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European Monitoring Centre on Change

Austria: Wage guarantee in case of insolvency

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Austria

Phase:

Management

Type:

Wage guarantee in case of insolvency

Last modified: 10 December, 2021

Native name:	Insolvenz-Entgeltsicherungsgesetz (IESG)
English name:	Act on wage guarantee in case of insolvency (IESG)

Article

whole legislation

Description

Employees, freelancers, home workers and apprentices (and their heirs or legal successors) are entitled to claims from the insolvency fund in cases of employer's insolvency/bankruptcy if a) employees are considered to be employed in Austria as defined in § 3 paragraph 1 or 2 (lit. a to d) of the general insurance act ([Allgemeines Sozialversicherungsgesetz, ASVG](#)), b) the insolvency procedure is opened in Austria and c) these claims have not yet been satisfied ([IESG, § 1](#)).

Insolvency is understood as:

- opening of a bankruptcy proceeding,
- appointment of an administrator,
- rejection of an application for opening bankruptcy proceedings due to insufficient assets or lack of court jurisdiction,
- deletion from the commercial register due to lack of assets,
- lack of assets in the case of the death of the entrepreneur or court decision that inheritance proceedings are to be devoted to the creditors.

Eligible are claims from:

- wages and severance payments,
- compensation from damages,
- other claims against the employer (like company pensions, daily allowances etc.), and
- costs related to the legal and administrative procedures to realise payment from these claims,

if they arose up to six months before filing for insolvency, up to a maximum of twice the amount considered for social security ('[Höchstbeitragsgrundlage](#)'), which is adjusted each year and can come up to €5,370 gross for employees and €6,265 gross for freelancers (as at November 2020). Special payments are subject to contributions in the calendar year up to a maximum amount of €10,740.

Employees of the state, federal states (provinces) and municipalities, as well as those having decisive influence on the organisation are not eligible.

Claims based on an avoidable transaction ('[anfechtbare Rechtshandlung](#)') or applicants who were convicted for a crime related to the insolvency (e.g., fraud, embezzlement, interception) are also not eligible.

Employees must apply within six months after the opening of insolvency proceedings. The claims will then be assessed. The assessment will include a consultation with the employer or insolvency administrator.

Payment is effected by the state-owned Insolvenz-Entgelt-Fonds-Service GmbH (IEF) which was specifically established for this purpose. The fund is financed by employers' contributions and public funds. In 2015, employers' contributions to the IEF were lowered from 0.55% to 0.45% ([BGBl. I Nr. 30/2014](#)), and again lowered to 0.35% from 2016 ([BGBl. Nr. 375/2015](#)).

If an employer does not pay, this does not reduce the benefits of the employees in case of insolvency.

Comments

As of July 2020, the website of the fund does not provide current budgets and case numbers. It quantifies the number of supported employees with an average of between 24,000 and 35,000 per year ([Insolvenzentgeltfonds 2020](#)).

In 2018, the fund registered 23,525 cases of affected workers. This is a marginal increase from 2017, when applicants numbered 23,279. Disbursements from the IEF increased from €159.2 million in 2017 to €166.9 million in 2018 ([IEF annual accounts 2018](#)). 2017 was characterised by the lowest insolvency pay since 2001. However, in 2018 the number of corporate insolvencies shrank to a historical minimum for the past 20 years, only 4,980 cases were reported, while in 2017 the cases were 5,079.

In 2013 there was a decline in the insolvency procedures compared to 2012. However, the number of affected workers measured as the number of applicants increased from 27,146 to 35,482 in this time period due to two major bankruptcy cases, Alpine and TAP dayli Vertriebs. Accordingly, the payments for outstanding salaries realised by the IEF increased from €190.8 in 2012 to €291.4 million in 2013. From 2014 to 2015 the number of applicants decreased by 3.9 % and stood at 25,279 in 2015. Disbursements from the IEF also dropped from €236 million in 2014 to €175.3 million in 2015 ([IEF annual accounts 2015](#)).

Cost covered by

Companies
National government

Involved actors other than national government

Other














Involvement others

Insolvenz-Entgelt-Fonds-Service GmbH; insolvency administrator

Thresholds

No, applicable in all circumstances

Sources

-  [EMCC - Restructuring: support measures for affected workers](#)
-  Deutsch, A. (2011), Europäische Beispiele für die Insolvenzentgeltsicherung, Federal Ministry of Labour, Social Affairs and Consumer Protection/IEF, Vienna
-  Sargent, M. (2007), Implementation Report Directive 80/987 EEC amended by Directive 2002/74/EC [protection of employees in the event of the insolvency of their employer], Human European Consultancy/Middlesex University Business School
-  [Insolvenz-Entgeltsicherungsgesetz](#)
-  [Allgemeines Sozialversicherungsgesetz \(ASVG\) - § 3](#)
-  [Insolvenz-Entgelt-Fonds-Service GmbH \(IEF\)](#)
-  [Arbeiterkammer: Insolvenz Entgelt](#)
-  [ERM database on restructuring support instruments - Austria: Insolvency Income Fund](#)
-  [Änderung des Insolvenz-Entgeltsicherungsgesetzes \(BGBl. I Nr. 30/2014\)](#)
-  [Änderung des Insolvenz-Entgeltsicherungsgesetzes \(BGBl. Nr. 375/2015\)](#)
-  [IEF - Bericht über die Prüfung des Jahresabschlusses 31.12.2018](#)
-  [IEF - Bericht über die Prüfung des Jahresabschlusses 31.12.2015](#)
-  [Änderung des Insolvenz-Entgeltsicherungsgesetzes \(BGBl. I Nr. 86/2021\)](#)

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