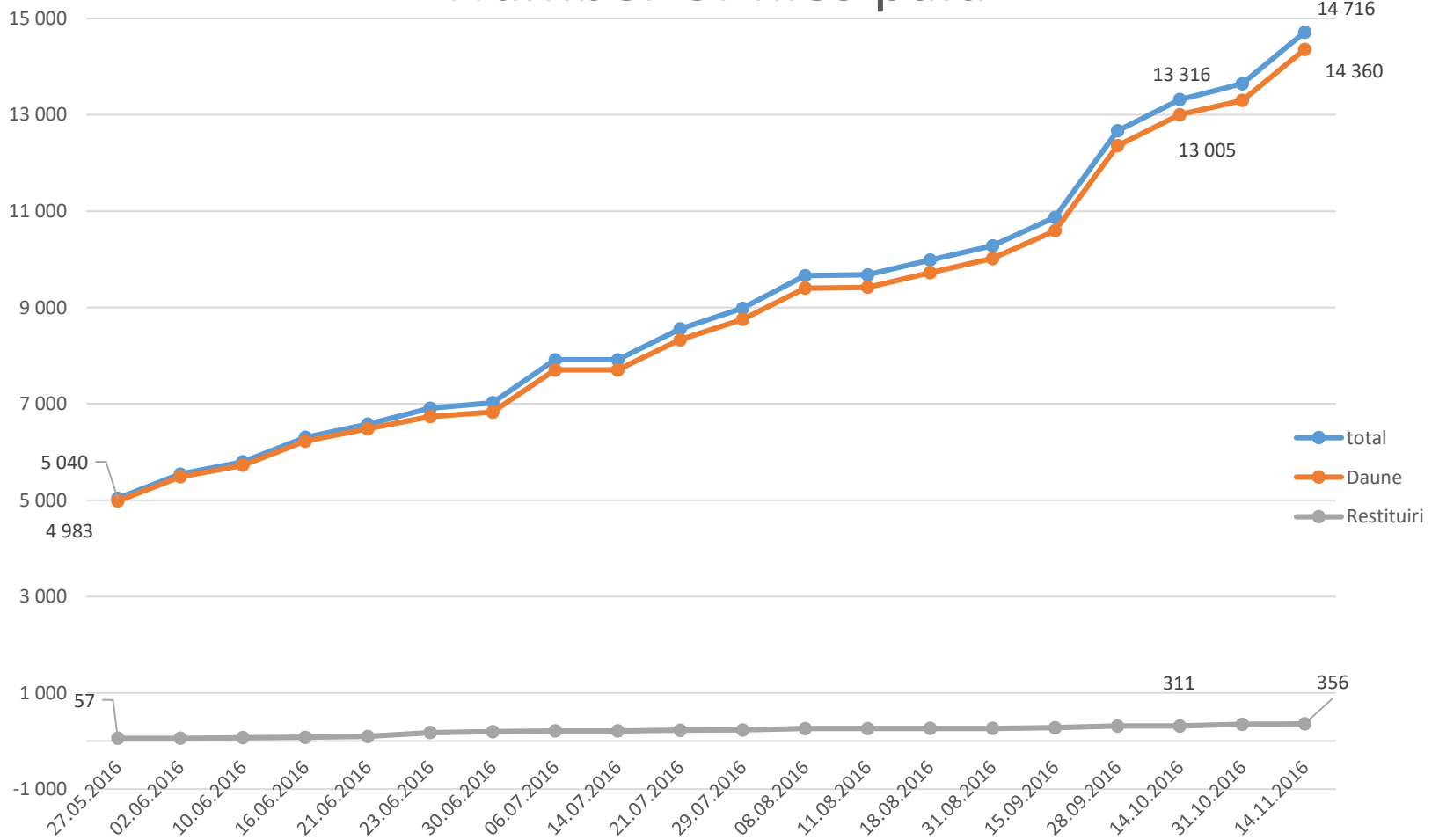


Claims files opened by FGA



		27.05.2016	14.11.2016
PAYMENT REQUESTS	Country	36,401	55,157
	RO	31,655	45,997
	UN	263	2,780
	SLK	4,481	6,369
	GE	2	11
No of files approved by SC		5,819	25,433
	RO	5,470	18,287
	UN	0	2,742
	SLK	349	4,404
	GE	0	0
No of files paid		5,040	14,716
	RO	5,040	13,901
	UN	0	815
	SLK	0	0
	GE	0	0
Value of the paid files (thousands lei)		21,141	107,286
	RO	21,141	103,811
	UN	0	3,475
	SLK	0	0
	GE	0	0

Number of files paid



Value of the files paid (thousands lei)

