

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

(2002/C 227 E/18)

(Text with EEA relevance)

COM(2002) 244 final — 2002/0124(COD)

(Submitted by the Commission on 7 June 2002)

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,

Having regard to the opinion of the Economic and Social Committee,

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

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 non-life 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⁽¹⁾, 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⁽²⁾, 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⁽³⁾ 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)⁽⁴⁾.

- (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 non-systematic checks which are not discriminatory and are carried out as part of a police control not aimed exclusively at insurance verification may be permitted.

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

⁽²⁾ OJ L 8, 11.1.1984, p. 17, as last amended by Directive 90/232/EEC (OJ L 129, 19.5.1990, p. 33).

⁽³⁾ OJ L 129, 19.5.1990, p. 33.

⁽⁴⁾ OJ L 181, 20.7.2000, p. 65.

- (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 non-insured 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⁽¹⁾. The procedural rules governing such a review need to be established.
- (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⁽²⁾, 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.
- (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 prejudice 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.

⁽¹⁾ OJ L 257, 27.10.1995, p. 1.

⁽²⁾ OJ L 172, 4.7.1988, p. 1, as last amended by Directive 2000/26/EC.

- (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 accident, 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 non-systematic 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.

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 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. 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.

(*) OJ L 257, 27.10.1995, p. 1.'

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.

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.

(*) OJ L 181, 20.7.2000, p. 65.'

*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.
