COMMON POSITION (EC) No 27/2004
adopted by the Council on 26 April 2004
(Text with EEA relevance)

(2004/C 101E/02)

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 (1),

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

Acting in accordance with the procedure laid down in Article 251 of the Treaty (3),

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 an important part 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.


(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 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 original plates. This rule often means that national insurers’ 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.

(2) OJ 95, 23.4.2003, p. 45.
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 control not aimed exclusively at insurance verification may be permitted.

Article 4(b) of Directive 72/166/EEC permits a Member State to act in derogation from the general obligation to take out compulsory insurance in respect of certain types of vehicles or certain vehicles having a special plate. In that case, the other Member States are allowed to require, at the entry into their territory, a valid green card or a frontier insurance contract, in order to ensure compensation to victims of any accident which may be caused by these vehicles in their territories. However, since the elimination of border controls within the Community does not make it possible to ensure that the vehicle is not identified, whether they are resident in its territory, the aforementioned Article should be amended. Furthermore, the Member States should ensure that the list of persons exempt from compulsory insurance and the authorities or bodies responsible for compensation of victims of accidents caused by these vehicles is communicated to the Commission for publication.

In order to harmonise consumer prices (EICP) published by Eurostat, as provided for in Council Regulation (EC) No 2494/95 of 23 October 1995 concerning harmonised indices of consumer prices (1), the procedural rules governing such a review need to be established.

Member States’ obligations to guarantee insurance cover at least in respect of certain minimum amounts constitute 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. With a view to facilitating the introduction of these minimum amounts, a transitional period of five years from the implementation date of this Directive should be established. Member States should increase the amounts to at least a half of the levels within 30 months of the implementation date.

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 harmonised indices of consumer prices (1). The procedural rules governing such a review need to be established.

Article 4(a) of Directive 72/166/EEC permits a Member State to act in derogation from the general obligation to take out compulsory insurance in respect of vehicles belonging to certain natural or legal persons public or private. In case of accidents caused by these vehicles, the Member State so derogating must designate an authority or body to compensate damage to victims of accidents caused in another Member State. In order to ensure that not only the victims of accidents caused by these vehicles abroad are duly compensated but also the victims of accidents occurring in the same Member State in which the vehicle is normally based, whether they are or not resident in its territory, the aforementioned Article should be amended. Furthermore, the Member States should ensure that the list of persons exempt from compulsory insurance and the authorities or bodies responsible for compensation of victims of accidents caused by these vehicles is communicated to the Commission for publication.

In order to clarify the scope of application of the motor insurance directives in accordance with Article 299 of the Treaty, the reference to the non-European territory of the Member States in Articles 6 and 7(1) of Directive 72/166/EEC should be deleted.

Member States’ obligations to guarantee insurance cover at least in respect of certain minimum amounts constitute 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. With a view to facilitating the introduction of these minimum amounts, a transitional period of five years from the implementation date of this Directive should be established. Member States should increase the amounts to at least a half of the levels within 30 months of the implementation date.

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 harmonised indices of consumer prices (1). The procedural rules governing such a review need to be established.

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.

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 (1), 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.

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 or any contractual clause contained in an insurance contract 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 properly the intoxication level of the driver. 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 preclude any liability they might have incurred pursuant to the applicable national legislation, nor the level of any award of damages in a specific accident.

Personal injuries and damage to property suffered by pedestrians, cyclists and other non-motorised users of the road, who are usually the weakest party in an accident, should be covered by the compulsory insurance of the vehicle involved in the accident where they are entitled to compensation according to national civil law. This provision does not prejudice the civil liability or the level of awards for damages in a specific accident, under national legislation.

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.

Steps should be taken to make it easier to obtain insurance cover for vehicles imported from one Member State into another, even though the vehicle is not yet registered 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 30 days from the date when the vehicle is delivered, made available or dispatched to the purchaser, the Member State of destination should be considered to be the Member State where the risk is situated.

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. The policyholder should have the right to request at any time a statement concerning the claims, or the absence of claims, involving the vehicle or vehicles covered by the insurance contract at least during the preceding five years of the contractual relationship. The insurance undertaking, or any body which may have been appointed by a Member State to provide compulsory insurance or to supply such statements, should provide this statement to the policyholder within 15 days of the request.

In order to ensure due protection for the victims of motor vehicle accidents, Member States should not permit insurance undertakings to rely on excesses against an injured party.

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 person responsible 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.

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. This same procedure should also apply mutatis mutandis where the accident is settled by the system of national insurers’ bureaux provided for in Directive 72/166/EEC.

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.

As Directive 2000/26/EC was adopted before the adoption of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (1) which replaced the Brussels Convention of 27 September 1968 on the same matter for a number of Member States, the reference to such Convention in that Directive should be adapted as appropriate.


HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 72/166/EEC

Directive 72/166/EEC shall be amended as follows:

1. In Article 1, point 4 shall be amended as follows:

(a) the first indent shall be 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 shall be 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) of this Directive or in Article 1(4) of 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);

(2) OJ L 8, 11.1.1984, p. 17;

2. in Article 2, paragraph 1 shall be 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 control which is not aimed exclusively at insurance verification.’;

3. Article 4 shall be amended as follows:

(a) in point (a), second subparagraph:

(i) the first sentence shall be replaced by the following:

‘A Member State so derogating shall take the appropriate measures to ensure that compensation is paid in respect of any loss or injury caused in its territory and in the territory of other Member States by vehicles belonging to such persons.’;

(ii) the last sentence shall be replaced by the following:

‘It shall communicate to the Commission the list of persons exempt from compulsory insurance and the authorities or bodies responsible for compensation. The Commission shall publish the list.’;

(b) in point (b), the second subparagraph shall be replaced by the following:

‘In that case Member States shall ensure that vehicles as mentioned in the first subparagraph of this point are treated in the same way as vehicles for which the insurance obligation provided for in Article 3(1) has not been satisfied. The compensation body of the Member State in which the accident has taken place shall then have a claim 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.


(†) OJ L ..., p. ...

4. in Articles 6 and 7(1) the words 'or in the non-European territory of a Member State' shall be deleted.

Article 2

Amendments to Directive 84/5/EEC

Article 1 of Directive 84/5/EEC shall be 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; Member States may, in place of such amount, provide for a minimum amount of EUR 5 000 000 per claim, whatever the number of victims;

(b) in the case of damage to property, EUR 1 000 000 per claim, whatever the number of victims.


Within 30 months of the implementation date of Directive 2004/.../EC Member States shall increase guarantees to at least a half of the levels provided for in this paragraph.

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 of 23 October 1995 concerning harmonised indices of consumer prices (§). The first review shall take place five years from the entry into force of Directive 2004/.../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 Union.

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 the body as subsidiary or non-subsidiary and the right to make provision for the settlement of claims between the 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.

However, where the body has paid compensation for significant personal injuries to any victim of the same accident in which damage to property was caused by an unidentified vehicle, Member States may not exclude the payment of compensation for damage to property on the basis that the vehicle is not identified. Nevertheless, Member States may provide for an excess of not more than EUR 500 for which the victim of such damage to property may be responsible.
The conditions for the personal injuries to be considered significant shall be determined in accordance with the legislation or administrative provisions of the Member State in which the accident takes place. In this regard, Member States may take into account, inter alia, whether the injury has required hospital care.

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

(*) OJ L ..., p. ...

Article 3

Amendments to Directive 88/357/EEC

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

Article 4

Amendments to Directive 90/232/EEC

Directive 90/232/EEC shall be amended as follows:

1. In Article 1, the following paragraph shall be inserted between the first and second paragraphs:

‘Member States shall take the necessary measures to ensure that any statutory provision or any contractual clause contained in an insurance policy which excludes a passenger from such 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, shall be deemed to be void in respect of the claims of such passenger.’

2. the following Article shall be inserted:

‘Article 1a

The insurance referred to in Article 3(1) of Directive 72/166/EEC shall cover personal injuries and damage to property suffered by pedestrians, cyclists and other non-motorised users of the roads who, as a consequence of an accident in which a motor vehicle is involved, are entitled to compensation in accordance with national civil law. This Article shall be without prejudice either to civil liability or to the amount of damages.’

3. in Article 2, the first indent shall be 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 shall be 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 imported 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 the date when the vehicle has been delivered, made available or dispatched to the purchaser for a maximum period of 30 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 of this Article 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 Article 1 of the said Directive.

Article 4b

Member States shall ensure that the policyholder shall have the right to request at any time a statement relating to the third party liability claims involving the vehicle or vehicles covered by the insurance contract at least during the preceding five years of the contractual relationship, or to the absence of such claims. The insurance undertaking, or a body which may have been appointed by a Member State to provide compulsory insurance or to supply such statements, shall provide this statement to the policyholder within 15 days of the request.

Article 4c

Insurance undertakings shall not rely on excesses 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 to 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

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 to in Article 3(1) of Directive 72/166/EEC.

In the case of accidents which may be settled by the system of national insurers’ bureaux provided for in Article 2(2) of Directive 72/166/EEC, Member States shall establish the same procedure as in Article 4(6) of Directive 2000/26/EC. For the purpose of applying this procedure any reference to insurance undertaking shall be understood as a reference to national insurers’ bureaux as defined in Article 1, point 3 of Directive 72/166/EEC.


5. in Article 5, paragraph 1 shall be replaced by the following:

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

Article 6

Implementation

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

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

The methods of making such reference shall be laid down by Member States.

2. 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.

(*) 24 months after the date of entry into force of this Directive.
3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

**Article 7**

**Entry into force**

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

**Article 8**

**Addressees**

This Directive is addressed to the Member States.

Done at … ,

*For the European Parliament*

*The President*

*For the Council*

*The President*
STATEMENT OF THE COUNCIL’S REASONS

I. INTRODUCTION


The European Parliament delivered its opinion at first reading on 22 October 2003 (2).

The Economic and Social Committee has given its opinion on 26 February 2003 (3).

On 27 November 2003, the Council reached a political agreement with a view to adopting a common position at a later stage in accordance with Article 251(2) of the Treaty.

On 26 April 2004 the Council adopted its Common Position on the proposal as set out in doc. 16182/03.

II. OBJECTIVE

The objective of the above-mentioned proposal is to update existing provisions in the field of motor vehicle insurance in order to enhance the protection of possible victims, to take into account the increased cross-border-traffic with practically only exceptional border controls and to create a more efficient market in motor insurance products. To this end, some apparent gaps in existing legislation had to be filled, too.

Among the most important elements are the improvements of insurance cover in the case of a long-term stay outside the country of registration, the increase in minimum amounts of insurance cover for personal injury and damage to property throughout the Union, and the elimination of any existing exclusion from the insurance cover on the basis that the driver was under influence of alcohol or in the case of an accident with an unidentified vehicle. In the case of victims caused by non-identified vehicles, the risk of fraud and the objective of not excluding payments to victims too easily had to be balanced out. Another question was those of different legal concepts in Member States, for example with regard to the possibility of excesses to be borne by the insured himself in certain cases. Moreover, provisions to facilitate short term insurance cover in the case of purchase and registration of a car in different jurisdictions as well as harmonized provisions with regard to the settlement of claims along the lines of the Fourth Motor Insurance Directive should help to further clarify the European legal environment.

III. ANALYSIS OF THE COMMON POSITION AS SET OUT IN DOC. 16182/03 (*)

1. GENERAL

The compromise text on which a political agreement was reached in Council maintains the main objectives of the Commission’s proposal. At the same time it takes on board some of the amendments of the European Parliament. The Council modified the Commission’s proposal following the spirit of the European Parliament’s amendments especially by not deleting the existing derogation for agricultural vehicles and by replacing the proposed provision on the insurance cover for pedestrians and cyclists by a provision which more clearly takes into account existing national law (Article 4(2)). As an innovation, the Council introduced a new provision in Article 1(4) to avoid any misinterpretation of the territorial scope of the Motor Insurance Directives. Similarly, the Council simplified the proposed provision on the application to any kind of motor accidents of the settlement procedures as given in the Fourth Motor Insurance Directive and extended them to the ‘Green Card’ settlement system (Article 4(4) inserting Article 4e into Directive 90/232/EEC).

(1) Not yet published in the Official Journal.
(2) OJ C 95, 23.4.2003, p. 45.
(3) Note: The numbering of articles refers to the result of the first reading of Parliament (doc. 13585/03) or, where it is specially indicated (‘now:…’) to the document reflecting the Common Position in Council (doc. 16182/03).
These modifications were justified mainly for technical reasons. However, some provisions of the Commission proposal were modified to avoid some possible conflicts with the law already applicable in Member States.

2. EP AMENDMENTS

At its first reading the European Parliament adopted 26 amendments to the text (1). During the Working Party meetings, these EP amendments were scrutinized and a number of them were integrated into the Council text, at least in principle. Concerning other amendments, however, the Council has not been in a position to accept them.

2.1. The following EP amendments have been accepted in principle or partly, but integrated into the text with modifications:

Amendments 26 and 11 — New recital 7a (now: 8) and Article 1(3) amending Article 4(b) of Directive 72/166/EEC
(Clarification on the derogation for agricultural vehicles)

The Council has integrated the main content of these amendments by maintaining the existing derogation for agricultural vehicles. However, the issue behind, the protection of all kinds of victims in the case of cross-border traffic, has been solved by invoking the guarantee fund procedure instead of demanding a special insurance when leaving the registration state. Furthermore, a provision on a reporting period has been brought into the text as a compromise.

Amendments 25 and 27 — New recital 8a (now: 10) and Article 2 modifying Article 1, paragraph 2 of Directive 84/5/EEC
(Minimum amounts of insurance cover)

Notwithstanding the legitimate aim of enhancing the protection of victims, the Council had to take into account the different situations in Member States and acceding countries concerning a manageable increase of amounts in an adequate time frame. Although a full introduction of the figures suggested by Parliament was not possible, the figures fixed in the Common Position and the transitional period laid down take on board the main objectives of the amendments.

Amendment 5 — Deletion of recital 20
(‘Reasoned offer’ — procedure)

The deletion of the whole recital on the ‘reasoned offer’ procedure could not be supported. Instead the Council has preferred an additional clarification and the deletion of the second sentence only, which, however, should cover part of Parliament's concerns, namely to avoid a reference to the claims representative (see also amendment 20).

Amendment 20 — Article 4, point 4, inserting Article 4ε into Directive 90/22/EEC
(Relationship between provisions on the ‘claims representative’ and the ‘Green Card’-office)

The Council has taken on board the EP amendments to a large extent. The clarification of the role of the claims representative and the maintenance of the Green Card office procedures, also for the cases described here, serve good administrative practice and do not counteract any substantive objective of the proposal.

(1) See doc. 13585/03. Draft amendments 3 and 13 were not voted favourably, their substance being covered by amendments 25 and 27.
Amendments 7 and 21 — New recital 21b (now: 24) and Article 5, point 1 modifying Directive 2000/26/EC
(Replacement, when appropriate, of the Brussels Convention by Regulation 44/2001 concerning a provision on the place of establishment)

The Council has integrated these amendments in substance. However, by amending Article 4 of Directive 2000/26/EC, the Council has made it clear that a mere recital would not be sufficient in this regard.

Amendment 14 — Article 2, modifying Article 1, paragraph 6, subparagraph 2 of Directive 84/5/EEC
(Exclusion of an option not to compensate when the victim has been in hospital)

The Council has accepted the substance of the EP amendment. However, in order to ensure the necessary flexibility for Member States and as a consequence of changes brought about in the preceding paragraph of the Article, the Council has adapted the wording of the proposed amendment.

Amendment 15 — Deletion of Article 4(2) inserting a new Article 1a in Directive 90/232/EEC
(Insurance cover for pedestrians and cyclists)

The Council has acknowledged that the aim of the provision to harmonise the provisions for the insurance cover for pedestrians and cyclists and other non-motorised users of the roads might be too difficult to achieve along the proposed lines. However, instead of deleting the suggested provision altogether — as the Parliament had suggested — the Council has preferred to clarify the provision by mentioning the entitlement to compensation according to national law as a relevant safeguard. Thereby the principle of inclusion of these non-motorised users of the roads would be maintained without running the risk of prejudging national decisions on entitlement to compensation via this Directive.

Amendment 18 — Article 4, point 4, inserting Article 4b into Directive 90/232/EEC
(Information to be provided to the policy-holder)

The Council has integrated the main ideas of the EP amendment. The relevant information should be available upon request by the policyholder at any time during the duration of the insurance contract. Thereby consumer protection should be enhanced and at the same time an unnecessary delivery of letters can be avoided. The differences between the Council text and the EP amendment mainly concern editorial points.

2.2. The following amendments have been rejected and have not been integrated into the Council text:

Amendments 1, 6, 9 and 23 — New recitals 3a and 21a; Article 1, point 1 (new) and new Article 5a
(Definition of trailers and introduction of special provisions applying to them)

The Council has not been in a position to accept the amendments on ‘trailers’. Although the issue of accidents with trailers as such might deserve further consideration, the Council does not share the view that the lack of coherent registration of towing engines and trailers is currently a predominant problem. Moreover, the harmonisation of the different national provisions regarding number plates for towing machines and trailers would go beyond the objective of the insurance directives.

Amendments 2 and 12 — New recital 7b and Article 2, point 1
(Inclusion of the costs of pursuing claims in legal proceedings)

The Council has not been in a position to accept these EP amendments. In its view, the cover of the costs of legal proceedings constitutes a modality of voluntary insurance and is already addressed in a specific insurance directive. Moreover, the regime of legal expenses differs widely between Member States and the inclusion of compulsory cover might lead to the negative side-effect of reducing the number of out-of-court agreements.
Amendments 4 and 19 — New recital 19a and Article 4, Point 4, inserting Article 4d, point 1a (new) into Directive 90/232/EEC (Limitation period for direct right of action)

The Council has not considered it useful to introduce a harmonization of the periods within which the victim can claim a damage. The reasons are the different legal traditions and situations in the Member States and the fact that not only the starting point of this period, but also the provisions regarding an interruption or standstill of the period differ considerably. Moreover, harmonisation of these periods would go beyond the objective of the non-life insurance directives.

Amendments 8 and 24 — New recital 21c and Article 5, point 2a (new) (Creation of a central body for gathering information on accidents)

The Council has not supported a strict obligation to create a central information body. Although the aim of better and faster information to all parties concerned, especially the persons having suffered a damage, is acknowledged, the suggested provision is not clear enough to determine how Member States should fulfil such an obligation and whether any enforceable right against a Member State could be derived in the context of this directive. The creation of such a centre, which would collect police information, would also go beyond the objective of the non-life insurance directives.

Amendment 10 — Article 1, point 2, modifying Article 2, paragraph 1 of Directive 72/166/EEC (Possibility of checks)

The proposed amendment seeks to avoid the exclusion of the possibility regarding systematic checks on the insurance status of vehicles, which might be necessary in the view of some Member States. However, the Council has preferred to stay closer to the Commission’s proposal and takes the view that the last sentence of the provision offers a sufficient balance between all interests concerned and gives some flexibility for Member States’ authorities.

Amendment 28 — Article 2, modifying Article 1, paragraph 3 of Directive 84/5/EEC (Revision of amounts)

The Council has not considered it advantageous to replace the provision of the Commission’s proposal by the one suggested in the EP amendment. Firstly, the provision proposed by the Commission aims at a periodic review of amounts in order to avoid that they are eroded by inflation (as is also explained in the relevant recital). The proposed amendment cannot replace this inflation provision. Secondly, the proposed amendment would mean that the result of a future analysis of the experience to be gained would be pre-empted (‘shall be revised upwards’).

Amendment 16 — Article 4(3) modifying Article 2 of Directive 90/232/EEC (Scope of insurance cover)

The Council has not considered it useful to take on board the EP amendment. It might give the impression of limiting the temporal or territorial applicability of the relevant provision and thus impair the objective of easier circulation of insurance holders.

Amendment 17 — Article 4(4) inserting Article 4a into Directive 90/232/EEC (Definition of the Member State where the risk is situated)

The Council has not been able to accept the EP amendment, since a clear definition is necessary of which Member State is to be regarded as the State where the risk is situated. The Council has therefore preferred to stick to the Commission’s proposal.

Amendment 22 — Article 5, new point (Obligation to make a ‘reasoned offer’)

The Council has rejected this amendment for reasons of legal technique as a consequence of the rejection of amendments 2 and 12.
3. IMPORTANT INNOVATIONS TO THE TEXT INTRODUCED BY THE COUNCIL


The reference to the non-European territory of the Member States in Articles 6 and 7(1) of Directive 72/166/EEC was deleted in order to clarify the current scope of application of the Directives.

Article 4(4) inserting Article 4e into Directive 90/232/EEC
(Green Card Offices and technical clarification)

The Council has followed partly EP amendment 20 by changing the Commission’s proposal in order to replace the suggested role of the claims representatives by a streamlined role of the Green Card offices. In doing so, the provision in question was clarified and considerably shortened. Moreover, the Council has extended the application of the reasoned offer procedure provided for in the Fourth Motor Insurance Directive to the Green Card Offices. In this regard, a reference has been added to Article 1(3) of Dir. 72/166/EEC in order to make clear that references to ‘insurance undertakings’ can be interpreted as references to the green card offices in the cases described.

4. CONCLUSION

The Common Position adopted by the Council is fully in line with the main objective of the Commission’s proposal. Although certain provisions take greater account of national options, the Directive will fulfil the aim of simplifying administrative provisions in a more efficient internal market for motor vehicle insurance, while at the same time taking full account of the interest of better protection for consumers and potential victims. The Council has furthermore been in a position to accept some of the most central EP amendments, at least partly or in substance, in an effort to meet Parliament’s concerns and to follow good legislative practice on a number of important points.