



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

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 Directives 73/239/EEC and 92/49/EEC

(Fourth Motor Insurance Directive)

(presented by the Commission)

Explanatory Memorandum

1. Background

The issue of compensation for victims of traffic accidents in the European Union has been one of the Commission's concerns since the First Motor Insurance Directive was adopted in 1972.¹ That Directive made third-party insurance compulsory throughout the European Economic Community, as it then was. The basic protection thus provided was extended and strengthened by the Second² and Third³ Motor Insurance Directives. Those Directives concerned traffic accidents occurring in the victim's State of residence and caused by vehicles either registered and insured in that State or registered and insured in another Member State. The 1990 Motor Insurance Services Directive treats as equivalent to those cases accidents occurring in the victim's State of residence where the vehicle, while registered in that country, was insured (by way of provision of services) by an insurer in another Member State.

None of those directives, however, took particular account of victims who, while temporarily in another Member State, suffer loss or injury there through a vehicle registered in a Member State other than that where the victim resides. As traffic increased between Member States, it became evident that those victims ("visitors") needed special protection. At the beginning of the 1990s, the Commission therefore requested two organisations for the insurance profession, the European Insurance Committee and the Council of Bureaux, to consider the matter. It was quite logical to proceed in this way because the existing motor insurance directives, particularly the First Directive of 1972, involved a balance of private agreements between insurers and legislative measures. This led to the preparation of an "Agreement between Bureaux on the Protection of Visitors" by the Council of Bureaux (the Rome Agreement of 27 May 1994), which could have considerably improved the position of visitors. Unfortunately, the required unanimity of all interested parties, i.e. of the European motor insurers of all countries concerned, could not be attained. The European Parliament therefore took the initiative in the matter.

¹ 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.

² 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.

³ 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.

In its resolution of 26 October 1995 under Article 138b of the EC Treaty on the settlement of claims arising from traffic accidents occurring outside the claimant's country of origin,⁴ the European Parliament called on the Commission to submit a proposal for a directive requiring

- "the Member States ... to introduce an arrangement whereby the person suffering damage in a road accident may apply directly to the liability insurer ... ("direct claim"),
- the Member States to ensure ... that every motor vehicle liability insurer ... appoints a ... representative ... in every other Member State and authorises him to settle ... claims for damages caused by vehicles insured by the insurer outside the claimant's country of origin ...,
- the Member States to ensure ... that insurers ... establish an information centre ... able ... to provide a claimant with the name of the ... representative ...,
- the Member States to ensure ... that insurers ... inform the information centres ... of the ... representatives they have appointed ...".

2. Purpose of the proposal

The purpose of the European Parliament's resolution is to improve the present remedies available to persons who are temporarily in a Member State other than their State of residence and suffer loss or injury in that Member State caused by a vehicle registered and insured in a Member State other than their State of residence.

For the reasons set out below, the Commission recognises that the Parliament's concerns are justified and that there is a need to improve the remedies available to such persons:

- Settlement of damages is more complicated abroad than domestically. In the first place, the injured party may not know the identity of the insurer against whom he must claim. The means of identifying the insurer differ from country to country and the injured party may in fact find that no such means are available to him;
- The victim will normally have to prove that his claim is justified. For obvious reasons it may be difficult for him to collect evidence (police reports, statements of witnesses, etc.) if the accident happens abroad and, as is sometimes the case, far from his home country;

⁴ OJ No C 308, 20.11.1995, p. 108.

- In typical cases such claims will be settled according to a law other than that applicable in the victim's home country. Claim-settlement procedures may therefore differ from those applied in that country;
- All these difficulties are aggravated if the insurer proves dilatory. In view of the victim's unfavourable position, insurers may in fact be tempted to induce the victim to abandon his claim.

Since the free movement of persons forms one of the objectives of the EC Treaty, the Commission must provide an alert response to obstacles liable to jeopardise its attainment. Similarly, the Commission is to consider consolidating the motor insurance directives. The presentation of Directives 72/166/EEC, 84/5/EEC, 90/232/EEC and the present proposed Directive (once adopted by the Parliament and the Council) in a single instrument with a rationalised structure will make the provisions more transparent and understandable, so that insurers and drivers will have readier access to them.

3. Content of the Directive

In line with the principle of subsidiarity, the victim's position may be improved by providing an intermediary. This can be done without changing the rules on liability and on jurisdiction that currently apply in the Member States.

For these reasons and reflecting the approach outlined by the Parliament, the Commission presents the following proposals:

- to provide improved protection for victims of an accident occurring in a Member State other than that of residence against the insurer of the vehicle involved in the accident by establishing special rules supplementing the present system set up by the motor insurance directives (Article 1);
- to introduce throughout the European Union a direct right of action for that category of victims (Article 2);
- to secure the appointment by all insurance undertakings of a representative responsible for settling accident claims in each Member State of the European Union (Article 3); and
- to establish information centres (Article 4).

The Commission also presents the following proposals:

- to make information centres responsible for identifying the representative empowered to settle accident claims, the insurer providing cover and the vehicle involved in the accident (Article 4);

- to establish in the State of origin of visitors a body responsible for settling claims arising out of accidents suffered by such visitors if there is no claims representative or, if the insurer proves dilatory, to act as a compensating agency; on effecting payment in the State of residence of the victim, the agency would acquire an automatic right of action against its counterpart in the State of the dilatory insurer, while the agency's counterpart would be subrogated to the rights of the victim against the insurer (Article 5); and
- to lay down expressly that, if the vehicle responsible for the accident is not insured or the insurer cannot be identified, the guarantee funds must compensate the victim on the conditions laid down in Directive 84/5/EEC (Article 6).

4. Comments on the articles of the Directive

Article 1 (*Scope*)

This Directive covers claims for damages arising from accidents caused by vehicles:

- registered and insured in the Member State where the accident occurs,
- registered in the Member State where the accident occurs and insured by way of provision of services in a Member State other than the State of residence of the victim, or
- registered and insured in a Member State other than the State of residence of the victim or of the place where the accident occurs.

This Article defines the scope of the Directive. It covers a clearly specified category of victims whose position under the green-card arrangements, while the same in law as that of "domestic" victims, is much weaker in practice. It also defines the purpose of the Directive, namely, to remedy the dysfunction in settling the claims of this category but not - for the present, at least - to make good other perceived problems in the operation of the rules on motor insurance in the Community. The additional legal arrangements, supplementary to the green-card arrangements, are set out in the subsequent articles and aim to strengthen the protection enjoyed by that category and to make it easier to secure compensation.

Article 2 (*Direct right of action*)

The extension of the direct right of action to all Member States is a precondition for the proper functioning of the arrangements which are envisaged. The victim's right to apply for compensation to the insurer providing civil liability motor cover for the person responsible for the accident is in addition to the right of action automatically available to him against the person responsible for the accident. It should be noted that the direct right of action is not available in all the national legal systems in all matters concerning civil liability and is available only to victims suffering an accident outside their State of residence.

Regarding the practical consequences flowing from prescribing a direct right of action, first of all, there will in practice be no change for Member States where a right of this nature already exists. Article 2 makes it compulsory for Member States to have a direct right of action, i.e. its introduction is no longer merely an option for them. In those States, the fact that the claim must be made available only for visitors suffering an accident is not really a false difficulty, i.e. false discrimination against domestic victims. In practice, the national rules, which are already binding, will operate as Community rules, at least for non-resident victims.

Second, where Member States' legal systems do not have a direct right of action, there is nothing to stop them creating this as a general right, i.e. available to both "visiting" and "domestic" victims, thereby removing all discrimination. In any case, the whole point of the Directive is that, since visitors suffering an accident are in practice at a disadvantage, their legal position should be strengthened outside their State of residence, in comparison with "domestic" victims.

In Member States which do not at present provide a direct right of action for victims of a traffic accident, such victims have no direct remedy against the other party's insurer. The insurer cannot be sued on the basis of civil liability nor, since there is no contractual link between the insurer and the victim, does contractual liability arise. The direct right of action enables the victim to proceed directly against the insurer and without that remedy there would be no point in having a representative responsible for settling claims.

The establishment of a direct right of action throughout the European Union is of considerable importance for the reasons set out below:

1. In the case of persons suffering a traffic accident outside their Member State of residence, the provision of this remedy considerably improves their current legal position under the motor insurance directives in countries where there is no direct right of action against the insurer. This is particularly true where there is uncertainty as to the person who is liable or where the person who is liable is out of reach (e.g. because he is abroad) or is without means;
2. The combination of the direct right of action and the claims representative in the victim's State of residence (Article 3) makes it easier for the victim to reach an out-of-court settlement and, in appropriate cases, to sue the other party's insurer. Moreover, it considerably improves the position of such victims in all cases where an out-of-court settlement cannot be reached. Finally, providing for the victim a direct right of action against an insurer gives a more solid assurance that the judgment which is delivered will be enforced.

The Directive does not establish new rules of law or amend conventions in the field of international private law conferring jurisdiction on courts. Both the definition of the applicable law and the establishment of the jurisdiction of the courts are determined by reference to the rules of private international law applicable in most of the Member States. The introduction of a direct right of action does not of itself establish the jurisdiction of the courts of the State of residence of the victim. That jurisdiction can only be determined on the basis of the Brussels Convention⁵ (second paragraph of Article 10 read in conjunction with Articles 7, 8 and 9).

Article 3 (*Claims representatives*)

Paragraph 1 sets out the objective of this Article. Every insurance company of Community origin operating throughout the Community on the basis of a single authorisation granted under Directive 92/49/EEC (the Third Non-life Insurance Directive) or having been granted a single authorisation under Article 23 of Directive 73/239/EEC must appoint a representative in every Member State of the European Union to settle claims. Persons suffering injury or damage outside their State of residence are thus enabled to apply, in that State, to an intermediary who can handle claims for damages against the other party's insurer where that insurer is not established in the State of the victim's residence. Obviously, if a national system already incorporates an arrangement for compensating victims of accidents, it could be adapted to discharge the duties of the claims representative or even to coexist with the system envisaged in this Directive. The intervention of the representative might form an alternative procedure at the option of the claimant if it were preferred to any other remedies available under national law.

Paragraph 1 also specifies the scope of this Article. It does not cover accidents occurring in the State where the victim resides unless the vehicle involved is registered outside that State (i.e. cases covered by the green-card arrangements, governed by the agreement concluded between national insurers' bureaux (cf. Article 2(2) of Directive 72/166/EEC), or registered in that State but insured in another Member State by way of provision of services, (governed by Directive 90/618/EEC).

Regarding the choice of intermediary, the intention is to leave a large degree of latitude to insurance undertakings. It is not necessary that the representative should be a third party. The undertaking may avail itself of any arrangements it may have made in particular countries.

For example, the representative may be a subsidiary or agency of the undertaking, an insurance undertaking belong to the same group or indeed independent, a claims-settlement bureau, or the national green-card bureau if the members of the bureau agree. It remains open to insurance undertakings to use their lawyers or tax representatives, or to appoint a joint representative for a number of undertakings.

⁵ Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters.

Moreover, if an insurer already has a representative⁶ who settles claims for compensation arising out of contracts which the company has concluded by way of provision of services in the State for which the representative has been appointed, it may also appoint him its claims representative under Article 3 of this Directive.

Under paragraph 2(a), the nomination of a claims representative is a precondition for the grant of the authorisation to carry on the activity under Directive 92/49/EEC. Two consequences flow from failure to nominate a representative: first, the authorisation will not be granted and therefore the undertaking will not have access to motor vehicle liability insurance; second, since prudential and financial surveillance under the third insurance directives is carried out continuously, Directive 92/49/EEC provides for the withdrawal of the authorisation if the insurer no longer satisfies the condition of having claims representatives in each Member State. Put another way, carrying on the activity is prohibited if the conditions on which the authorisation was granted are no longer satisfied.

Likewise, paragraph 2(b) applies to undertakings whose head office is outside the Community and was introduced to bring the present Directive into line with the approach adopted since the adoption of Directive 73/239/EEC.

Paragraph 3 specifies the duties of the claims representative and his relations with the undertaking. It is made clear that the representative acts purely in accordance with the instructions, general or specific, issued to him by the undertaking. His acts bind the undertaking only with regard to the victim. He will be liable to the insurer for his acts if he fails to comply with his instructions or acts *ultra vires*.

The paragraph does not contain any provisions on the law applicable to accidents suffered by visitors. In most cases, the rules of private international law applicable in the various Member States make this the law of the State where the accident occurs. As in the case of the direct right of action, the law applicable is always determined by reference to the generally applicable rules of private international law. This Directive does not provide any criteria for the choice of the applicable law (for example, *lex loci* or the law of the State of residence of the victim, etc.).

Paragraph 4 specifies the representative's qualifications. The cases which will normally be envisaged within the framework of the examination under the Directive will not be governed by the law of the victim's State but by that of the State where the accident occurred, which will in most cases be the State where the insurer is established. While it would be unreasonable to require that the representative should be acquainted with the law of that country, and a fortiori of the law of all the other Member States, it is essential that he should understand the differences between the law applicable to the particular case and the law with which the victim is accustomed, at least with regard to the rules on, and the level of, compensation in each Member State.

⁶ Article 12a(4) of Directive 88/357/EEC, inserted by Article 6 of Directive 90/618/EEC.

Paragraph 5 sets out the effects of the representative's acts with regard to the victim. In so far as the representative has legal power to represent the insurer in settling claims, his acts will bind the insurer with regard to the victim.

The paragraph does not confer jurisdiction on the courts of the State of the victim's residence. This would be inappropriate in cases which must normally be determined on the basis of a law other than the *lex fori*, i.e. the rules of private international law of the court hearing the dispute. Thus the fact that the representative will have power to represent the insurer "before the courts" will be of limited practical importance in the context of this Directive.

Paragraph 6 is intended to get the insurer to settle the claim within a reasonable period. It is intended to prevent the insurer from resorting to procrastinating responses. Moreover, the offer of compensation must be genuine, not an empty formality merely intended to fulfil the requirement to submit an offer. Within three months of presentation of the victim's substantiated claim, the other party's insurer must genuinely participate in the compensation process by providing a detailed response. The insurer or his representative will naturally have to be able to assess the damages involved and liability therefor before a final decision can be taken. If liability for the accident has not been clearly established or if the victim's loss and injuries are not fully determined, the obligation to make an offer will remain suspended until this information becomes available.

The penalties provided for in paragraph 6 fall within the discretion of the Member States; nevertheless they must be appropriate, in order to make sure that the insurer discharges his obligations to the victim. While the objective of paragraph 6 differs from that of paragraph 2, it intensifies the pressure on the insurer to make sure that he discharges his obligations to the victim. The insurer is obliged to make an offer of compensation within a specified time-limit. The result is a combination of supplementary administrative penalties, since the administrative penalty of refusal to grant, or withdrawal of, the undertaking's authorisation is accompanied by a different penalty, pecuniary or administrative, and the two are intended to secure prompt compensation for the victim. The first penalty (refusal or withdrawal of the authorisation) compels the insurer to establish arrangements whereby the victim can secure his rights against the insurer. The second penalty concerns details of the claimant's claim, i.e. to have the claim settled promptly. The combination of the two penalties is intended to get the insurer to settle the claim within a reasonable period so that the intervention of the compensation body is exceptional and a last resort for the victim.

Paragraph 7 indicates that the claims representative duly appointed under this Directive does not constitute a branch within the meaning of Article 10(1) of Directive 73/239/EEC, as amended by Article 32 of Directive 92/49/EEC.

Article 4 (Information centres)

The purpose of Article 4 is to enable the victim to identify the insurer of the vehicle involved in the accident; it is often at this point that the victim's difficulties become extreme. This information is also necessary for the effective exercise of the direct right of action.

From 1990 the Community legislature has been aware of the difficulties victims have in identifying the insurer of the vehicle involved in an accident. Under Article 5(1) of Directive 90/232/EEC, Member States must "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 ...".

Subsequently, there have been complaints that this provision has not been implemented satisfactorily in all Member States. A survey of the current situation undertaken by the Commission shows that these complaints are well founded.

To give an example, in some Member States a victim who knows only the registration number of the vehicle involved in an accident will be able to identify the insurer only with great difficulty, if at all.

A distinction must be drawn between the requirement imposed by Article 5(1) of Directive 90/232/EEC and that imposed by this Directive on the Member States in establishing information registers. Article 4(1) of the present Directive requires the establishment of a precise mechanism (an "information register") so that it is possible to identify the insurer, his representative responsible for settling claims in the claimant's State of residence and, if necessary, the insured. The Third Motor Insurance Directive imposes an obligation on Member States to produce a specific result, without, however, spelling out the details of what must be done to meet that obligation. Moreover, that obligation applies to certain information only, i.e. the name of insurance undertakings. In the present Directive, the information is much wider, extending to the claims representative. This kind of information is also necessary for following the procedure set up in Article 3. It is practical to entrust information centres with the task of keeping registers not only of insurance undertakings but of the claims representatives appointed by such undertakings. Moreover, a victim can secure other information concerning the insured if the conditions for disclosure specified in Article 4(3) of this proposed Directive (the vehicle is not validly or legally insured) are fulfilled.

It is undoubtedly the case that Member States which have already established databases or information registers under Article 5(1) of the Third Motor Insurance Directive will readily be able to adapt or supplement those facilities or make them operational under this Directive.

The objective is to ensure that victims can easily identify the insurer of the other party's vehicle and discover the name and address of the representative of the insurer in the State of the victim's residence but it may well be that the means for doing so are not centralised in a single unit; it will be enough if, according to the situation in each

individual country, the various items of information are held by different organisations since this information will be obtainable from a single address.

In order to ensure that the arrangements envisaged are effective, the information centres in the various countries will have to be in communication with each other; this will enable accident victims to obtain information in the State where the vehicle is registered and, perhaps more important, in their State of residence. In any event, cooperation between information centres is essential if the registration number of the vehicle and the name of the insurer in the victim's State of residence are to be made available since this information is only recorded in the State where the vehicle is registered.

The victim's main objective in requesting information is to enable him to exercise his direct right of action, as specified in Article 1 of this Directive. Paragraph 3 shows that establishing the identity of the insurer is sufficient for the victim to initiate the procedure against the insurer. Nevertheless, in the case of vehicles that are not properly insured it is essential that the victim should have access to information on the owner or usual driver of the vehicle which has caused the accident.

Article 5 (*Compensation bodies*)

Paragraph 1 improves the victim's position in cases where, although there is a binding obligation to appoint a claims representative, no appointment has in fact been made or where the insurer, although having appointed a representative, proves dilatory in settling. It is unacceptable that the victim should have to be content with the imposition of purely administrative penalties by the supervisory authority if the insurer fails to meet the conditions laid down for granting his authorisation. Moreover, in order to ensure that compensation bodies take effective action, this paragraph specifies a time-limit, starting from the presentation of the victim's claim for compensation, within which action must be taken. In addition this paragraph requires the compensation body to which a claim has been presented to notify the insurer formally, so that he can prepare his defence; this is reasonable since the insurer may well be ultimately responsible for payment of the claim. This requirement does not affect the procedure applicable to the victim's claim (i.e. there is no suspensory effect), which must be terminated within two months of presentation of the claim.

Paragraph 2 is intended to provide an incentive in the form of the risk, for the insurer, of being bound by decisions taken by third parties to impel him to fulfil the obligation under Article 3 of settling the claims of visitors promptly. In the two typical cases covered in paragraph 1 there is no reason why anyone other than the insurer should ultimately bear the cost of the claim and the expenses incurred in settlement. A distinction should be drawn between the objective in imposing penalties under Article 3(6) and the objective in this Article. In the former case, the penalties are purely disciplinary and intended to punish the insurer who fails to meet his obligations under Article 3. In the latter, the objective is to compensate the victim irrespective of

the consequences for the insurer. Provisions intended to punish an insurer do not appropriately protect the rights of a victim.

The legal status of the compensation body, which in practice will be in the form of a network of bodies, corresponds to that of the body referred to Article 1(4) of Directive 84/5/EEC. The victim can present a claim for compensation to the body; the body is not bound by the instructions of the insurer and its decisions bind the insurer unless the insurer can prove that the body failed to give due notification in accordance with the preceding paragraph, thereby preventing the insurer from preparing his defence, or that the claim was deliberately settled in the knowledge that it was not justified. It will be in the insurer's own interest to avoid such a situation arising and it may therefore be assumed that the procedure provided for in Article 5 will only be applied in very rare cases. The procedure is in fact primarily intended as a means of bringing pressure to bear.

As in the case of claims representatives and information centres, Member States may use existing arrangements which can be readily adapted to the requirements of this Article; examples of such arrangements would be the guarantee fund for motor vehicles established under Article 1(4) of Directive 84/5/EEC or indeed green-card bureaux. Moreover, the Member States are responsible for taking the decisions required for the financing of these bodies, i.e. all financial resources and other means of financing.

Under the first indent of paragraph 2, the compensation body in the victim's State of residence proceeds automatically not against the person responsible for the accident or the company providing his motor vehicle liability insurance but against the body's opposite number in the State of the insurer who has failed to appoint a representative. This indent is based on the principle that a compensation body must compensate victims residing its own Member State for accidents occurring in a Member State other than that where the victim resides and thus other than the State in which the body itself is situated; consequently, the second indent of paragraph 2 provides that the body has a claim against the compensation body in the State where the insurer is established.

With a view to ensuring that the system of automatic claims functions properly, the first indent of paragraph 2 prescribes a precise time-limit within which the compensation body in the State where the insurer is established must settle. In addition, under paragraph 3, Member States are under an obligation to define the procedures and technicalities involved in settlement. It should be noted that Article 5 and the preceding articles are not intended to alter the rules on liability as such.

With the establishment of this system of automatic claims in which the compensation body of the State in which the insurer is established is subrogated to the rights of the victim, reimbursement from the insurer ultimately liable can be easily secured for two reasons. First, the compensation body with a claim against the insurer is geographically situated in the same Member State as the insurer, with the advantage that all disputes will be settled before the national courts according to national law. Second, in most cases it will be the guarantee fund of the State where the insurer is

established which will be appointed the compensation body and that fund is financed by insurers established and operating in the country. A great deal of pressure will therefore be brought to bear on the insurer by the other insurers in the State where he is established since they have an interest that the failure of a member of a guarantee fund to fulfil his obligations should not result in a charge on the fund.

Article 6 (Cases where the insurer cannot be identified)

If the insurer proves impossible to identify, the system set up (direct right of action, claims representative, compensation body) cannot operate. The objective of this Article is therefore to ensure that, although one of the conditions for the operation of the arrangements established by the Directive is not fulfilled, the victim will in any event be compensated. In this case the guarantee fund in the Member State where the victim resides will be responsible for compensating the victim. Subsequently, when that guarantee fund applies, the guarantee fund in the Member State where the vehicle is normally based will have ultimate liability for the compensation paid to the victim. Under Article 1(4) of Directive 84/5/EEC, read in conjunction with Article 3(1) of Directive 72/166/EEC, it is the Member State where the vehicle is normally based that is responsible for ensuring that each vehicle is required to have civil liability insurance in accordance with the latter Directive. It follows that if a vehicle not fulfilling that condition causes an accident it is the guarantee fund of the Member State where that vehicle is normally based that is liable for the costs of compensating the victim.

The reasoning behind this Article is in line with that of Article 5 of the proposed Directive. A victim of an accident occurring outside his State of residence has an interest in securing compensation on the same conditions as those applicable to the functioning of the compensation body provided for in Article 5 in his State of residence. Thereafter, the guarantee fund of the victim's State of residence has a claim against the guarantee fund of the State where the vehicle causing the accident is normally based on the same conditions as those laid down in Article 5 (2) (subrogation to the victim's rights, time-limit of two months for reimbursement by the guarantee fund of the Member State where the vehicle is normally based, etc.) and by reference to that Article.

Failing an insurer, in certain cases the party ultimately responsible for the compensation paid by the guarantee fund of the State of residence of the victim claiming damages will be the guarantee fund of the State where the accident occurred if the other party's vehicle is registered there, or the green-card bureau of the State where the accident occurred if the other party's vehicle is registered (i.e. is normally based) in a third country, with a right of recourse for the bureau against its counterpart in the State where the vehicle is normally based.

Nevertheless, it is important to distinguish between the case in view in this Article (the vehicle is identified but the insurer is unidentified) and the case where the vehicle is unidentified. The latter cases are specifically dealt with by the existing green-card arrangements and it is logical that, under Article 1(4) of Directive 84/5/EEC, ultimate

liability for payment should rest with the guarantee fund of the State where the accident occurred.

Articles 7 and 8 (*Implementation and Entry into force*)

These Articles contain the standard provisions on the time for implementation and determining the addressees of the proposed Directive.

Article 9 (*Penalties*)

For some time now this clause has been introduced into all of the Commission's draft proposals and reflects its policy, as guardian of the Treaties, of seeing to it that the legislative measures it puts forward are properly transposed and applied.⁷

⁷ See COM(95) 162 final, 3.5.1995.

Proposal
for a European Parliament and Council directive
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 Directives 73/239/EEC and 92/49/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 57(2) and 100a 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 referred to in Article 189b of the Treaty,

Whereas, differences currently 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 these differences form an obstacle to the free movement of persons and of insurance services,

Whereas, it is therefore necessary to approximate those provisions in order to promote the functioning of the single market,

Whereas, by Directive 72/166/EEC,³ as last amended by Directive 90/232/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;

Whereas, by Directive 88/357/EEC,⁵ as last amended by Directive 92/49/EEC,⁶ 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;

¹ OJ No C...

² OJ No C...

³ OJ No L 103, 2.5.1972, p. 1.

⁴ OJ No L 129, 19.5.1990, p. 33.

⁵ OJ No L 172, 4.7.1988, p. 1.

⁶ OJ No L 228, 11.8.1992, p. 1.

Whereas, the European Parliament, by its Resolution of 26 October 1995 on the settlement of claims arising from traffic accidents occurring outside the claimant's country of origin,⁷ took an initiative under the second paragraph of Article 138b of the EC Treaty calling on the Commission to submit a proposal for a European Parliament and Council Directive on this matter,

Whereas, it is in fact appropriate to supplement the arrangements established by Directives 72/166/EEC, 84/5/EEC⁸ and 90/232/EEC in order to guarantee motor vehicle accident victims comparable treatment irrespective of where in the Community accidents occur; whereas, for accidents occurring in a Member State other than that of the victim's residence, there are gaps with regard to the settlement of victims' claims;

Whereas in order to fill such gaps at least in part, it should be provided that the Member State where the insurance undertaking is established require the undertaking to appoint representatives resident or established in the other Member States to collect all necessary information in relation to claims resulting from such accidents with sufficient powers to represent the undertaking in relation to persons suffering damage from such accidents, including the payment of compensation therefor, and to represent it or, where necessary, have it represented in relation to such claims before the courts, in so far as this is compatible with the rules of private international law on the determination of jurisdiction, and before the authorities of the other Member States;

Whereas the appointment of representatives responsible for settling claims is one of the conditions for access to and carrying on the activity of insurance listed in class 10 of title A of the Annex to Directive 73/239/EEC; whereas that condition is 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; whereas this condition also applies to undertakings having their head office outside the Community which have secured an authorisation granting them access to a Member State of the Community; whereas Directives 73/239/EEC and 92/49/EEC should be amended and supplemented accordingly;

Whereas the existence of a direct right of action against the insurer for the party who has suffered loss or injury is a logical precondition for the institution of such representatives and moreover improves the legal position of victims of road accidents occurring outside that party's Member State of residence;

Whereas, in addition to ensuring that there is an intermediary representing the insurance undertaking in the State where the victim resides, it is appropriate to guarantee the specific right of the victim to have the claim settled promptly; whereas it is therefore necessary to include in national law appropriate penalties to be imposed on the insurer if his representative fails to fulfil his obligation of making an offer of compensation within a reasonable time-limit; however, it is a condition that liability

⁷ OJ No C 308, 20.11.1995, p. 108.

⁸ OJ No L 8, 11.1.1984, p. 17.

and the damage and injury sustained should not be in dispute, so that the insurer is able to make an appropriate offer within the prescribed time-limit;

Whereas victims of traffic accidents sometimes have difficulty in establishing the name of the undertaking providing insurance against civil liability in respect of motor vehicles involved in an accident; whereas in the interest of such victims, Member States should set up information centres to ensure that such information is made available promptly; whereas those information centres should also make available to victims information concerning claims representatives; it is necessary that such centres should cooperate with each other and respond rapidly to requests for information on claims representatives made by centres in other Member States;

Whereas it is necessary to make provision for a body to guarantee that the victim will not remain without compensation where the insurer has failed to appoint a representative or is manifestly dilatory in settling a claim and to provide that, in such cases, the victim should be able to apply directly to that body; whereas it is justified to confer on that body a right of subrogation in so far as it has compensated the victim; whereas, in order to facilitate enforcing that claim against the insurer, the body providing compensation in the victim's State should enjoy an automatic right of reimbursement with subrogation to the rights of the victim by the corresponding body in the State where the insurer is established; whereas the latter body is the best placed to institute proceedings for redress against the insurer;

Whereas it is necessary to have a body to ensure that the victim will not remain without compensation if it is impossible to identify the insurer of the vehicle; whereas provision must be made so that the ultimate debtor in respect of the damages paid to the victim is a body situated in the Member State where the non-insured vehicle which has caused the accident is normally based,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

The objective of this Directive is to lay down special provisions applicable to victims of accidents

- (a) occurring in a Member State other than the State of residence of the victim, and
- (b) caused by a vehicle
 - insured by an undertaking established in a Member State other than the State of residence of the victim, and
 - registered in a Member State other than the State of residence of the victim.

Article 2

Direct right of action

Each Member State shall ensure that victims of accidents as defined in Article 1 of this Directive enjoy a direct right of action against the insurer covering other the party against civil liability.

Article 3

Claims representatives

1. Each Member State shall take all measures necessary to ensure that all insurance undertakings authorised in accordance with

- Article 6 of Directive 73/239/EEC, as amended by Article 4 of Directive 92/49/EEC, to cover the risks classified in class 10 of point A of the Annex to Directive 73/239/EEC, other than carrier's liability, or
- Article 23(2) of Directive 73/239/EEC,

freely appoint in each Member State other than that in which they are established a body (hereinafter referred to as "the claims representative"). The claims representative shall be responsible for handling and settling claims arising from accidents occurring in a Member State other than the State where the victim resides and caused by a vehicle insured by such undertakings and registered in a Member State other than the

State where the victim resides. The claims representative shall be resident or established in the Member State where the victim resides.

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

(a) The following subparagraph shall be added to Article 8(1):

"(f) communicate the name and address of the claims representative they appoint in each of the Member States if the risks to be covered are classified in class 10 of title A of the Annex."

(b) The following subparagraph shall be added to Article 23(2):

"(h) communicate the name and address of the claims representative they appoint in each of the Member States if the risks to be covered are classified in class 10 of title A of the Annex."

3. The claims representative shall, in relation to such claims, collect all information necessary in connection with compensation and shall take the measures necessary to negotiate a settlement of claims in accordance with the instructions of the insurer, the rules on compulsory insurance against civil liability as these rules are defined in the last indent of Article 2 of Directive 90/232/EEC and the rules on civil liability applicable to the accident. The requirement of appointing a claims representative shall not preclude the right of the victim or his insurer to institute proceedings directly against the person responsible for the accident or his insurer.

4. The claims representative shall be appropriately qualified. His facilities shall be such as to enable him to discharge the duties provided for in this Article.

5. The claims representative shall possess sufficient powers to represent the undertaking in relation to persons suffering damage who pursue claims, including the payment in full of such claims, and to represent it or, where necessary, to have it represented, before the courts concerning such claims in so far as compatible with the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters⁹ and with the other rules of private international law on the determination of jurisdiction, and before the authorities of the Member State where he represents the insurer.

⁹ OJ No L 299, 31.12.1972.

6. The Member States shall create a duty, backed by penalties, to the effect that, within a time-limit of three months from the date when the victim presented his claim for compensation either directly to the insurer or to the claims representative,
- the insurer of the person causing the accident or his claims representative is required to make an offer of compensation, in cases where liability is not contested and the damages have been quantified, and
 - the insurer to whom the claim for compensation has been addressed or his claims representative is required to provide an appropriate reply to the points made in the claim, in cases where liability has not been clearly determined and the damages have not been fully quantified.
7. The last subparagraph of Article 12a(4) of Directive 88/357/EEC shall apply.

Article 4

Information centres

1. Each Member State shall establish or approve a body (hereinafter referred to as “the information centre”) responsible for keeping a register of motor vehicles registered in the territory of that State, insurance undertakings providing civil liability cover for such vehicles and the claims representatives appointed by such undertakings in accordance with Article 3 whose name shall be notified to the information centre in accordance with paragraph 2 below, or for coordinating the compilation and dissemination of that information; the information centre shall also be responsible for assisting victims in identifying the name of motor insurance undertakings providing cover for vehicles registered in that Member State and of the claims representatives notified to it.
2. Insurance undertakings providing cover against civil liability in respect of the use of motor vehicles shall notify to the information centre in the Member State in whose territory they are established the registration numbers of the vehicles they insure which are registered in that State, the number of the insurance policy and the name and address of the insured. It shall notify to the information centres of the other Member States the name and address of the claims representative which they have appointed in accordance with Article 3 in each of the Member States and the corresponding information concerning vehicles registered in those countries which they insure by way of provision of services.
3. The Member States shall ensure that the victim of an accident occurring in a Member State other than the State where he resides shall be entitled to obtain from the information centre of the State where he resides or of the State where the vehicle is registered the name and address of the insurer, the number of the insurance policy and the name of the insurer’s claims representative in the State of residence of the victim.

If the vehicle is not duly insured, the information centre shall provide the victim with the name and address of the owner or usual driver of the vehicle.

Article 5

Compensation bodies

1. Each Member State shall establish or approve a body (hereinafter referred to as "the compensation body") responsible for providing compensation where damage to property or personal injury is caused to a victim resident in a Member State by a vehicle registered and insured in a Member State other than the State of residence of the victim and the accident giving rise to such damage or injury occurs in a Member State other than the State of residence of the victim.

The compensation body in the State of residence of the victim shall take action if, within a period of 2 months from the date when the victim presents to the body a claim for compensation,

- the insurer of the vehicle causing the accident has failed to appoint a claims representative in accordance with Article 2, or
- the insurer or the claims representative has failed to make an offer of compensation, or has not provided a reply answering, with reasons, the points raised by the victim in his claim for compensation or has refused the claim for compensation without specifying the reasons on which the refusal is based within a time-limit of three months from the date when the victim presented his claim for compensation, either directly to that insurer or to the claims representative, within the limits imposed by insurance obligations, as specified in the last indent of Article 2 of Directive 90/232/EEC, and in accordance with the national rules on civil liability applicable to the accident.

The compensation body in the State of residence of the victim shall inform the insurer of the person responsible for the accident or the claims representative that it has received a claim from the victim and that it will respond to that claim within a period of two months from the presentation of that claim.

2. The compensation body which has compensated the victim in his Member State of residence shall be entitled to claim the reimbursement from the compensation body in the State where the insurer is established of the sum paid as compensation within a period of two months of the date when the former body applied to the latter body for reimbursement.

Consequently, the compensation body in the Member State where the insurer is established shall be subrogated to the victim in his rights against the person responsible for the accident or his insurer in so far as the compensation body in the Member State of residence of the victim has provided compensation for the loss or injury suffered. If

the insurer's compensation for the victim is fixed by a court ruling, acknowledgement of the debt or mutual agreement, the insurer may only challenge the reimbursement if he adduces evidence that the body has failed to inform him of the complaint in accordance with paragraph 1 hereof or that it has mistakenly accepted unfounded claims for compensation or has overvalued the loss or injury. The compensation body in the State of residence of the victim and the compensation body in the State where the insurer is established may also claim reimbursement of expenses reasonably incurred.

3. Each Member State shall take the measures necessary to ensure that the compensation body in its territory provides reimbursement within the time-limit specified in paragraph 2 of this Article to a compensation body in another Member State which has reimbursed the victim of an accident caused by a vehicle covered by an insurance undertaking established in the first Member State in the cases provided for in the second subparagraph of paragraph 1 of this Article.

Article 6

Cases where the insurer cannot be identified

If it is impossible to identify the insurer, the vehicle shall be treated as uninsured. Compensation for damage to property or personal injury caused to the victim shall be provided by the body within the limits laid down in Article 1(4) of Directive 84/5/EEC. The victim shall be compensated by that body in the Member State where he resides. The body shall then have a claim, on the conditions laid down in Article 5(2) of this Directive, against the body in the Member State where the vehicle in question is normally based or, depending on the circumstances, against the green-card bureau in that Member State.

Article 7

Implementation

1. The Member States shall adopt and promulgate the provisions necessary to comply with this Directive within 18 months of its notification and shall forthwith inform the Commission thereof. They shall apply these provisions within 24 months of the date of the notification of this Directive.

2. The Member States shall communicate to the Commission the texts of the necessary provisions of national law which they adopt in the fields covered by this Directive.

Article 8

Entry into force

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

Article 9

Penalties

The Member States shall fix penalties for breaches of the national provisions 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, together with any amendments thereof, to the Commission not later than the date mentioned in Article 7.

Article 10

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President

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