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Proposal for a Fifth Motor Directive

52002PC0244

Proposal for a Directive of the European Parliament and of the Council amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC, 90/232/EEC and Directive 2000/26/EC on insurance against civil liability in respect of the use of motor vehicles

/ COM/2002/0244 final - COD 2000/0124 */*

Official Journal C 227 E , 24/09/2002 P. 0387 - 0392

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. General comments

1.1. The existing Motor Insurance Directives

The Directives on insurance against civil liability in respect of the use of motor vehicles (Motor Insurance Directives) [1] date back to 1972 and the First Motor Insurance Directive. The most recent development in this field was in 2000, with the adoption of the Fourth Motor Insurance Directive.

[1] Directive 72/166/EEC, OJ L 103, 2.5.1972, p. 1 (First Motor Directive); Directive 84/5/EEC, OJ L 8, 11.1.1984, p. 17 (Second Council Directive); Directive 90/232/EEC, OJ L 129, 19.5.1990, p. 33 (Third Motor Directive); Directive 2000/26/EC, OJ L 181, 20.7.2000, p. 65 (Fourth Motor Directive).

With the first three Directives, the Community took fundamental steps towards establishing a single market in the field of motor insurance:

- they introduced an obligation for all motor vehicles in the Community to be covered by insurance against thirdparty liability (compulsory motor insurance) and fixed minimum amounts for such insurance cover;
- they ensured the free movement of motor vehicles by making the insurance certificate generally valid throughout Community territory, thereby obviating the need for insurance checks at borders. This was a major step towards ensuring the free movement of individuals and goods across borders;
- they ensured that victims of accidents caused by unidentified or uninsured vehicles would be compensated through the establishment of compensation bodies (guarantee funds) in all Member States;
- they ensured that all passengers in the vehicle (including the family of the driver) fall within the definition of victims covered by compulsory insurance.

These first three Directives built on the system of "green cards", which had been introduced to facilitate the settlement of claims in accidents caused by a motorist in a Member State other than that in which the vehicle is normally based. This system ensures the payment of compensation to victims of accidents caused by visiting vehicles through a privatesector network of Green Card Bureaux set up by the insurers and established in all the Member States.

However, an important gap still remained: because the original aim was to eliminate border controls on insurance, the "green card" system covered victims only when they were in their home country. It did not cover the settlement of claims when the accident took place outside the victim's Member State of residence (visiting victims). This gap was filled by the Fourth Motor Directive, [2] which also provides for an efficient mechanism for settling claims in respect of such accidents.

[2] Directive 2000/26/EC, OJ L 181, 20.7.2000, p. 65 (Fourth Motor Directive).

1.2 The need for a Fifth Motor Directive

Further work is needed. There is increasing growth in crossborder traffic and the Commission continues to receive a large number of questions, complaints and petitions from individuals and members of the European Parliament on the operation of the Motor Insurance Directives.

It is not only that some aspects of the Directives adopted in the 1970s or 1980s need to be updated (in particular, review of the minimum amount of cover).

There is also a need to fill gaps or provide solutions to problems that arise very frequently. This is the case, in particular, for:

- the large number of people (e.g. students, workers residing temporarily abroad and individuals with secondary residences) who complain about the difficulties of finding insurance for a temporary stay in another Member State;
- individuals wishing to purchase a new or secondhand car in another Member State who encounter difficulties in finding shortterm insurance cover before the vehicle is registered in the country of importation;
- the growing demand for motor insurance cover for pedestrians and cyclists;
- motorists wishing to obtain from their existing insurer a statement relating to their claims record in order to negotiate a contract with another insurance undertaking.

Finally, the Fourth Motor Directive applies only to the settlement of claims in respect of accidents which occurred outside the victim's Member State of residence. The settlement mechanism has a two-fold objective: to ensure that "visiting victims" are compensated quickly, and to set up an efficient system of compensation that keeps legal costs to a minimum.

It is now proposed to extend this settlement mechanism to all accidents, regardless of the victim's Member State of residence.

The need to revise and modernise the Motor Insurance Directives has been confirmed by a wide-ranging consultation exercise initiated by the Commission in 1999 and involving national authorities, industry representatives and groups representing users and victims. The European Parliament, aware of the impact that motor insurance has on the daytoday life of individuals, adopted in July 2001 a Resolution recommending the adoption of a fifth motor insurance directive. The present proposal for a Directive is the Commission's response.

1.3. The objectives of the proposal

The proposal aims to revise the Motor Insurance Directives in order to achieve the following main objectives:

- (1) to update and improve the protection of victims of motor vehicle accidents by compulsory insurance;

(2) to fill gaps and clarify certain provisions of the Directives, thereby ensuring increased convergence as regards their interpretation and application by the Member States;

(3) to provide solutions to problems which arise frequently in order to create a more efficient single market in motor insurance.

1.4. The content of the proposal: issues addressed

The different reasons for revising and modernising the Motor Insurance Directives are described in detail below. The proposed solutions are explained in the "Description of articles" in paragraph 2 of this Explanatory Memorandum.

(a) Temporary registration plates [Article 1(1)(a)]

The definition of "the territory in which the vehicle is normally based" in Article 1(4) of Directive 72/166/EEC refers to the territory of the State of which the vehicle bears a registration plate but it does not specify whether the registration plate should be temporary or permanent. There have been difficulties in the case of some vehicles bearing temporary plates in finding insurance cover in the Member State in which they are registered.

In order to avoid any misinterpretation of this provision, the definition should be amended by including an explicit reference to temporary registration plates.

(b) Vehicles without a registration plate or bearing a noncorresponding plate [Article 1(1)(b)]

When an accident is caused by a vehicle without a registration plate or bearing a plate not corresponding to the vehicle, the determination of the "territory in which the vehicle is normally based" poses a problem which cannot be easily resolved.

Interpreting the Directives, the European Court of Justice has stated that "a vehicle which, on crossing the frontier, bears a registration plate that was duly issued by the authorities of a Member State but is false by reason of the fact that it is in reality the registration plate allocated to another vehicle, is to be regarded as normally based in the territory of the State which issued the plate in question" [3] and that systematic checking would be required to ascertain whether the plate was valid [4].

[3] Fournier ruling.

[4] Gambetta ruling.

As a result of the Court rulings, national bureaux are often obliged to deal with the economic consequences of accidents which do not have any connection with the Member State in which they are established. However, the ECJ rulings do not prevent the Community legislator from envisaging a different solution for the future. The Council of Bureaux has suggested that, in the case of vehicles without a registration plate or bearing a noncorresponding registration plate, the territory in which the vehicle is normally based should, for settlement purposes, be the territory of the Member State in which the accident took place.

(c) Checks on insurance [Article 1(2)]

With a view to facilitating the free movement of vehicles and persons within the European Community, Article 2 of Directive 72/166/EEC abolished the checks on green cards for vehicles normally based in a Member State entering the territory of another Member State.

There has been some confusion concerning the scope of the "random checks" referred to in Article 2(1). The first problem of interpretation concerns whether the last sentence of the second subparagraph should also apply to the first subparagraph. In other words, to what extent are "random checks" permitted in the case of vehicles normally based in a Member State entering the territory of another Member State- The second problem relates to the interpretation of the term "random checks" itself, the meaning of which is not evident, especially in view of the difficulty of finding an appropriate translation in the other Community languages.

The Commission wishes to clarify this matter and proposes that insurance controls concerning intraCommunity traffic may be justified, under certain conditions, for reasons of public order (e.g. following an accident or mishap). These conditions should be that the controls are nonsystematic and nondiscriminatory and are not aimed at insurance verification.

(d) Derogation from the obligation to insure certain vehicles [Article 1(3)]

Article 4 of Directive 72/166/EEC provides that Member States may exclude from compulsory insurance certain types of vehicles having special registration plates, provided that such exclusions are communicated by the Member State concerned to the other Member States and to the Commission.

Paragraph (a) refers to vehicles owned by certain natural or legal persons for which the Member States applying such derogation should ensure that compensation is paid in the case of accidents taking place in other Member States. Application of this paragraph does not pose any particular problems as the payment of compensation is ensured by the Member State.

Paragraph (b) permits a Member State to exclude from compulsory insurance "certain types of vehicle or certain vehicles having a special plate" (e.g. some lowspeed vehicles and certain motor machines). There is no obligation for the Member State to ensure compensation of the victims of accidents caused by these vehicles in another Member State. The paragraph allows the other Member States to carry out border controls with regard to these vehicles in order to check that the driver is in possession of a green card or has concluded a frontier insurance contract.

But such border checks carried out under the Directive with respect to the vehicles concerned by Article 4(b) are no longer permitted at the internal borders of the Member States following the Schengen Agreement. Therefore, the conditions for implementing this derogation no longer apply.

(e) Review of the minimum amounts of cover [Article 2]

According to Article 6(2) of Directive 84/5/EEC, the Commission should "where appropriate, submit proposals in particular as regards adjustment of the amounts laid down in Article 1(2) and (4)". Nevertheless, the existing minimum amounts of cover have not been revised since the Directive was adopted.

Meanwhile, the Member States' national legislation has evolved substantially in this respect: eight Member States have introduced unlimited cover for personal injuries and many of them have introduced amounts of cover far higher than the minimum laid down in the Directive for the compensation of damage to property. If we take account of the impact of inflation on the current amounts [5] since the Directive was adopted in 1984, the figures would be as follows: personal injuries: EUR 605 500 in the case of a single victim and EUR 865 000 per claim in the case of more than one victim; damage to property: EUR 173 000 per claim; personal injuries and damage to property: EUR 1 038 000 per claim.

[5] The current minimum amounts for compulsory insurance are: Personal injuries: EUR 350 000 in the case of one victim and EUR 500 000 per claim in

the case of more than one victim; Damage to property: EUR 100 000 per claim; Personal injuries and damage to property: EUR 600 000 per claim.

It should be noted that the European Parliament draft Resolution on a Fifth Motor Directive provides for single minimum cover of EUR 2 000 000, but no explanation regarding the basis for the calculation of this figure has been provided.

(f) Elimination of the Member States' option to limit compensation to damage to property in the case of accidents caused by unidentified vehicles [Article 2]

Article 1(4) of Directive 84/5/EEC provides that Member States are to set up or authorise a body with the task of providing compensation, at least up to the limits of the insurance obligation, for damage to property or personal injuries caused by an unidentified vehicle or a noninsured vehicle.

However, the fourth subparagraph of this provision contains an exception which may seriously limit the scope of the compensation provided. It states that "Member States may limit or exclude the payment of compensation by the body in the event of damage to property by an unidentified vehicle." This exception is justified in the last sentence of the sixth recital to the Directive "in view of the danger of fraud".

According to a number of complaints received by the Commission from accident victims, it seems that certain Member States exclude the payment of compensation by their national bodies for damage to property even where the specific circumstances involved eliminate any risk of fraud, e.g. when the victim has suffered personal injuries as well as damage to property in the same accident.

(g) Regime for service representatives [Article 3]

The first sentence of the second subparagraph of Article 12a(4) of Directive 88/357/EEC (Second NonLife), as amended by Directive 90/618/EEC (Freedom to provide services Motor), states that "the Member State of provision of services (i.e. where the risk is situated) shall require the undertaking to appoint a representative resident or established in its territory who shall collect all necessary information in relation to claims". The last sentence of the fourth subparagraph states that "The appointee shall not take up the business of direct insurance on behalf of the said undertaking."

This latter provision prevents branches of the insurance undertaking from becoming claim representatives for the freedom to provide services, although subsidiaries (which are independent legal persons) are not affected by this prohibition. This may entail extra costs.

The reason for such a provision - not specified in the recitals to the Directive - was probably to prevent the simultaneous exercise of the freedom to provide services and the right of establishment. However, the Third Directives subsequently abolished all restrictions on the simultaneous exercise of these functions. The consequence of this legislative development is that, according to the current insurance Directives, branches of insurance undertakings are allowed to act as service representatives for all insurance operations except motor insurance.

(h) Cover for passengers who knew or should have known that the driver was under the influence of alcohol or any other intoxicating agent [Article 4(1)]

The intention of the Motor Insurance Directives to ensure that compulsory insurance covers all passengers in the vehicle is not disputed. Nevertheless, some interpretations have maintained that passengers might be excluded from cover where they knew or should have known that the driver of the vehicle was under the influence of alcohol or other intoxicating agent at the time of the accident. Such an interpretation has even been included in some Member States' national legislation.

The passenger is not usually in a position to assess properly the intoxication level of the driver. In any case, the emphasis should be on protecting the victim. To discourage persons under the influence of intoxicating agents from driving is a very worthy objective but it is not legitimate to try to achieve this result by reducing the insurance cover for passengers who are victims in motor accidents.

It is therefore important to clarify this point of the Directives along the lines of the doctrine established by the Court of Justice. [6]

[6] Case C129/94 Ruiz Bernáldez.

(i) Pedestrians and cyclists [Article 4(2)]

While pedestrians and cyclists may be the cause of some accidents, motor vehicles cause most accidents. Whoever is responsible for the accident,

pedestrians and cyclists usually suffer more in accidents involving motor vehicles.

In case of an accident not caused by the driver, the situation of pedestrians and cyclists differs a good deal from one Member State to another. In some Member States no insurance cover is provided and the courts often try to establish driver liability in such a way as to permit inclusion of the victim within the motor insurance cover. In other Member States the legislation provides that pedestrians and cyclists are covered by the insurance for the vehicle involved in the accident, irrespective of whether the driver is at fault, although the particular circumstances in which the civil liability of the pedestrian or cyclist is involved varies according to the national legislation.

As far as the Commission is aware, such inclusion of pedestrians and cyclists in some Member States' legislation does not seem to have had a significant impact on the cost of the insurance.

(j) Cover over the entire territory of the Community during the whole term of the contract (temporary stays in other Member States) [Article 4(3)]

The Commission receives a large number of letters from individuals complaining about the difficulties of finding insurance cover for a temporary stay abroad that stem from the practice followed by certain insurance undertakings. Some insurers stipulate in their policies that the contract is to expire after the insured vehicle has remained for a certain period of time in another Member State. Other contracts state that the policyholder has to notify the insurance undertaking if the vehicle remains abroad beyond a certain period so that the premium can be revised. The lack of such notification may result in early termination of the contract.

Both kinds of clause have similar effects: they hinder the free movement of persons as well as the functioning of the single market. They are in contradiction to Article 2, first indent, of Directive 90/232/EEC, which obliges Member States to ensure that compulsory insurance policies against motor vehicle liability cover the entire Community territory on the basis of a single premium.

It may be appropriate to clarify the Directives in this respect in order to ensure the effective application of this principle so that an insured person who moves to

another Member State on a temporary basis, whether for professional or private reasons, may not be deprived of insurance cover. This should, however, not affect the obligations under the Member States' national legislation with respect to the registration of vehicles.

(k) Insurance cover for imported vehicles [Article 4(4)]

Every year thousands of individuals apply to register in their Member State of residence an imported vehicle previously registered in another Member State.

[7] It may be a secondhand vehicle purchased in another Member State by the applicant himself or by a dealer or a vehicle bought new in another Member State. There are significant price differences within the Community and it is only normal that individuals should wish to take advantage of the single market.

[7] The deadline for reregistration of vehicles is not harmonised. It differs widely within the EEA: one day in Ireland; three days in Austria; fourteen days in Denmark; one month in Finland, Portugal and Sweden; three months in France and the United Kingdom; six months in Greece, Luxembourg and Spain; and one year in Germany, Italy, the Netherlands and Norway.

For the journey to the Member State of destination the vehicle has to be covered by an insurance policy issued by a company authorised to operate in the Member State of origin. Such shortterm insurance is normally much more expensive pro rata than insurance for a normal full term or it is more often than not difficult to find any insurer ready to provide such shortterm cover.

When the vehicle reaches the Member State of destination, it needs to be covered by insurance until its new registration is completed. In the exporting Member State the vehicle insurance does not often provide cover for this period and it is difficult to find alternative insurance in the Member State of destination. The Directives should provide for a solution to make it easier to obtain insurance cover for these vehicles.

(l) Accident statement provided by the insurer [Article 4(4)]

When, upon termination of an insurance contract, a policyholder decides to take out a new contract with an insurance undertaking established in another Member State (because he has changed his residence or wishes to obtain crossborder insurance), he may have difficulties in obtaining from the former insurer a statement concerning his accident record. The fact that he is unable to

show proof of his accident record under the old contract often means that the policyholder cannot negotiate the best premium with the new insurer.

The Directives should therefore establish the insurer's obligation to provide the aforementioned accident statement upon termination of the contractual relationship. This obligation should not affect the freedom of the parties to fix the premium for the insurance contract.

(m) Excesses [Article 4(4)]

Excesses are part of any damage for claims which the insured person and not the insurer must pay.

The effective protection of the victim requires that the excesses provided for in national legislation or agreed upon in the contract should not be enforced against the accident victim as far as compulsory insurance is concerned.

These excesses should be allowed only within the framework of the relationship between the insured and the insurer.

(n) Extension to all accidents of the mechanism of the Fourth Motor Directive [8] for a quick and efficient settlement of claims [Article 4(4)]

[8] Directive 2000/26/EC, OJ L 181, 20.7.2000, p. 65 (Fourth Motor Directive).

The mechanism provided for in the Fourth Motor Directive to settle accident claims has a two-fold objective: to ensure that victims are compensated quickly, and to set up an efficient system of compensation that keeps legal costs to a minimum. The Directive applies to the settlement of claims in respect of accidents which occurred outside the victim's Member State of residence.

In connection with the modernisation of the Motor Insurance Directives, it has been considered appropriate to extend the provisions introduced by the Fourth Directive to the settlement of claims in respect of all kinds of accident, regardless of the victim's Member State of residence. Such an extension should be compatible with the existing system of bureaux provided for in Article 2(2) of Directive 72/166/EEC for the settlement of claims in respect of accidents caused by vehicles normally based in the territory of another Member State.

The mechanism which is proposed is composed of the following elements:

- Right of direct action for the victims of any motor accident

Article 3 of the Fourth Motor Directive provides that victims of accidents occurring either in a Member State other than the injured party's Member State

of residence or in a third country belonging to the green card system has a right of direct action against the insurance undertaking covering the person responsible. The right of direct action is a necessary condition for the appropriate application of the reasoned offer procedure (see below).

It should be noted that the victim's right of direct action against the insurance undertaking is not a procedural or civil law matter alien to insurance. The introduction of an improved system of compulsory insurance in the Community with an appropriate level of protection for victims requires that the right of direct action be extended to all victims of motor accidents.

- Appointment by the insurance undertaking of a claims representative

Article 4(1) of the Fourth Motor Directive requires each insurance undertaking to appoint a representative in all Member States to handle claims. The functions of this representative are currently limited to the accidents covered by the Directive (accidents occurring outside the victim's Member State of residence).

- Reasoned offer procedure

Article 4(6) of the Fourth Motor Directive provides that Member States should require the insurance undertaking of the person responsible for the accident to make within three months of the date of the claim a reasoned offer of compensation in cases where liability is not contested and where the damages have been quantified or to provide a reasoned reply in case of denial. This duty should be backed up by appropriate, effective and systematic financial or equivalent administrative penalties.

- Setting up of information centres

Article 5 of Directive 2000/26/EC obliges each Member State to set up an information centre responsible for keeping a register containing specified information in order to facilitate the settlement of claims.

The extension of the compensation body provided for in Article 6 of the Fourth Motor Directive to all accidents would, however, not be appropriate since the functioning of this body would interfere with the existing system of "green card" bureaux for the settlement of claims in respect of accidents caused by vehicles normally based in the territory of another Member State.

2. Description of articles

Article 1(1) - Temporary registration plates - Vehicles without a registration plate or bearing a noncorresponding plate

Paragraph 1 of this Article amends the first indent of Article 1(4) of Directive 72/166/EEC, which contains the definition of the territory in which the vehicle is normally based. The objective is to rule out any misinterpretation. The text makes it clear that the definition applies to both temporary and permanent registration.

Paragraph 2 inserts a sentence in the aforementioned definition of the territory in which the vehicle is normally based. This amendment clarifies the application of this definition in the case of vehicles without a registration plate or bearing a plate which does not correspond to the vehicle. It states that, in the event of an accident, the territory in which those vehicles should be considered to be normally based is the territory in which the accident took place. Although other alternative criteria (such as the territory of the latest plate legally allocated to the vehicle) have been considered, the proposal follows the Council of Bureaux's recommendation in this respect as this will facilitate the settlement of claims involving such vehicles.

In order to cover all possible illegal situations concerning registration plates (false and forged plates, absence of plates and nonvalid plates), the provision refers to vehicles "not bearing any registration plate or bearing a registration plate which does not correspond or does not correspond any more to the vehicle".

Article 1(2) - Checks on insurance

There has been some confusion concerning the scope of the term "random checks" used in Article 2(1) of Directive 72/166/EEC as well as its interpretation. The proposal clarifies the application of this provision in two important respects: first, it limits the scope of the prohibition on carrying out insurance checks to vehicles normally based in the territory of another Member States and to vehicles normally based in the territory of a third country entering from the territory of another Member State; second, it avoids the term "random checks" and defines the checks that are permitted by reference to three negative conditions: nonsystematic, nondiscriminatory and not aimed at insurance verification.

Article 1(3) - Derogation from the obligation to insure certain vehicles

The proposal repeals Article 4(b) of Directive 72/166/EEC.

Article 4 of the First Motor Directive allows Member States to derogate in some cases from the general obligation to provide compulsory insurance for motor vehicles. Article 4(a) provides for certain cases of derogation (vehicles owned by specific legal persons) in which Member States must ensure that compensation is paid in respect of any loss or injury resulting from accidents occurring in the territory of another Member State. Since, in these cases, the protection of the victims of noninsured vehicles is guaranteed, the derogation can be maintained.

Paragraph (b) of the aforementioned Article provides for other cases of derogation (vehicles with special features) in which the Directive allows Member States to require presentation of a valid green card or a frontier insurance contract at the border as a means of ensuring payment of compensation to the victims of accidents caused by vehicles coming from another Member State. However, after the abolition of border controls within the Community following the Schengen Agreement, the payment of compensation to the victims of accidents caused outside the territory of their registration by vehicles subject to this derogation can no longer be guaranteed. The derogation should therefore be abrogated.

Article 2 - Minimum amounts of cover

In revising the minimum amounts of cover agreed many years ago, the Commission has rejected the option of introducing unlimited cover such as exists in some Member States. It has also rejected single minimum cover for personal injuries and damage to property. It considers that personal injuries are more significant for the victim than damage to property and require stronger protection.

The proposal amends Article 1(2) of Directive 84/5/EEC and provides for a minimum amount of cover EUR 1 000 000 per victim for personal injuries and EUR 500 000 per claim for damage to property. The overall minimum amount per claim for personal injuries where there is more than one victim and the overall amount for personal injury and damage to property are abolished. The Commission takes the view that the proposed amounts should be an

appropriate minimum, in order not only to take account of inflation and financial reality in all the Member States but also to improve the protection of victims.

Abolition of these amounts, in addition to the increase in the minimum amount of cover, is a key element in improving protection. It should be stressed that the Commission's intention is not only to maintain the economic value of the existing thresholds by adjusting them for inflation but also to improve substantially the protection afforded to victims.

A new paragraph 3 replaces the old paragraph 3 in the amended Article. The latter contained a conversion value clause which is no longer applicable in view of the introduction of the euro. The former provides for a periodic review clause ensuring that the minimum amounts are updated without it being necessary to amend the Directive. The most clear and objective index is probably the European index of consumer prices published by Eurostat.

To facilitate the application of the review clause, the Commission should inform the Council and Parliament of the review and the adapted amounts and ensure publication of those amounts in the Official Journal of the European Communities.

Finally, in order to improve the protection afforded to victims in the case of damage caused by unidentified vehicles, an amendment is proposed to Article 1(4) of Directive 84/5/EEC. This amendment is aimed at restricting the discretion granted to Member States to limit or exclude payments by the compensation body in order to prevent fraud. It excludes the application of such discretion where damage to property and significant personal injuries have resulted from the same accident and where the risk of fraud is therefore negligible. Owing to the difficulty of establishing a harmonised definition of significant personal damages, definition of this concept is left to national legislation.

Article 3 - Service representatives

Article 12a(4) of Directive 88/357/EEC is amended in order to permit branches of insurance undertakings to become representatives in respect of the freedom to provide services, as already happens with respect to any insurance activity other than motor insurance.

Article 4(1) - Passengers' knowledge of the driver's incapacity

This provision is designed to correct any misinterpretation of the Directives and to ensure full cover for all passengers. According to some interpretations in a number of Member States, a passenger may be excluded from insurance cover on the basis that he knew or should have known that the driver of the vehicle was under the influence of alcohol or any other intoxicating agent. Depriving the passenger of cover in such cases would be in clear conflict with the spirit of the insurance Directives as well as with the case law of the Court of Justice.

Cover for such passengers under the compulsory motor insurance for the vehicle does not prejudice any hypothetical liability which they might have incurred pursuant to the applicable national legislation or the level of awards for damages in a specific accident, which should be determined by the national courts.

Article 4(2) - Pedestrians and cyclists

A new provision is inserted in Directive 84/5/EEC in order to include in the cover provided by the vehicle insurance personal injuries suffered by pedestrians and cyclists in accidents involving a motor vehicle. This cover under the compulsory insurance of the vehicle should apply, irrespective of whether the driver is at fault.

To avoid any possible confusion between insurance matters (scope of the insurance Directives) and civil law (scope of national legislation), a recital states that the civil liability of pedestrians and cyclists must be governed by the applicable Member State legislation. In other words, the victim's injuries must, in principle, be covered by the vehicle insurance. This cover under the compulsory motor insurance of the vehicle does not determine the civil liability of the pedestrian or cyclist in a specific accident or the level of any award for damages. This should be governed by the applicable national legislation and the national courts.

Article 4(3) - Cover for the entire territory of the Community during the whole term of the contract

Article 2, first indent, of Directive 90/232/EEC provides that compulsory insurance should cover the entire territory of the Community on the basis of a single premium.

Article 4(3) of the proposal aims to clarify this obligation and to prevent insurers from carrying out practices which limit this obligation. The objective is that an insured person who moves from one Member State to another on a temporary basis, whether for professional or private reasons, should not be deprived directly or indirectly of insurance cover.

Article 4(4) - Insurance cover for imported vehicles

Individuals wishing to purchase new or secondhand cars in one Member State and import them into another Member State often complain about the difficulties they have in finding insurance cover.

By considering the importing Member State as the territory in which the vehicle is normally based for a period of thirty days after delivery, insurers in that Member State would be allowed to cover the risk during that period without being obliged to follow the procedures laid down in the insurance Directives in respect of the freedom to provide services. This would make it easier to obtain insurance cover for the first thirty days after delivery and allow the purchaser to import and register the car during that period.

If during those thirty days the imported vehicle is involved in an accident without being covered by insurance, the compensation body of the importing Member State should be liable. The competence of that compensation body in this case is a result of the provision that the importing Member State is considered to be the territory in which the vehicle is normally based during that period.

Article 4(4) - Insurer's statement relating to accidents

This provision is designed to permit an insured person who wishes to take out a new insurance policy with another insurance undertaking to show proof of his record of claims/accidents under his old policy.

The Article sets out the insurer's obligation to provide the policyholder, within fifteen days of the end of the contractual relationship, with a statement relating to claims involving his vehicle for the duration of that relationship, subject to a limit of five years.

However, the proposal does not intend to determine the way in which an accident record should be taken into account by the new insurer in order to assess the risks or determine the premium. The Directives should not interfere with the principle of freedom to set prices applied in the single market for

financial services. This provision does not therefore affect the freedom of the parties to fix the premium of the insurance contract.

Article 4(4) - Excesses

In order to provide full protection for the victims of motor accidents, Member State should not allow excesses to be relied on against an injured party, except in the exceptional cases in which they are permitted by the Directives (e.g. Article 1(4) of Directive 84/5/EEC, as amended by Article 4 of this proposal, in order to prevent fraud).

Article 4(4) - Right of direct action

This provision extends the right of direct action provided for in Article 3 of the Fourth Motor Directive to parties having suffered damage to property or personal injuries in any motor vehicle accident.

The determination whether the victim of an accident has the right to invoke the insurance contract and to bring its claim directly against the insurance undertaking is a significant element of the insurance relationship which has great importance for the protection of the victim. It is not justified within the framework of a modernisation of the Motor Insurance Directives to confine this right to the victims of accidents occurring outside their Member State of residence as provided in the Fourth Motor Directive. The victims of other motor vehicle accidents deserve the same protection.

Article 4(4) - Claims representatives and reasoned offer procedure

As for the right of direct action, it does not seem justified within the context of a modernisation of the Motor Insurance Directives to confine the application of provisions which may have a significant impact on the protection of victims to the limited scope of the Fourth Motor Directive.

This provision extends the reasoned offer procedure provided for in Article 4(6) of the Fourth Motor Directive to any kind of motor vehicle accident.

Moreover, since the proper functioning of this procedure requires that each insurance undertaking should have a claims representative in all Member States and since the Fourth Motor Directive already obliges insurance undertakings to appoint such a representative, the proposal, building on the existing mechanism, expands the functions of the representative so that he may handle any accident caused by a vehicle covered by compulsory insurance.

Article 4(4) of the proposal is compatible with the system of bureaux provided for in Article 2(2) of Directive 72/166/EEC for the settlement of claims in respect of accidents caused by vehicles normally based in the territory of another Member State, whether or not such vehicles are insured.

Article 4(4) - Information centres

In order to help the injured party seek compensation, the information centres provided for in the Fourth Motor Insurance Directive should not be confined to the accidents referred to in that Directive but should also provide information in the case of any accident caused by a vehicle covered by compulsory insurance.

Article 5 - Deletion of reference to repealed Article

Article 5 of this proposal repeals Article 4(b) of Directive 72/166/EEC, which contains certain derogations from the obligation to insure motor vehicles. The reference to this provision in Article 5 of Directive 2000/26/EC should therefore be repealed.

2002/0124 (COD)

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC, 90/232/EEC and Directive 2000/26/EC on insurance against civil liability in respect of the use of motor vehicles

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the first and third sentences of Article 47(2), Article 55 and Article 95(1) thereof,

Having regard to the proposal from the Commission [9],

[9] OJ C

Having regard to the opinion of the Economic and Social Committee [10],

[10] OJ C

Acting in accordance with the procedure laid down in Article 251 of the Treaty [11],

[11] OJ C

Whereas:

(1) Insurance against civil liability in respect of the use of motor vehicles (motor insurance) is of special importance for European citizens, whether they are policyholders or victims of an accident. It is also a major concern for insurance undertakings as it constitutes the bulk of nonlife insurance business in the Community. Motor insurance also has an impact on the free movement of persons and vehicles. It should therefore be a key objective of Community action in the field of financial services to reinforce and consolidate the single insurance market in motor insurance.

(2) Very significant advances in this direction have already been achieved by Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability [12], by Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles [13], by Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles [14] and by Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (Fourth motor insurance Directive) [15].

[12] OJ L 103, 2.5.1972, p. 1, as last amended by Directive 84/5/EEC (OJ L 8, 11.1.1984, p. 17).

[13] OJ L 8, 11.1.1984, p. 17, as last amended by Directive 90/232/EEC (OJ L 129, 19.5.1990, p. 33).

[14] OJ L 129, 19.5.1990, p. 33.

[15] OJ L 181, 20.7.2000, p. 65.

(3) The Community system of motor insurance needs to be updated and improved. This need has been confirmed by the consultation conducted with the industry, consumers and victims' associations.

(4) In order to exclude any possible misinterpretation of the current provisions of Directive 72/166/EEC and to make it easier to obtain insurance cover for vehicles bearing temporary plates, the definition of the territory in which the vehicle is normally based should refer to the territory of the State of which the vehicle bears a registration plate, irrespective of whether such a plate is permanent or temporary.

(5) In accordance with Directive 72/166/EEC, vehicles bearing false or illegal plates are considered to be normally based in the territory of the Member State that issued the plates in question. This rule often means that national bureaux are obliged to deal with the economic consequences of accidents which do not have any connection with the Member State where they are established. Without altering the general criterion of the registration plate to determine the territory in which the vehicle is normally based, a special rule should be provided in the case of an accident caused by a vehicle without a registration plate or bearing a registration plate which does not correspond or no longer corresponds to the vehicle. In this case and for the sole purpose of settling the claim, the territory in which the vehicle is normally based should be the territory in which the accident took place.

(6) In order to facilitate the interpretation and application of the term "random checks" in Directive 72/166/EEC, the relevant provision should be clarified. The prohibition of systematic checks on motor insurance should apply to vehicles normally based in the territory of another Member State as well as to vehicles normally based in the territory of a third country but entering from the territory of another Member State. Only nonsystematic checks which are not discriminatory and are carried out as part of a police control not aimed exclusively at insurance verification may be permitted.

(7) Directive 72/166/EEC permits Member States to derogate in certain cases from the general obligation to take out compulsory motor vehicle insurance. In some of these cases, Member States must ensure that compensation is paid in respect of any loss or injury caused in the territory of another Member State. Such a derogation, which does not jeopardise protection of the victims, should be maintained. In other cases the Member State applying the derogation is not obliged to pay compensation to the victim of an accident occurring abroad so

long as other Member States are allowed to require, at the entry into their territory, a valid green card or a frontier insurance contract. However, since the elimination of border controls within the Community, compensation for victims of accidents caused abroad by such noninsured vehicles has ceased to be guaranteed. Derogation in those cases, as provided for in Directive 72/166/EEC, should therefore no longer be permitted. The corresponding provisions in Directive 2000/26/EC should also be deleted.

(8) Member States' obligations to guarantee insurance cover beyond certain minimum amounts constitutes an important element in ensuring the protection of the victims. The minimum amounts provided for by Directive 84/5/EEC should not only be updated to take account of inflation but should be increased in real terms to improve the protection of victims. Moreover, the current overall minimum amount per claim for personal injuries in the case of more than one victim, as well as the combined amount for personal injuries and damage to property, which reduce the effective insurance cover of victims in certain accidents, should be abolished.

(9) In order to ensure that the minimum amount of cover is not eroded over time, a periodic review clause should be introduced using as a benchmark the European Index of Consumer Prices (EICP) published by Eurostat, as provided for in Council Regulation (EC) No 2494/95 of 23 October 1995 concerning harmonized indices of consumer prices [16]. The procedural rules governing such a review need to be established.

[16] OJ L 257, 27.10.1995, p. 1.

(10) The provision in Directive 84/5/EEC allowing Member States, in the interest of preventing fraud, to limit or exclude payments by the compensation body in the case of damage to property by an unidentified vehicle is liable to impede legitimate compensation of victims in some cases. The option to limit or exclude compensation should not apply where, in addition to damage to property, significant personal injuries have been caused by the same accident and therefore the risk of fraud is negligible. The meaning of significant personal injuries should be determined by each Member State's national legislation.

(11) At present, an option contained in Directive 84/5/EEC allows Member States to authorise, up to a specified ceiling, excesses for which the victim

would be responsible in the event of damage to property caused by uninsured vehicles. That option unjustly reduces the protection of victims and creates discrimination with respect to victims of other accidents. It should therefore no longer be permitted.

(12) Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC [17], should be amended in order to permit branches of insurance undertakings to become representatives with respect to motor insurance activities, as already happens with respect to insurance services other than motor insurance.

[17] OJ L 172, 4.7.1988, p. 1, as last amended by Directive 2000/26/EC.

(13) The inclusion within the insurance cover of any passenger in the vehicle is a major achievement of the existing legislation. This objective would be placed in jeopardy if national legislation excluded passengers from insurance cover because they knew or should have known that the driver of the vehicle was under the influence of alcohol or of any other intoxicating agent at the time of the accident. The passenger is not usually in a position to assess the intoxication level of the driver properly. The objective of discouraging persons from driving whilst under the influence of intoxicating agents is not achieved by reducing the insurance cover for passengers who are victims of motor vehicle accidents. Cover of these passengers under the vehicle's compulsory motor insurance does not prejudge any hypothetical liability they might have incurred pursuant to the applicable national legislation, nor the level of any award of damages in a specific accident.

(14) Insurance cover for pedestrians and cyclists in the case of accidents involving a motor vehicle varies a great deal within the Community. In some Member States pedestrians and cyclists are not covered by the vehicle's insurance unless some form of driver liability can be established. In other Member States pedestrians and cyclists are covered by such insurance because they are usually the weakest party in any accident. In order to reduce such disparity, it should be ensured that pedestrians and cyclists are covered by the compulsory insurance of the vehicle involved in the accident, irrespective of

whether the driver is at fault. This cover under the vehicle's compulsory motor insurance does not prejudice the civil liability of the pedestrian or cyclist or the level of awards for damages in a specific accident, under national legislation.

(15) Some insurance undertakings insert into insurance policies clauses to the effect that the contract will be cancelled if the vehicle remains outside the Member State of registration for longer than a specified period. This practice is in conflict with the principle set out in Directive 90/232/EEC, according to which the compulsory motor insurance should cover on the basis of a single premium the entire territory of the Community. It should therefore be specified that the insurance cover should remain valid during the whole term of the contract, irrespective of whether the vehicle remains in another Member State for a particular period, without prejudice to the obligations under Member States' national legislation with respect to the registration of vehicles.

(16) Steps should be taken to make it easier for consumers to obtain insurance cover for vehicles despatched from one Member State into another, for the period between acceptance of delivery by the purchaser and registration of the vehicle in the Member State of destination. A temporary derogation from the general rule determining the Member State where the risk is situated should be introduced. For a period of thirty days after acceptance of delivery by the purchaser, the Member State of destination, and not the Member State of registration, should be regarded as the Member State where the risk is situated.

(17) The person wishing to take out a new motor insurance contract with another insurer should be able to justify his accident and claims record under the old contract. Upon termination of the contract, the insurance undertaking should provide the policyholder with a statement relating to claims or the absence of claims during the term of the contract within the preceding five years, without prejudice to the right of the parties to an insurance contract to establish the contract premium.

(18) In order to ensure due protection for the victims of motor vehicle accidents, Member States should not permit excesses to be relied on against an injured party.

(19) The right to invoke the insurance contract and to claim against the insurance undertaking directly is of great importance for the protection of the

victim of any motor-vehicle accident. Directive 2000/26/EC already provides victims of accidents occurring in a Member State other than the Member State of residence of the injured party, which are caused by the use of vehicles insured and normally based in a Member State, with a right of direct action against the insurance undertaking covering the responsible person against civil liability. In order to facilitate an efficient and speedy settlement of claims and to avoid as far as possible costly legal proceedings, this right should be extended to victims of any motor vehicle accident.

(20) To enhance the protection of any victim of a motor vehicle accidents, the "reasoned offer" procedure provided for in Directive 2000/26/EC should be extended to any kind of motor vehicle accident. With a view to ensuring the proper functioning of this mechanism without duplicating the structure required by that Directive, the representative appointed by the insurance undertaking for the specific purposes of that Directive should also be allowed to take responsibility for handling any motor vehicle accident. That procedure is compatible with the system of Green Card Bureaux laid down in Directive 72/166/EEC for the settlement of claims in respect of accidents caused by vehicles normally based in the territory of another Member State.

(21) In order to make it easier for the injured party to seek compensation, the information centres set up in accordance with Directive 2000/26/EC should not be confined to providing information concerning the accidents covered by that Directive but should be able to provide the same kind of information for any motor vehicle accident.

(22) Directives 72/166/EEC, 84/5/EEC, 88/357/EEC, 90/232/EEC and 2000/26/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 72/166/EEC

Directive 72/166/EEC is amended as follows:

(1) In Article 1, paragraph 4 is amended as follows:

(a) The first indent is replaced by the following:

" the territory of the State of which the vehicle bears a registration plate, irrespective of whether the plate is permanent or temporary; or";

(b) The following indent is added:

" in cases where vehicles do not bear any registration plate or bear a registration plate which does not correspond or no longer corresponds to the vehicle and have been involved in an accident, the territory of the State in which the accident took place, for the purpose of settling the claim as provided for in the first indent of Article 2(2); "

(2) In Article 2, paragraph 1 is replaced by the following:

"1. Member States shall refrain from making checks on insurance against civil liability in respect of vehicles normally based in the territory of another Member State and in respect of vehicles normally based in the territory of a third country entering their territory from the territory of another Member State. However, they may carry out nonsystematic checks on insurance provided that they are not discriminatory and are carried out as part of a police control which is not aimed exclusively at insurance verification."

(3) In Article 4, point (b) is deleted.

Article 2

Amendments to Directive 84/5/EEC

Article 1 of Directive 84/5/EEC is replaced by the following:

"Article 1

1. The insurance referred to in Article 3(1) of Directive 72/166/EEC shall cover compulsorily both damage to property and personal injuries.

2. Without prejudice to any higher guarantees which Member States may lay down, each Member State shall require insurance to be compulsory at least in respect of the following amounts:

(a) in the case of personal injury, EUR 1 000 000 per victim;

(b) in the case of damage to property, EUR 500 000 per claim, whatever the number of victims.

3. The amounts referred to in paragraph 2 shall be reviewed every five years in order to take account of changes in the European Index of Consumer Prices (EICP), as set out in Council Regulation (EC) No 2494/95*. The first review shall take place five years from the entry into force of Directive 2003/.../EC.

* OJ L 257, 27.10.1995, p. 1."

The amounts shall be adjusted automatically. Such amounts shall be increased by the percentage change indicated by the EICP for the relevant period, that is to say, the five years immediately preceding the review, and rounded up to a multiple of EUR 10 000.

The Commission shall communicate the adjusted amounts to the European Parliament and the Council and shall ensure their publication in the Official Journal of the European Communities.

4. Each Member State shall set up or authorise a body with the task of providing compensation, at least up to the limits of the insurance obligation for damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which the insurance obligation provided for in paragraph 1 has not been satisfied.

The first subparagraph shall be without prejudice to the right of the Member States to regard compensation by that body as subsidiary or nonsubsidiary and the right to make provision for the settlement of claims between that body and the person or persons responsible for the accident and other insurers or social security bodies required to compensate the victim in respect of the same accident. However, Member States may not allow the body to make the payment of the compensation conditional on the victim establishing in any way that the person liable is unable or refuses to pay.

5. The victim may in any case apply directly to the body which, on the basis of information provided at its request by the victim, shall be obliged to give him a reasoned reply regarding the payment of any compensation.

Member States may, however, exclude the payment of compensation by that body in respect of persons who voluntarily entered the vehicle which caused the damage or injury when the body can prove that they knew it was uninsured.

6. Member States may limit or exclude the payment of compensation by the body in the event of damage to property by an unidentified vehicle.

That option shall not apply where, as a result of the same accident, the victim has suffered significant personal injuries.

The conditions for the personal injuries to be considered significant shall be determined by each Member State's legislation.

7. Each Member State shall apply its laws, regulations and administrative provisions to the payment of compensation by this body, without prejudice to any other practice which is more favourable to the victim.

Article 3

Amendments to Directive 88/357/EEC

The second sentence in the fourth subparagraph of Article 12a(4) of Directive 88/357/EEC is deleted.

Article 4

Amendments to Directive 90/232/EEC

Directive 90/232/EEC is amended as follows:

(1) In Article 1, the following paragraph is inserted between the first and second paragraphs:

"A passenger shall not be excluded from insurance cover on the basis that he knew or should have known that the driver of the vehicle was under the influence of alcohol or of any other intoxicating agent at the time of an accident."

(2) The following Article 1a is inserted:

"Article 1a

The insurance referred to in Article 3(1) of Directive 72/166/EEC shall cover personal injuries suffered by pedestrians and cyclists as a consequence of an accident in which a motor vehicle is involved, irrespective whether the driver is at fault."

(3) In Article 2, the first indent is replaced by the following:

" cover, on the basis of a single premium and during the whole term of the contract, the entire territory of the Community, including for any period when the vehicle remains in other Member States during the term of the contract; and".

(4) The following Articles 4a to 4f are inserted:

"Article 4a

1. By way of derogation from the second indent of Article 2(d) of Directive 88/357/EEC, where a vehicle is despatched from one Member State to another, the Member State where the risk is situated shall be considered to be the Member State of destination immediately upon acceptance of delivery by the

purchaser for a period of thirty days, even though the vehicle has not formally been registered in the Member State of destination.

2. In the event that the vehicle is involved in an accident during the period mentioned in paragraph 1 while being uninsured, the body referred to in Article 1(4) of Directive 84/5/EEC in the Member State of destination shall be liable for the compensation provided for in that Article.

Article 4b

Member States shall ensure that, within fifteen days of the termination of an insurance contract concerning a vehicle covered by insurance as referred to in Article 3(1) of Directive 72/166/EEC, the policyholder shall be provided with a statement relating to the claims or the absence of claims involving the vehicle during the preceding five years of the contractual relationship.

Article 4c

Excesses shall not be relied on against the injured party to an accident as far as the insurance referred to in Article 3(1) of Directive 72/166/EEC is concerned.

Article 4d

Member States shall ensure that injured parties to accidents caused by a vehicle covered by insurance as referred in Article 3(1) of Directive 72/166/EEC enjoy a direct right of action against the insurance undertaking covering the responsible person against civil liability.

Article 4e

1. Member States shall ensure that the representative appointed by an insurance undertaking in accordance with Article 4(1) to (5) of Directive 2000/26/EC of the European Parliament and of the Council*, without prejudice to his obligations under that Directive, may also be responsible for handling and settling the claims arising from any accident caused in the Member State where he is appointed by a vehicle covered by compulsory insurance as referred in Article 3(1) of Directive 72/166/EEC and underwritten by the insurance undertaking he represents.

* OJ L 181, 20.7.2000, p. 65."

2. Member States shall establish the procedure provided for in Article 4(6) of Directive 2000/26/EC for the settlement of claims arising from any accident

caused by a vehicle covered by insurance as referred in Article 3(1) of Directive 72/166/EEC.

3. Paragraphs 1 and 2 are without prejudice to the system of bureaux provided for in Article 2(2) of Directive 72/166/EEC for the settlement of claims in respect of accidents caused by vehicles normally based in the territory of another Member State, whether or not such vehicles are insured.

Article 4f

Member States shall ensure that, without prejudice to their obligations under that Directive, the information centres established or approved in accordance with Article 5 of Directive 2000/26/EC, provide the information specified in that Article to any party to an accident who has suffered damage to property or personal injuries caused by a vehicle covered by insurance as referred to in Article 3(1) of Directive 72/166/EEC.

Article 5

Amendments to Directive 2000/26/EC

In Article 5(1) of Directive 2000/26/EC, point (a) is amended as follows:

(1) point 2(ii) is deleted;

(2) point 5(ii) is deleted.

Article 6

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2004 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of domestic law which they adopt in the field governed by this Directive.

Article 7

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

Article 8

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament For the Council

The President The President

IMPACT ASSESSMENT FORM THE IMPACT OF THE PROPOSAL ON BUSINESS, WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)

Title of proposal

Directive of the European Parliament and the Council amending Directives 72/166/EEC, 84/5/EEC, 88/357/EEC, 90/232/EEC and 2000/26/EC on insurance against civil liability in respect of the use of motor vehicles")

Document reference number

COM(2002) 244 final

The proposal

1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims-

Community legislation is needed since this directive aims to clarify and improve the existing Community framework of compulsory motor insurance.

The most urgent change deals with the revision of the minimum coverage amounts provided for in the Directives. Article 6(2) of Directive 84/5/EEC stipulates that the Commission should "where appropriate, submit proposals in particular as regards adjustment of the amounts laid down in Article 1(2) and (4)". This revision has not been carried out since the adoption of Directive 84/5/EEC.

Other changes aimed at clarifying and improving the legal framework for motor insurance are in response to a large number of questions, complaints and petitions received from individuals and members of the European Parliament on the application of the Directives. In the consultation exercise with industry,

victims' organisations and drivers' associations, as well as with Member States' experts, the Commission has thoroughly checked that these changes in Community legislation are needed.

Lastly, other changes are designed to extend certain mechanisms for settling claims already introduced into Community legislation by Directive 2000/26/EC (Fourth Motor Insurance Directive) to all kinds of motor accidents.

In the interests of subsidiarity, it should also be noted that the Resolution of the European Parliament adopted in July 2001 has recommended that the Commission adopt a proposal for a Fifth Motor Insurance Directive. The actions requested in this Resolution are covered by the present proposal.

The proposal is confined to the specific scope of the EU legislation on motor insurance. It is focused on compulsory motor insurance and carefully avoids regulating matters which go beyond this matter such as civil law or the rules for vehicle registration.

The impact on business

2. Who will be affected by the proposal-

- Which sectors of business- Those non-life insurance undertakings active in the field of motor insurance.

- Which sizes of business- (What is the concentration of small and medium-sized firms-) Both small and medium-sized firms as well as large nonlife insurance undertakings will be affected. The proposal and EU motor insurance legislation in general aim to ensure that compulsory insurance provides appropriate protection to victims of motor accidents, regardless of the size and features of the insurance undertaking providing the cover. Any discrimination in the legislation between insurance undertakings on the grounds of size would not be appropriate.

- Are there particular geographical areas of the Community where these businesses are found- No.

3. What will business have to do to comply with the proposal-

Most provisions of the proposal clearly do not impose any additional burden on insurance undertakings.

Article 2, which revises the minimum amounts of insurance cover provided for in the Directives and establishes a revision clause, might be considered as having

an impact on the amounts of compensation paid by insurance undertakings. However, the results of the consultation exercise carried out by the Commission with the different interested parties show that only in a very small percentage of accidents (usually less than 0.1%) does the compensation to be paid by insurance undertakings reach the minimum level of cover for compulsory insurance laid down in the present Directives or the other maximum levels set in some Member States. In a number of Member States the minimum amounts of cover do not exist at all (unlimited coverage system) or exist only for property damage. Most Member States with minimum amounts of cover have fixed them at a level higher than the minimum established in the existing Directives. As far as the Commission is aware, insurance undertakings in those Member States have not suffered as a result of the minimum levels of cover. Furthermore, the Resolution adopted by the European Parliament on July 2001 calls for a larger increase in the minimum amounts of cover than that provided for in the proposal.

Article 4(2), which includes pedestrians and cyclists within the scope of the compulsory insurance of the vehicle involved in the accident without affecting the rules on civil liability existing in each Member State, should not have a significant impact on premiums. A number of Member States have already taken this step and the insurance undertakings and their insurance markets have been able to assume this cover without encountering any special difficulties.

Article 4(4) establishing the insurer's obligation to provide the policyholder on termination of the insurance contract with a statement of accidents is established practice in the industry as well as an obligation in some Member States. The burden it imposes on insurance undertakings is negligible.

This Article also obliges insurance undertakings to have a representative in all Member States for settling claims. It does not entail any additional burden for the structure of insurance undertakings since the proposal builds on the existing appointed representatives as provided for in the Fourth Motor Insurance Directive. Furthermore, Article 3 of the proposal reduces the administrative burden on insurance undertakings since it removes the prohibition in the existing Directives on using a branch as an insurance undertaking's representative in another Member State.

4. What economic effects is the proposal likely to have-

- On employment: broadly neutral.
- On investment and the creation of new businesses: broadly neutral.
- On the competitiveness of businesses: broadly neutral.

5. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements, etc.)-

The proposal does not affect the prudential financial requirements to be imposed on insurance undertakings, such as technical provisions or the solvency margin. It aims to improve the protection of the victims of motor accidents and to make it easier for the policyholder to find insurance cover. In these matters, no distinction based on size of undertaking is acceptable.

Consultation

6. List the organisations which have been consulted during the preparation of the proposal and outline their main views.

1. European Federation of Road Traffic Victims (FEVR)

This organisation of road traffic victims supports the measures proposed by the Commission. It would, however, prefer unlimited insurance cover for personal damages instead of a minimum amounts system as in the current Directives and in the proposal. With regard to the extension of the mechanisms for settling claims established by the Fourth Motor Insurance Directive to all kinds of accidents, although the FEVR agrees with the provision, it suggests introducing further guarantees and stricter deadlines over and above those established in the Fourth Directive. It also suggests some additional measures that go beyond the scope of insurance legislation such as harmonisation of moral tort and the provision of information to victims about the defence associations competent in the territory where the accident occurred

2. Comité Européen des Assurances (CEA)

The organisation representing European insurers has expressed its support for the Commission's initiative to modernise the insurance Directives and for the core provisions contained in the proposal. A number of its technical suggestions have been taken into account in the Proposal. However, with regard to the revision of the minimum amounts of cover, the CEA supports the updating of the amounts adopted in 1984 and a periodic revision clause, but it is not in favour of

a substantial revision of the minimum amounts of cover as envisaged in the proposal (and requested by the European Parliament) to improve the protection of victims. The CEA would like to see the proposal retain an overall amount per claim (for personal injuries in the case of more than one victim in the same accident and for personal injuries and damage to property) as exists under the current Directives. It also considers that some insurance markets may require transitional periods to adapt to the compensation amounts provided for in the proposal. Furthermore, the CEA is concerned about the inclusion of pedestrians and cyclists within the scope of the compulsory insurance of the driver, as it considers this to be a matter of civil liability which goes beyond the proper scope of an insurance directive.

3. Council of Bureaux [18]

[18] The Council of Bureaux is the co-ordination body of the "green card system". This system ensures the payment of compensation to victims of accidents caused by visiting vehicles through a private-sector network of Green Card Bureaux set up by the insurers and established in all the Member States and in a large number of third countries.

The Council of Bureaux has expressed its support for the core provisions contained in the proposal and has given its cooperation to the Commission in order to resolve properly some difficult problems such as those relating to vehicles without a registration plate or bearing a non-corresponding plate or to insurance cover for imported vehicles.

4. Association of European Cooperative and Mutual Insurers (ACME)

This association is in favour of the Commission's initiative to modernise the insurance Directives as well as of the core provisions contained in the proposal. A number of suggestions have been taken into account in the proposal. ACME has, however, expressed its concern at the abolition of an overall compensation amount per claim (for personal injuries in the case of more than one victim in the same accident and for personal injuries and damage to property) as exists under the current Directives. It is also concerned at the abolition of the Member States' option to limit compensation to damage to property in the case of accidents caused by unidentified vehicles owing to the risk of fraud. It would prefer it if the insurer's obligation to provide statements relating to accidents

were limited to cases in which the insurance contract had been cancelled or the insured person had requested such a statement.

5. European Consumers Organisation (BEUC)

BEUC has welcomed the Commission's initiative aimed at updating the insurance Directives and improving the Community legal framework in this field. It has expressed its general support for the core provisions contained in the proposal. A number of its suggestions have been taken up in the text. Beyond the specific comments on the proposed provisions, BEUC has stressed the need to move towards a more harmonised legal framework in the field of insurance contract law. It has also expressed its concern at the high cost of premiums in motor insurance contracts and recommended that premiums should be based more closely on statistics of claims costs for the different categories of risk.

6. European Bureau of the International Alliance of Tourism and International Automobile Federation

These two federations representing motorists have expressed their support for the Commission's initiative and for the core provisions contained in the proposal. They would, however, prefer to see unlimited insurance cover for personal damages instead of a minimum amounts system as in the current Directives and in the proposal. They have expressed their concern at the inclusion of pedestrians and cyclists within the scope of compulsory insurance of the driver as they understand that this is a matter for national liability legislation. They stressed the fact that problems such as temporary stays in other Member States, secondary residences and the importation of vehicles should be treated in a separate horizontal Directive dealing with these issues (insurance, registration of vehicles, taxation, etc.).

As indicated above, a large number of concerns and suggestions expressed by these organisations has been taken into account in the proposal. Some comments, however, have not been taken on board because of the need to strike a proper balance between the interests and rights of the different parties affected by the application of the motor insurance Directives. The justification for the approach adopted by the Commission on each issue has been provided in detail in the explanatory memorandum and in the recitals to the proposal.

EU Institutions press releases

Insurance: Commission proposes to modernise and improve EU rules on motor insurance

DN: IP/02/838 Date: 10/06/2002

Brussels, 10th June 2002

Insurance: Commission proposes to modernise and improve EU rules on motor insurance

The European Commission has presented a proposal for a new Motor Insurance Directive which would modernise and improve existing EU rules in this field. The proposal aims to make it easier for people to find car insurance for a temporary stay in another Member State. It will also make it easier to get short-term insurance covering cars bought outside the owner's Member State of residence. That in turn will help people to buy cars wherever in the EU they can find the best value and help stimulate cross-border competition in the vehicle market. The proposal would update some existing provisions, for example on the minimum amount of cover motorists must have. It would make it easier for customers to change insurance provider. Last but not least, it aims to improve protection for pedestrians and cyclists who are involved in traffic accidents. Without an improved common set of EU rules, motorists will continue to be frustrated by the insurance obstacles which currently exist. This proposal follows extensive work by a Commission expert group drawn from the Member States and takes into account wide-ranging consultation of industry, accident victims' associations and other interested parties. In July 2001, the European Parliament called on the Commission to put forward a proposal to update motor insurance rules. This proposal is part of the Commission's efforts to make EU citizens' rights to live, travel and work in any EU Member State, free of bothersome practical obstacles, a reality.

Internal Market Commissioner Frits Bolkestein said: "The aim of this proposal is to make life easier for motorists travelling within the EU, by addressing a number of problems which they frequently encounter today. European citizens have the right to use, buy and sell their vehicles in other Member States. So we need a system that makes it as easy as possible to get insurance cover, for whatever circumstances may arise. That cover needs to be effective across borders. This proposal is the Commission's response to the questions, comments and complaints we have received from citizens and from members of the European Parliament on the operation of the existing Motor Insurance Directives, at a time when cross-border traffic has grown immensely. "

Simple and safe driving within the EU

The Motor Insurance Directives are a major EU success story and a fundamental factor in making the free movement of motorists and their vehicles in the Union a reality. They have permitted the abolition of border checks on insurance, so that vehicles can be driven as easily between Member States as within one country. They also provide a mechanism to compensate the local victims of accidents caused by vehicles from another Member State. The Directives do this by building upon the private sector network of bureaux and the Green Card System set up by insurers. This system works efficiently to provide compensation for the hundreds of thousands of accidents involving vehicles from more than one Member State. The Motor Insurance Directives need to be kept up to date if these advantages are to be preserved.

With the first three Motor Insurance Directives(1), the EU took fundamental steps towards establishing a single market for motor insurance. Those Directives made it compulsory for all motor vehicles in the EU to be covered by third party insurance, and ensured better protection for accident victims. The Fourth Motor Directive(2) completed the system by establishing an efficient mechanism for quick settlement of claims where accidents take place outside the victims' Member State of residence ("visiting victims").

Remaining obstacles

However, a number of problems still remain. It is not only that some aspects of the Directives adopted in the seventies and eighties need to be updated (in particular, review of the minimum amount of cover). There is also a need to fill gaps and to solve common problems that lead to many complaints from European citizens. This is the case in particular for:

- the large number of people (e.g. students, workers residing temporarily abroad and individuals with secondary residences) who complain about the difficulties of finding insurance for a temporary stay in another Member State;
- citizens who wish to purchase a new or second-hand car in another Member State and who encounter difficulties in finding short-term insurance cover before the vehicle is registered in the country of importation;
- the growing demand by pedestrians and cyclists - the weakest parties in traffic accidents - to be protected by the insurance coverage of the vehicle involved;
- motorists wishing to obtain from their existing insurer a statement relating to their claims record, so that they can negotiate a contract with another insurance undertaking.

The proposed Fifth Motor Insurance Directive would solve many practical problems of these types and would improve the functioning of the Internal Market in motor insurance.

Fourth motor insurance Directive

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Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (Fourth motor insurance Directive)

Official Journal L 181 , 20/07/2000 P. 0065 - 0074

Directive 2000/26/EC of the European Parliament and of the Council
of 16 May 2000

on the approximation of the laws of the Member States relating to insurance
against civil liability in respect of the use of motor vehicles and amending
Council Directives 73/239/EEC and 88/357/EEC

(Fourth motor insurance Directive)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN
UNION,

Having regard to the Treaty establishing the European Community, and in
particular Articles 47(2) and 95 thereof,

Having regard to the proposal from the Commission(1),

Having regard to the opinion of the Economic and Social Committee(2),

Acting in accordance with the procedure laid down in Article 251 of the
Treaty(3), in the light of the joint text approved by the Conciliation Committee on
7 April 2000,

Whereas:

(1) At present, differences exist between provisions laid down by law, regulation
or administrative action in the Member States relating to insurance against civil

liability in respect of the use of motor vehicles and those differences constitute an obstacle to the free movement of persons and of insurance services.

(2) It is therefore necessary to approximate those provisions in order to promote the sound functioning of the single market.

(3) By Directive 72/166/EEC(4), the Council adopted provisions on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability.

(4) By Directive 88/357/EEC(5), the Council adopted provisions on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services.

(5) The green card bureau system ensures the ready settlement of claims in the injured party's own country even where the other party comes from a different European country.

(6) The green card bureau system does not solve all problems of an injured party having to claim in another country against a party resident there and an insurance undertaking authorised there (foreign legal system, foreign language, unfamiliar settlement procedures and often unreasonably delayed settlement).

(7) By its Resolution of 26 October 1995 on the settlement of claims arising from traffic accidents occurring outside the claimant's country of origin(6), the European Parliament, acting under the second paragraph of Article 192 of the Treaty, called on the Commission to submit a proposal for a European Parliament and Council Directive to solve these problems.

(8) It is in fact appropriate to supplement the arrangements established by Directives 72/166/EEC, 84/5/EEC(7) and 90/232/EEC(8) in order to guarantee injured parties suffering loss or injury as a result of a motor vehicle accident comparable treatment irrespective of where in the Community accidents occur; for accidents falling within the scope of this Directive occurring in a State other than that of the injured party's residence, there are gaps with regard to the settlement of injured parties' claims.

(9) The application of this Directive to accidents occurring in third countries covered by the green card system, affecting injured parties resident in the

Community and involving vehicles insured and normally based in a Member State does not imply an extension of the compulsory territorial coverage of motor insurance as provided for in Article 3(2) of Directive 72/166/EEC.

(10) This entails giving the injured party a direct right of action against the insurance undertaking of the responsible party.

(11) One satisfactory solution might be for injured parties suffering loss or injury as a result of a motor vehicle accident falling within the scope of this Directive and occurring in a State other than that of their residence to be entitled to claim in their Member State of residence against a claims representative appointed there by the insurance undertaking of the responsible party.

(12) This solution would enable damage suffered by injured parties outside their Member State of residence to be dealt with by procedures familiar to them.

(13) This system of having claims representatives in the injured party's Member State of residence affects neither the substantive law to be applied in each individual case nor the matter of jurisdiction.

(14) The existence of a direct right of action against the insurance undertaking for the party who has suffered loss or injury is a logical supplement to the appointment of such representatives and moreover improves the legal position of injured parties of motor vehicle accidents occurring outside that party's Member State of residence.

(15) In order to fill the gaps in question, it should be provided that the Member State where the insurance undertaking is authorised should require the undertaking to appoint claims representatives resident or established in the other Member States to collect all necessary information in relation to claims resulting from such accidents and to take appropriate action to settle the claims on behalf and for the account of the insurance undertaking, including the payment of compensation therefor; claims representatives should have sufficient powers to represent the insurance undertaking in relation to persons suffering damage from such accidents, and also to represent the insurance undertaking before national authorities including, where necessary, before the courts, in so far as this is compatible with the rules of private international law on the conferral of jurisdiction.

(16) The activities of the claims representative are not sufficient in order to confer jurisdiction on the courts in the injured party's Member State of residence if the rules of private international law on the conferral of jurisdiction do not so provide.

(17) The appointment of representatives responsible for settling claims should be one of the conditions for access to and carrying on the activity of insurance listed in class 10 of point A of the Annex to Directive 73/239/EEC(9), except for carriers' liability; that condition should therefore be covered by the single official authorisation issued by the authorities of the Member State where the insurance undertaking establishes its head office, as specified in Title II of Directive 92/49/EEC(10); that condition should also apply to insurance undertakings having their head office outside the Community which have secured an authorisation granting them access to the activity of insurance in a Member State of the Community; Directive 73/239/EEC should be amended and supplemented accordingly.

(18) In addition to ensuring that the insurance undertaking has a representative in the State where the injured party resides, it is appropriate to guarantee the specific right of the injured party to have the claim settled promptly; it is therefore necessary to include in national law appropriate effective and systematic financial or equivalent administrative penalties - such as injunctions combined with administrative fines, reporting to supervisory authorities on a regular basis, on-the-spot checks, publications in the national official journal and in the press, suspension of the activities of the company (prohibition on the conclusion of new contracts for a certain period), designation of a special representative of the supervisory authorities responsible for monitoring that the business is run in line with insurance laws, withdrawal of the authorisation for this business line, sanctions to be imposed on directors and management staff - in the event that the insurance undertaking or its representative fails to fulfil its obligation to make an offer of compensation within a reasonable time-limit; this should not prejudice the application of any other measure - especially under supervisory law - which may be considered appropriate; however, it is a condition that liability and the damage and injury sustained should not be in dispute, so that the insurance undertaking is able to make a reasoned offer

within the prescribed time-limit; the reasoned offer of compensation should be in writing and contain the grounds on the basis of which liability and damages have been assessed.

(19) In addition to those sanctions, it is appropriate to provide that interest should be payable on the amount of compensation offered by the insurance undertaking or awarded by the court to the injured party when the offer has not been made within the said prescribed time-limit; if Member States have existing national rules which cover the requirement for late-payment interest this provision could be implemented by a reference to those rules.

(20) Injured parties suffering loss or injury as a result of motor vehicle accidents sometimes have difficulty in establishing the name of the insurance undertaking providing insurance against civil liability in respect of the use of motor vehicles involved in an accident.

(21) In the interest of such injured parties, Member States should set up information centres to ensure that such information is made available promptly; those information centres should also make available to injured parties information concerning claims representatives; it is necessary that such centres should cooperate with each other and respond rapidly to requests for information about claims representatives made by centres in other Member States; it seems appropriate that such centres should collect information about the actual termination date of the insurance cover but not about the expiry of the original validity of the policy if the duration of the contract is extended owing to non-cancellation.

(22) Specific provision should be made with respect to vehicles (for example, government or military vehicles) which fall under the exemptions from the obligation to be insured against civil liability.

(23) The injured party may have a legitimate interest in being informed about the identity of the owner or usual driver or the registered keeper of the vehicle, for example if he can obtain compensation only from these persons because the vehicle is not duly insured or the damage exceeds the sum insured, this information should also be provided accordingly.

(24) Certain information provided, such as the name and address of the owner or usual driver of the vehicle and the number of the insurance policy or the

registration number of the vehicle, constitutes personal data within the meaning of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽¹¹⁾; the processing of such data which is required for the purposes of this Directive must therefore comply with the national measures taken pursuant to Directive 95/46/EC; the name and address of the usual driver should be communicated only if national legislation provides for such communication.

(25) It is necessary to make provision for a compensation body to which the injured party may apply where the insurance undertaking has failed to appoint a representative or is manifestly dilatory in settling a claim or where the insurance undertaking cannot be identified to guarantee that the injured party will not remain without the compensation to which he is entitled; the intervention of the compensation body should be limited to rare individual cases where the insurance undertaking has failed to comply with its duties in spite of the dissuasive effect of the potential imposition of penalties.

(26) The role played by the compensation body is that of settling the claim in respect of any loss or injury suffered by the injured party only in cases which are capable of objective determination and therefore the compensation body must limit its activity to verifying that an offer of compensation has been made in accordance with the time-limits and procedures laid down, without any assessment of the merits.

(27) Legal persons who are subrogated by law to the injured party in his claims against the person responsible for the accident or the latter's insurance undertaking (such as, for example, other insurance undertakings or social security bodies) should not be entitled to present the corresponding claim to the compensation body.

(28) The compensation body should have a right of subrogation in so far as it has compensated the injured party; in order to facilitate enforcing the compensation body's claim against the insurance undertaking where it has failed to appoint a claims representative or is manifestly dilatory in settling a claim, the body providing compensation in the injured party's State should enjoy an automatic right of reimbursement with subrogation to the rights of the injured

party on the part of the corresponding body in the State where the insurance undertaking is established; the latter body is the best placed to institute proceedings for recourse against the insurance undertaking.

(29) Even though Member States may provide that the claim against the compensation body may be subsidiary, the injured person should not be obliged to present his claim to the person responsible for the accident before presenting it to the compensation body; in this case the injured party should be in at least the same position as in the case of a claim against the guarantee fund under Article 1(4) of Directive 84/5/EEC.

(30) This system can be made to function by means of an agreement between the compensation bodies established or approved by the Member States defining their functions and obligations and the procedures for reimbursement.

(31) Where it is impossible to identify the insurer of the vehicle, provision should be made so that the ultimate debtor in respect of the damages to be paid to the injured party is the guarantee fund provided for in Article 1(4) of Directive 84/5/EEC situated in the Member State where the non-insured vehicle, the use of which has caused the accident, is normally based; where it is impossible to identify the vehicle, provision must be made so that the ultimate debtor is the guarantee fund provided for in Article 1(4) of Directive 84/5/EEC situated in the Member State in which the accident occurred,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

1. The objective of this Directive is to lay down special provisions applicable to injured parties entitled to compensation in respect of any loss or injury resulting from accidents occurring in a Member State other than the Member State of residence of the injured party which are caused by the use of vehicles insured and normally based in a Member State.

Without prejudice to the legislation of third countries on civil liability and private international law, this Directive shall also apply to injured parties resident in a Member State and entitled to compensation in respect of any loss or injury resulting from accidents occurring in third countries whose national insurer's

bureaux as defined in Article 1(3) of Directive 72/166/EEC have joined the Green Card system whenever such accidents are caused by the use of vehicles insured and normally based in a Member State.

2. Articles 4 and 6 shall apply only in the case of accidents caused by the use of a vehicle

(a) insured through an establishment in a Member State other than the State of residence of the injured party, and

(b) normally based in a Member State other than the State of residence of the injured party.

3. Article 7 shall also apply to accidents caused by third-country vehicles covered by Articles 6 and 7 of Directive 72/166/EEC.

Article 2

Definitions

For the purpose of this Directive:

(a) "insurance undertaking" means an undertaking which has received its official authorisation in accordance with Article 6 or Article 23(2) of Directive 73/239/EEC;

(b) "establishment" means the head office, agency or branch of an insurance undertaking as defined in Article 2(c) of Directive 88/357/EEC;

(c) "vehicle" means a vehicle as defined in Article 1(1) of Directive 72/166/EEC;

(d) "injured party" means an injured party as defined in Article 1(2) of Directive 72/166/EEC;

(e) "the Member State in which the vehicle is normally based" means the territory in which the vehicle is normally based as defined in Article 1(4) of Directive 72/166/EEC.

Article 3

Direct right of action

Each Member State shall ensure that injured parties referred to in Article 1 in accidents within the meaning of that provision enjoy a direct right of action against the insurance undertaking covering the responsible person against civil liability.

Article 4

Claims representatives

1. Each Member State shall take all measures necessary to ensure that all insurance undertakings covering the risks classified in class 10 of point A of the Annex to Directive 73/239/EEC, other than carrier's liability, appoint a claims representative in each Member State other than that in which they have received their official authorisation. The claims representative shall be responsible for handling and settling claims arising from an accident in the cases referred to in Article 1. The claims representative shall be resident or established in the Member State where he is appointed.
2. The choice of its claims representative shall be at the discretion of the insurance undertaking. The Member States may not restrict this choice.
3. The claims representative may work for one or more insurance undertakings.
4. The claims representative shall, in relation to such claims, collect all information necessary in connection with the settlement of the claims and shall take the measures necessary to negotiate a settlement of claims. The requirement of appointing a claims representative shall not preclude the right of the injured party or his insurance undertaking to institute proceedings directly against the person who caused the accident or his insurance undertaking.
5. Claims representatives shall possess sufficient powers to represent the insurance undertaking in relation to injured parties in the cases referred to in Article 1 and to meet their claims in full. They must be capable of examining cases in the official language(s) of the Member State of residence of the injured party.
6. The Member States shall create a duty, backed by appropriate, effective and systematic financial or equivalent administrative penalties, to the effect that, within three months of the date when the injured party presented his claim for compensation either directly to the insurance undertaking of the person who caused the accident or to its claims representative,
 - (a) the insurance undertaking of the person who caused the accident or his claims representative is required to make a reasoned offer of compensation in cases where liability is not contested and the damages have been quantified, or

(b) the insurance undertaking to whom the claim for compensation has been addressed or his claims representative is required to provide a reasoned reply to the points made in the claim in cases where liability is denied or has not been clearly determined or the damages have not been fully quantified.

Member States shall adopt provisions to ensure that where the offer is not made within the three-month time-limit, interest shall be payable on the amount of compensation offered by the insurance undertaking or awarded by the court to the injured party.

7. The Commission shall report to the European Parliament and Council on the implementation of paragraph 4, first subparagraph, and on the effectiveness of that provision as well as on the equivalence of national penalty provisions before 20 January 2006 and shall submit proposals if necessary.

8. The appointment of a claims representative shall not in itself constitute the opening of a branch within the meaning of Article 1(b) of Directive 92/49/EEC and the claims representative shall not be considered an establishment within the meaning of Article 2(c) of Directive 88/357/EEC or an establishment within the meaning of the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters(12).

Article 5

Information centres

1. For the purposes of allowing the injured party to seek compensation, each Member State shall establish or approve an information centre responsible:

(a) for keeping a register containing the following information:

1. the registration numbers of motor vehicles normally based in the territory of the State in question;

2. (i) the numbers of the insurance policies covering the use of those vehicles for the risks classified in class 10 of point A of the Annex to Directive 73/239/EEC, other than carrier's liability, and where the period of validity of the policy has expired, also the date of termination of the insurance cover;

(ii) the number of the green card or frontier insurance policy if the vehicle is covered by one of those documents in case the vehicle benefits from the derogation provided for in Article 4(b) of Directive 72/166/EEC;

3. insurance undertakings covering the use of vehicles for the risks classified in class 10 of point A of the Annex to Directive 73/239/EEC, other than carrier's liability, and claims representatives appointed by such insurance undertakings in accordance with Article 4 whose names shall be notified to the information centre in accordance with paragraph 2 of this Article;

4. the list of vehicles which, in each Member State, benefit from the derogation from the requirement for civil liability insurance cover in accordance with Article 4(a) and (b) of Directive 72/166/EEC;

5. regarding the vehicles provided for in point (4):

(i) the name of the authority or the body designated in accordance with the second subparagraph of Article 4(a) of Directive 72/166/EEC as responsible for compensating injured parties in the cases where the procedure provided for in the first indent of Article 2(2) of Directive 72/166/EEC is not applicable, if the vehicle benefits from the derogation provided for in Article 4(a) of Directive 72/166/EEC;

(ii) the name of the body covering the vehicle in the Member State where it is normally based if the vehicle benefits from the derogation provided for in Article 4(b) of Directive 72/166/EEC;

(b) or for coordinating the compilation and dissemination of that information;

(c) and for assisting entitled persons to be apprised of the information mentioned in points (a)(1), (2), (3), (4) and (5).

The information under points (a)(1), (2) and (3) must be preserved for a period of seven years after the termination of the registration of the vehicle or the termination of the insurance contract.

2. Insurance undertakings referred to in paragraph 1(a)(3) shall notify to the information centres of all Member States the name and address of the claims representative which they have appointed in accordance with Article 4 in each of the Member States.

3. The Member States shall ensure that the injured party is entitled for a period of seven years after the accident to obtain without delay from the information centre of the Member State where he resides, the Member State where the vehicle is normally based or the Member State where the accident occurred the following information:

- (a) the name and address of the insurance undertaking;
- (b) the number of the insurance policy; and
- (c) the name and address of the insurance undertaking's claims representative in the State of residence of the injured party.

Information centres shall cooperate with each other.

4. The information centre shall provide the injured party with the name and address of the owner or usual driver or the registered keeper of the vehicle if the injured party has a legitimate interest in obtaining this information. For the purposes of this provision, the information centre shall address itself in particular:

- (a) to the insurance undertaking, or
- (b) to the vehicle registration agency.

If the vehicle benefits from the derogation provided for in Article 4(a) of Directive 72/166/EEC, the information centre shall inform the injured party of the name of the authority or body designated in accordance with the second subparagraph of Article 4(a) of that Directive as responsible for compensating injured parties in cases where the procedure provided for in the first indent of Article 2(2) of that Directive is not applicable.

If the vehicle benefits from the derogation provided for in Article 4(b) of Directive 72/166/EEC, the information centre shall inform the injured party of the name of the body covering the vehicle in the country where it is normally based.

5. The processing of personal data resulting from the previous paragraphs must be carried out in accordance with national measures taken pursuant to Directive 95/46/EC.

Article 6

Compensation bodies

1. Each Member State shall establish or approve a compensation body responsible for providing compensation to injured parties in the cases referred to in Article 1.

Such injured parties may present a claim to the compensation body in their Member State of residence:

(a) if, within three months of the date when the injured party presented his claim for compensation to the insurance undertaking of the vehicle the use of which caused the accident or to its claims representative, the insurance undertaking or its claims representative has not provided a reasoned reply to the points made in the claim; or

(b) if the insurance undertaking has failed to appoint a claims representative in the State of residence of the injured party in accordance with Article 4(1). In this case, injured parties may not present a claim to the compensation body if they have presented a claim for compensation directly to the insurance undertaking of the vehicle the use of which caused the accident and if they have received a reasoned reply within three months of presenting the claim.

Injured parties may not however present a claim to the compensation body if they have taken legal action directly against the insurance undertaking.

The compensation body shall take action within two months of the date when the injured party presents a claim for compensation to it but shall terminate its action if the insurance undertaking, or its claims representative, subsequently makes a reasoned reply to the claim.

The compensation body shall immediately inform:

(a) the insurance undertaking of the vehicle the use of which caused the accident or the claims representative;

(b) the compensation body in the Member State of the insurance undertaking's establishment which issued the policy;

(c) if known, the person who caused the accident,

that it has received a claim from the injured party and that it will respond to that claim within two months of the presentation of that claim.

This provision shall be without prejudice to the right of the Member States to regard compensation by that body as subsidiary or non-subsidiary and the right to make provision for the settlement of claims between that body and the person or persons who caused the accident and other insurance undertakings or social security bodies required to compensate the injured party in respect of the same accident. However, Member States may not allow the body to make the payment of compensation subject to any conditions other than those laid

down in this Directive, in particular the injured party's establishing in any way that the person liable is unable or refuses to pay.

2. The compensation body which has compensated the injured party in his Member State of residence shall be entitled to claim reimbursement of the sum paid by way of compensation from the compensation body in the Member State of the insurance undertaking's establishment which issued the policy.

The latter body shall then be subrogated to the injured party in his rights against the person who caused the accident or his insurance undertaking in so far as the compensation body in the Member State of residence of the injured party has provided compensation for the loss or injury suffered. Each Member State is obliged to acknowledge this subrogation as provided for by any other Member State.

3. This Article shall take effect:

(a) after an agreement has been concluded between the compensation bodies established or approved by the Member States relating to their functions and obligations and the procedures for reimbursement;

(b) from the date fixed by the Commission upon its having ascertained in close cooperation with the Member States that such an agreement has been concluded.

The Commission shall report to the European Parliament and the Council on the implementation of this Article and on its effectiveness before 20 July 2005 and shall submit proposals if necessary.

Article 7

If it is impossible to identify the vehicle or if, within two months following the accident, it is impossible to identify the insurance undertaking, the injured party may apply for compensation from the compensation body in the Member State where he resides. The compensation shall be provided in accordance with the provisions of Article 1 of Directive 84/5/EEC. The compensation body shall then have a claim, on the conditions laid down in Article 6(2) of this Directive:

(a) where the insurance undertaking cannot be identified: against the guarantee fund provided for in Article 1(4) of Directive 84/5/EEC in the Member State where the vehicle is normally based;

(b) in the case of an unidentified vehicle: against the guarantee fund in the Member State in which the accident took place;

(c) in the case of third-country vehicles: against the guarantee fund of the Member State in which the accident took place.

Article 8

Directive 73/239/EEC shall be amended as follows:

(a) In Article 8(1) the following point shall be added:

"(f) communicate the name and address of the claims representative appointed in each Member State other than the Member State in which the authorisation is sought if the risks to be covered are classified in class 10 of point A of the Annex, other than carrier's liability."

(b) In Article 23(2) the following point shall be added:

"(h) communicate the name and address of the claims representative appointed in each Member State other than the Member State in which the authorisation is sought if the risks to be covered are classified in class 10 of point A of the Annex, other than carrier's liability."

Article 9

Directive 88/357/EEC shall be amended as follows:

In Article 12a(4) the following subparagraph shall be added: "If the insurance undertaking has failed to appoint a representative, Member States may give their approval to the claims representative appointed in accordance with Article 4 of Directive 2000/26/EC(13) assuming the function of the representative appointed according to this paragraph."

Article 10

Implementation

1. Member States shall adopt and publish before 20 July 2002 the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

They shall apply these provisions before 20 January 2003.

2. When these measures are adopted by the Member States, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

3. Without prejudice to paragraph 1, the Member States shall establish or approve the compensation body in accordance with Article 6(1) before 20 January 2002. If the compensation bodies have not concluded an agreement in accordance with Article 6(3) before 20 July 2002, the Commission shall propose measures designed to ensure that the provisions of Articles 6 and 7 take effect before 20 January 2003.

4. Member States may, in accordance with the Treaty, maintain or bring into force provisions which are more favourable to the injured party than the provisions necessary to comply with this Directive.

5. Member States shall communicate to the Commission the text of the main provisions of domestic law which they adopt in the field governed by this Directive.

Article 11

Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 12

Penalties

The Member States shall fix penalties for breaches of the national provisions which they adopt in implementation of this Directive and take the steps necessary to secure their application. The penalties shall be effective, proportional and dissuasive. The Member States shall notify these provisions to the Commission not later than 20 July 2002 and any subsequent amendments thereof as soon as possible.

Article 13

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 16 May 2000.

For the European Parliament

The President

Nicole Fontaine

For the Council

The President

Manuel Carrilho

(1) OJ C 343, 13.11.1997, p. 11 and OJ C 171, 18.6.1999, p. 4.

(2) OJ C 157, 25.5.1998, p. 6.

(3) Opinion of the European Parliament of 16 July 1998 (OJ C 292, 21.9.1998, p. 123), confirmed on 27 October 1999, Council Common Position of 21 May 1999 (OJ C 232, 13.8.1999, p. 8) and Decision of the European Parliament of 15 December 1999 (not yet published in the Official Journal). Decision of the Council of 2 May 2000 (not yet published in the Official Journal) and Decision of the European Parliament of 16 May 2000.

(4) OJ L 103, 2.5.1972, p. 1. Directive as last amended by Directive 84/5/EEC (OJ L 8, 11.1.1984, p. 17).

(5) OJ L 172, 4.7.1988, p. 1. Directive as last amended by Directive 92/49/EEC (OJ L 228, 11.8.1992, p. 1).

(6) OJ C 308, 20.11.1995, p. 108.

(7) Second Council Directive (84/5/EEC) of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ L 8, 11.1.1984, p. 17). Directive as last amended by Directive 90/232/EEC (OJ L 129, 19.5.1990, p. 33).

(8) Third Council Directive (90/232/EEC) of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ L 129, 19.5.1990, p. 33).

(9) First Council Directive (73/239/EEC) of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJ L 228, 16.8.1973, p. 3). Directive as last amended by Directive 95/26/EC (OJ L 168, 18.7.1995, p. 7).

(10) Council Directive (92/49/EEC) of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ L 228, 11.8.1992, p. 1). Directive as amended by Directive 95/26/EC (OJ L 168, 18.7.1995, p. 7).

(11) OJ L 281, 23.11.1995, p. 31.

(12) OJ C 27, 26.1.1998, p. 1 (consolidated version).

(13) Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (OJ L 181, 20.7.2000, p. 65).

Third Motor Council Directive

31990L0232

Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles

Official Journal L 129 , 19/05/1990 P. 0033 - 0035

Finnish special edition: Chapter 13 Volume 19 P. 0189

Swedish special edition: Chapter 13 Volume 19 P. 0189

THIRD COUNCIL DIRECTIVE

of 14 May 1990

on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles

(90/232/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas, by Directive 72/166/EEC (4), as last amended by Directive 84/5/EEC (5), the Council adopted provisions on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and to the enforcement of the obligation to insure against such liability;

Whereas Article 3 of Directive 72/166/EEC requires each Member State to take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance; whereas the extent of the liability covered and the terms and conditions of the insurance cover should be determined on the basis of those measures;

Whereas Directive 84/5/EEC, as amended by the Act of Accession of Spain and Portugal, reduced considerably the disparities between the level and content of compulsory civil liability insurance in the Member States; whereas significant disparities still exist, however, in such insurance cover;

Whereas motor vehicle accident victims should be guaranteed comparable treatment irrespective of where in the Community accidents occur;

Whereas there are, in particular, gaps in the compulsory insurance cover of motor vehicle passengers in certain Member States; whereas, to protect this particularly vulnerable category of potential victims, such gaps should be filled;

Whereas any uncertainty concerning the application of the first indent of Article 3 (2) of Directive 72/166/EEC should be removed; whereas all compulsory motor insurance policies must cover the entire territory of the Community;

Whereas in the interests of the party insured, every insurance policy should, moreover, guarantee for a single premium, in each Member State, the cover required by its law or the cover required by the law of the Member State where the vehicle is normally based, when that cover is higher;

Whereas Article 1 (4) of Directive 84/5/EEC requires each Member State to set up or authorize a body to compensate the victims of accidents caused by uninsured or unidentified vehicles; whereas, however, the said provision is without prejudice to the right of the Member States to regard compensation by this body as subsidiary or non-subsidiary;

Whereas, however, in the case of an accident caused by an uninsured vehicle, the victim is required in certain Member States to prove that the party liable is unable or refuses to pay compensation before he can claim on the body; whereas this body is better placed than the victim to bring an action against the party liable; whereas, therefore, this body should be prevented from being able to require that the victim, if he is to be compensated, should establish that the party liable is unable or refuses to pay;

Whereas, in the event of a dispute between the body referred to above and a civil liability insurer as to which of them should compensate the victim of an accident, Member States, to avoid any delay in the payment of compensation to the victim, should ensure that one of these parties is designated to be

responsible in the first instance for paying compensation pending resolution of the dispute;

Whereas motor vehicle accident victims sometimes have difficulties in finding out the name of the insurance undertaking covering the liability arising out of the use of a motor vehicle involved in an accident; whereas, in the interests of such victims, Member States should take the necessary measures to ensure that such information is made available promptly;

Whereas the previous two Directives on civil liability in respect of motor vehicles should, in view of all these considerations, be supplemented in a uniform manner;

Whereas such an addition, which leads to greater protection for the parties insured and for the victims of accidents, will facilitate still further the crossing of internal Community frontiers and hence the establishment and functioning of the internal market; whereas, therefore, a high level of consumer protection should be taken as a basis;

Whereas, under the terms of Article 8c of the Treaty, account should be taken of the extent of the effort which must be made by certain economies which show differences in development; whereas certain Member States should, therefore, be granted transitional arrangements so that certain provisions of this Directive may be implemented gradually,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Without prejudice to the second subparagraph of Article 2 (1) of Directive 84/5/EEC, the insurance referred to in Article 3 (1) of Directive 72/166/EEC shall cover liability for personal injuries to all passengers, other than the driver, arising out of the use of a vehicle.

For the purposes of this Directive, the meaning of the term 'vehicle' is as defined in Article 1 of Directive 72/166/EEC.

Article 2

Member States shall take the necessary steps to ensure that all compulsory insurance policies against civil liability arising out of the use of vehicles:

- cover, on the basis of a single premium, the entire territory of the Community,

and

- guarantee, on the basis of the same single premium, in each Member State, the cover required by its law or the cover required by the law of the Member State where the vehicle is normally based when that cover is higher.

Article 3

The following sentence shall be added to the first subparagraph of Article 1 (4) of Council Directive 84/5/EEC:

'However, Member States may not allow the body to make the payment of compensation conditional on the victim's establishing in any way that the person liable is unable or refuses to pay.'

Article 4

In the event of a dispute between the body referred to in Article 1 (4) of Directive 84/5/EEC and the civil liability insurer as to which must compensate the victim, the Member States shall take the appropriate measures so that one of these parties is designated to be responsible in the first instance for paying compensation to the victim without delay.

If it is ultimately decided that the other party should have paid all or part of the compensation, that other party shall reimburse accordingly the party which has paid.

Article 5

1. Member States shall adopt the necessary measures to ensure that the parties involved in a road traffic accident are able to ascertain promptly the identity of the insurance undertaking covering the liability arising out of the use of any motor vehicle involved in the accident.

2. Not later than 31 December 1995, the Commission shall present to the European Parliament and the Council a report on the implementation of paragraph 1 of this Article.

Where necessary, the Commission shall submit appropriate proposals to the Council.

Article 6

1. Member States shall take the measures necessary to comply with this Directive not later than 31 December 1992. They shall forthwith inform the Commission thereof. 2. By way of exception from paragraph 1:

- the Hellenic Republic, the Kingdom of Spain and the Portuguese Republic have until 31 December 1995 to comply with Article 1 and 2,
- Ireland shall have until 31 December 1998 to comply with Article 1 as regards pillion passengers of motorcycles and until 31 December 1995 to comply with Article 1 as regards other vehicles and to comply with Article 2.

Article 7

This Directive is addressed to the Member States.

Done at Brussels, 14 May 1990.

For the Council

The President

D. J. O'MALLEY

(1) OJ No C 16, 20. 1. 1989, p. 12.

(2) OJ No C 304, 4. 12. 1989, p. 41 and
OJ No C 113, 7. 5. 1990.

(3) OJ No C 159, 26. 6. 1989, p. 7.

(4) OJ No L 103, 2. 5. 1972, p. 1.

(5) OJ No L 8, 11. 1. 1984, p. 17.

Second Motor Council Directive

31984L0005

Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles

Official Journal L 008 , 11/01/1984 P. 0017 - 0020

Finnish special edition: Chapter 6 Volume 2 P. 0090

Spanish special edition: Chapter 13 Volume 15 P. 0244

Swedish special edition: Chapter 6 Volume 2 P. 0090

Portuguese special edition Chapter 13 Volume 15 P. 0244

SECOND COUNCIL DIRECTIVE

of 30 December 1983

on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles

(84/5/EEC)

THE COUNCIL OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas, by Council Directive 72/166/EEC (4), as amended by Directive 72/430/EEC (5), the Council approximated the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and to the enforcement of the obligation to insure against such liability;

Whereas Article 3 of Directive 72/166/EEC requires each Member State to take all appropriate measures to ensure that civil liability in respect of the use of

vehicles normally based in its territory is covered by insurance; whereas the extent of the liability covered and the terms and conditions of the insurance cover are to be determined on the basis of those measures;

Whereas, however, major disparities continue to exist between the laws of the different Member States concerning the extent of this obligation of insurance cover; whereas these disparities have a direct effect upon the establishment and the operation of the common market;

Whereas, in particular, the extension of the obligation of insurance cover to include liability incurred in respect of damage to property is justified;

Whereas the amounts in respect of which insurance is compulsory must in any event guarantee victims adequate compensation irrespective of the Member State in which the accident occurred;

Whereas it is necessary to make provision for a body to guarantee that the victim will not remain without compensation where the vehicle which caused the accident is uninsured or unidentified; whereas it is important, without amending the provisions applied by the Member States with regard to the subsidiary or non-subsidiary nature of the compensation paid by that body and to the rules applicable with regard to subrogation, to provide that the victim of such an accident should be able to apply directly to that body as a first point of contact; whereas, however, Member States should be given the possibility of applying certain limited exclusions as regards the payment of compensation by that body and of providing that compensation for damage to property caused by an unidentified vehicle may be limited or excluded in view of the danger of fraud;

Whereas it is in the interest of victims that the effects of certain exclusion clauses be limited to the relationship between the insurer and the person responsible for the accident; whereas, however, in the case of vehicles stolen or obtained by violence, Member States may specify that compensation will be payable by the abovementioned body;

Whereas in order to alleviate the financial burden on that body, Member States may make provision for the application of certain excesses where the body provides compensation for damage to property caused by uninsured vehicles or, where appropriate, vehicles stolen or obtained by violence;

Whereas the members of the family of the insured person, driver or any other person liable should be afforded protection comparable to that of other third parties, in any event in respect of their personal injuries;

Whereas the abolition of checks on insurance is conditional on the granting by the national insurers' bureau of the host country of a guarantee of compensation for damage caused by vehicles normally based in another Member State; whereas the most convenient criterion for determining whether a vehicle is normally based in a given Member State is the bearing of a registration plate of the State; whereas the first indent of Article 1 (4) of Directive 72/166/EEC should therefore be amended to that effect;

Whereas, in view of the situation in certain Member States at the outset as regards on the one hand the minimum amounts, and on the other hand the cover and the excesses applicable by the abovementioned body in respect of damage to property, provision should be made for transitional measures concerning the gradual implementation in those Member States of the provisions of the Directive concerning minimum amounts and compensation for damage to property by that body,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. The insurance referred to in Article 3 (1) of Directive 72/166/EEC shall cover compulsorily both damage to property and personal injuries.

2. Without prejudice to any higher guarantees which Member States may lay down, each Member State shall require that the amounts for which such insurance is compulsory are at least:

- in the case of personal injury, 350 000 ECU where there is only one victim; where more than one victim is involved in a single claim, this amount shall be multiplied by the number of victims,

- in the case of damage to property 100 000 ECU per claim, whatever the number of victims.

Member States may, in place of the above minimum amounts, provide for a minimum amount of 500 000 ECU for personal injury where more than one victim is involved in a single claim or, in the case of personal injury and damage

to property, a minimum overall amount of 600 000 ECU per claim whatever the number of victims or the nature of the damage.

3. For the purposes of this Directive, 'ECU' means the unit of account as defined in Article 1 of Regulation (EEC) No 3180/78 (1). The conversion value in national currency to be adopted for successive four-year periods from 1 January of the first year of each period shall be that obtaining on the last day of the preceding September for which ECU conversion values are available in all the Community currencies. The first period shall begin on 1 January 1984.

4. Each Member State shall set up or authorize a body with the task of providing compensation, at least up to the limits of the insurance obligation for damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which the insurance obligation provided for in paragraph 1 has not been satisfied. This provision shall be without prejudice to the right of the Member States to regard compensation by that body as subsidiary or non-subsidiary and the right to make provision for the settlement of claims between that body and the person or persons responsible for the accident and other insurers or social security bodies required to compensate the victim in respect of the same accident.

The victim may in any case apply directly to the body which, on the basis of information provided at its request by the victim, shall be obliged to give him a reasoned reply regarding the payment of any compensation.

However, Member States may exclude the payment of compensation by that body in respect of persons who voluntarily entered the vehicle which caused the damage or injury when the body can prove that they knew it was uninsured.

Member States may limit or exclude the payment of compensation by that body in the event of damage to property by an unidentified vehicle.

They may also authorize, in the case of damage to property caused by an uninsured vehicle an excess of not more than 500 ECU for which the victim may be responsible.

Furthermore, each Member State shall apply its laws, regulations and administrative provisions to the payment of compensation by this body, without prejudice to any other practice which is more favourable to the victim.

Article 2

1. Each Member State shall take the necessary measures to ensure that any statutory provision or any contractual clause contained in an insurance policy issued in accordance with Article 3 (1) of Directive 72/166/EEC, which excludes from insurance the use or driving of vehicles by:

- persons who do not have express or implied authorization thereto, or
- persons who do not hold a licence permitting them to drive the vehicle concerned, or
- persons who are in breach of the statutory technical requirements concerning the condition and safety of the vehicle concerned,

shall, for the purposes of Article 3 (1) of Directive 72/166/EEC, be deemed to be void in respect of claims by third parties who have been victims of an accident.

However the provision or clause referred to in the first indent may be invoked against persons who voluntarily entered the vehicle which caused the damage or injury, when the insurer can prove that they knew the vehicle was stolen.

Member States shall have the option - in the case of accidents occurring on their territory - of not applying the provision in the first subparagraph if and in so far as the victim may obtain compensation for the damage suffered from a social security body.

2. In the case of vehicles stolen or obtained by violence, Member States may lay down that the body specified in Article 1 (4) will pay compensation instead of the insurer under the conditions set out in paragraph 1 of this Article; where the vehicle is normally based in another Member State, that body can make no claim against any body in that Member State.

The Member States which, in the case of vehicles stolen or obtained by violence, provide that the body referred to in Article 1 (4) shall pay compensation, may fix in respect of damage to property an excess of not more than 250 ECU for which the victim may be responsible.

Article 3

The members of the family of the insured person, driver or any other person who is liable under civil law in the event of an accident, and whose liability is covered by the insurance referred to in Article 1 (1) shall not be excluded from insurance in respect of their personal injuries by virtue of that relationship.

Article 4

The first indent of Article 1 (4) of Directive 72/166/EEC shall be replaced by the following:

'- the territory of the State of which the vehicle bears a registration plate, or'.

Article 5

1. Member States shall amend their national provisions to comply with this Directive not later than 31 December 1987. They shall forthwith inform the Commission thereof.

2. The provisions thus amended shall be applied not later than 31 December 1988.

3. Notwithstanding paragraph 2:

(a) the Hellenic Republic shall have a period until 31 December 1995 in which to increase guarantees to the levels required by Article 1 (2). If it avails itself of this option the guarantee must reach, by reference to the amounts laid down in that Article:

- more than 16 % not later than 31 December 1988,
- 31 % not later than 31 December 1992;

(b) the other Member States shall have a period until 31 December 1990 in which to increase guarantees to the levels required by Article 1 (2). Member States which avail themselves of this option must, by the date indicated in paragraph 1, increase guarantees by at least half the difference between the guarantees in force on 1 January 1984 and the amounts laid down in Article 1 (2).

4. Notwithstanding paragraph 2:

(a) the Italian Republic may provide that the excess laid down in the fifth subparagraph of Article 1 (4) shall be 1 000 ECU until 31 December 1990;

(b) the Hellenic Republic and Ireland may provide that:

- compensation by the body referred to in Article 1 (4) for damage to property shall be excluded until 31 December 1992,
- the excess referred to in the fifth subparagraph of Article 1 (4) and the excess referred to in the second subparagraph of Article 2 (2) shall be 1 500 ECU until 31 December 1995.

Article 6

1. Not later than 31 December 1989 the Commission shall present to the Council a report on the situation in the Member States benefiting from the transitional measures provided for in Article 5 (3) (a) and (4) (b) and shall, where appropriate, submit proposals to review these measures in the light of developments.

2. Not later than 31 December 1993 the Commission shall present to the Council a progress report on the implementation of this Directive and shall, where appropriate, submit proposals in particular as regards adjustment of the amounts laid down in Article 1 (2) and (4).

Article 7

This Directive is addressed to the Member States.

Done at Brussels, 30 December 1983.

For the Council

The President

G. VARFIS

(1) OJ No C 214, 21. 8. 1980, p. 9 and OJ No C 78, 30. 3. 1982, p. 17,

(2) OJ No C 287, 9. 11. 1981, p. 44.

(3) OJ No C 138, 9. 6. 1981, p. 15.

(4) OJ No L 103, 2. 5. 1972, p. 2.

(5) OJ No L 291, 28. 12. 1972, p. 162.

(1) OJ No L 379, 30. 12. 1978, p. 1.