

- them to sign electronically, with a personalized national registration number and of course a centralized database;
- as soon as possible, public authorities should be in a position to provide and accept electronic documentation; access could be provided through terminals installed in public institutions, at least initially;
 - it is necessary to ensure mutual recognition of certification authorities at a global level;
 - the confidentiality of correspondence is guaranteed in virtually all constitutions of democratic countries, and exceptions to this rule are established by law; electronic communication should be protected in the same way and in accordance with the same criteria.

Brussels, 25 March 1998.

The President
of the Economic and Social Committee
Tom JENKINS

Opinion of the Economic and Social Committee on the '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)'⁽¹⁾

(98/C 157/02)

On 4 November 1997 the Council decided to consult the Economic and Social Committee, under Article 100A of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 March 1998. The rapporteur was Mr Pelletier.

At its 353rd plenary session (meeting of 25 March 1998), the Economic and Social Committee adopted the following opinion by 94 votes, with two abstentions.

1. Introduction

1.1. Improving compensation for victims of traffic accidents in the European Union has been a major concern of the EU's lawmakers since the single insurance market was set up.

1.2. This concern is all the more legitimate as it helps to facilitate the free movement of persons guaranteed under the Treaty and make the single market a reality.

1.3. The fourth motor insurance directive comes at a time when EU citizens are becoming more mobile and regularly spend short stays in Member States other than their country of residence. These population movements,

which often coincide with holiday periods, are growing steadily in volume and have a highly varying impact on the different Member States. There is a clear distinction between tourist 'exporting' and 'importing' countries and the Member States through which such flows pass.

1.4. Petitions received by the European Parliament show that, statistically, there is a real risk that people travelling through a foreign Member State may be the victims of an accident, even though the number of persons concerned remains small.

2. Antecedents

2.1. The green card scheme set up at the end of the 1940s at the initiative of the UN's transport committee organized, under an inter-bureaux agreement, the repair

⁽¹⁾ OJ C 343, 13.11.1995, p. 11.

of damage caused outside their country of registration by vehicles insured in a European country.

2.2. The EU Commission has been pursuing its goal of improving compensation for victims of road accidents in the EU since the first motor insurance directive of 1972 (72/166/EEC), which made civil liability insurance compulsory in all EEC Member States at that time. The second and third directives (84/5/EEC and 90/232/EEC) further strengthened victim protection.

2.3. The second directive of 30 December 1983, which was inspired by the green card scheme, covered road accidents in the victim's country of residence that were caused by vehicles registered and insured in that country or in another Member State.

2.4. The third directive of 14 May 1990, which organized the free provision of car insurance services, covered accidents in the victim's country of residence that were caused by a vehicle registered in the same state but insured with an insurance company from another Member State under the freedom to provide services.

2.4.1. In particular, it made it compulsory for all insurers operating in this market, whether established or not, to belong to the green card bureau and to a national guarantee fund.

2.5. So, the car directives do not enable people who are victims of a road accident outside their country of residence to be covered adequately in practice.

2.6. Having identified this loophole, the EU Commission submitted this question at the beginning of the 1990s to the two professional organizations most likely to provide an answer: the European Insurance Committee (EIC) and the Council of Bureaux.

2.7. The Council of Bureaux, which runs the green card scheme, prepared a 'protection of visitors' agreement to cover such cases. But enactment proved impossible because (i) not all the bureaux concerned would give their consent and (ii) the extension of direct action — which was the key to the whole system of applying to a representative — could not be guaranteed under optimal conditions of legal security.

2.8. Noting this impossibility in such a sensitive area, the EIC came out clearly in favour of a draft directive, as the sole means of guaranteeing an equal level of

protection throughout the EU and, above all, of allowing accident victims in all Member States the right to take direct action against the insurer covering the other party against civil liability.

2.9. Following a number of petitions from victims of road accidents outside their country of residence, who complained about delays in receiving compensation and the slowness of procedures, the European Parliament took up the matter in 1995. The legal committee appointed as rapporteur Mr Willy Rothley, who was behind the resolution adopted by the EP on 26 October 1995 under Article 138B of the Treaty.

2.10. The EU Commission took account of the EP's request and drew up a draft directive based on the following principles:

- victims to have a right of direct action against the insurer covering the other party against civil liability;
- all insurance firms to appoint a representative for settling claims from each EU Member State;
- setting-up of information centres responsible for telling victims the names and addresses of the other party and of the representative responsible for settling claims in his/her country of residence;
- obligation for an insurer to offer compensation within a fixed period together with penalties for non-compliance;
- in the event of an unsatisfactory offer from the insurer by the deadline laid down, or of a failure to name a correspondent, setting-up of a procedure for providing victims with compensation from an ad hoc body in their own country of residence, with the right for that body to claim back the sum from its counterpart in the Member State where the accident took place.

3. General comments

3.1. The ESC is in favour of the proposed directive as an essential stage in building a single market for the benefit of consumers who may be faced with the following difficulties if they are involved in an accident abroad:

- language and communication problems;
- difficulties in identifying the person responsible for damage and his/her insurer;
- differences in the conditions for admitting the liability of the person causing an accident; and
- different laws on procedure and compensation in different countries.

3.2. The ESC wants this text to be adopted as soon as possible and to be the subject of some degree of

publicity from the EU Commission and from those all those in the Member States who have a stake in promoting such a measure: public authorities, insurers' organizations, consumers' associations, the tourist industry, etc.

3.3. However, the ESC notes that some passages could be worded more clearly and that questions remain in professional circles over whether some of the obligations in the proposal can be met within the time limits set, especially the drawing-up of a register of vehicles, civil liability insurers and claims representatives.

3.4. Therefore the question of allowing a longer deadline for implementing this specific provision in the proposal should be discussed because the setting-up of such a register, which at present does not exist in this form in several Member States, requires a reasonable length of time in order to assemble the technical and financial resources needed for it to operate properly.

3.5. Generally speaking, the question of the cost involved in implementing the proposal has been raised by the interests concerned. The ESC would be interested in knowing if the EU Commission has tried, in the traditional assessment forms, to evaluate the economic cost of this legislative initiative.

3.6. It also seems obvious to the ESC that other stages will have to be traversed once the proposal has been adopted.

3.6.1. Even if the issue is a more general one, the Commission ought to consider how to speed up and facilitate the access of victims to the rules of evidence, especially as regards the delivery and communicating of local or national police reports.

3.6.2. It also seems desirable to eventually align the rules on the rights to compensation at European level, even if current conditions do not seem ripe for real convergence.

3.6.3. The European Insurance Committee, for its part, has helped the settlement of claims abroad by preparing a model for a 'European declaration', which is used in many Member States.

The right to direct action

3.7. The inclusion of this right in the laws of all the Member States undeniably represents an essential objective in improving the situation of victims seeking compensation. It would be something entirely new for the United Kingdom and Ireland.

3.8. The ESC notes that this right to direct action would only apply to victims satisfying the criteria set out in Article 1, i.e. victims of accidents occurring in a Member State other than their state of residence and caused by a vehicle registered and insured in a Member State other than their state of residence.

3.9. The ESC wonders about the reasons behind this restriction and feels that the present proposal should have provided a good opportunity for making this facility a universal right for the use of all victims of accidents on EU territory.

Appointment of claims representatives

3.10. The Member States must take the measures necessary to ensure that approved class 10 insurance firms appoint claims representatives in each Member State. This new obligation incumbent upon firms is designed to make things easier for victims. It is to be added to the list of formalities that have to be fulfilled before firms can be approved.

3.10.1. The appointment of such a representative thus becomes one of the conditions of eligibility for a European passport.

3.11. The ESC is pleased at the method adopted but wonders about the conditions under which it will be implemented by the authorities. These will have to make arrangements for requiring firms that have already been approved to appoint a representative and for seeing that the request files are completed. European insurers should make the authorities aware of the importance of this new task and press for the insertion of an additional clause on this point in the protocol on the collaboration of the insurance authorities in the countries of the European Economic Area as modified in October 1997.

3.12. This new formality does not seem to represent too heavy a burden for firms if the list of natural or legal persons able to carry out this task is open. The EU Commission states in its commentary on Article 3 that its intention is 'to leave a large degree of latitude to insurance undertakings'. So, it will be easy for firms to use existing structures: subsidiaries, branches, agencies, claims-settlement bureaux... or natural persons already carrying out the duties of lawyer, agent, tax representative or service representative within the meaning of Article 6 of Directive 90/618/EEC.

3.13. In addition, the appointment of such a representative obviously does not prevent the company from contacting the victim or victims directly. Such flexibility, which makes use of the claims representative just one path of action among others, is particularly important in that it respects the diversity of existing situations, especially those where the victim has taken out a 'legal protection' policy.

3.14. The definition of the mandate linking the representative to the company that appoints him must show the same flexibility — this is the option in Article 3.5 — so as not to force operators to change their contractual relations with outside persons or their organizational set-up on foreign markets.

3.15. Regarding the claims representative's qualifications, it should be explicitly stated that he must communicate in the official language or languages of the victim's Member State of residence, since language difficulties are one of the main obstacles to the smooth operation of compensation procedures.

Duty to offer compensation

3.16. Article 3.6 creates a duty to offer compensation within a time limit of three months, with penalties 'in cases where liability is not contested and the damages have been quantified'. This clause alone is absolutely essential to the directive being effective and should make any intervention by a compensation body as described in Article 5 quite exceptional.

3.17. This duty to offer compensation already exists in France, since the entry into force of the Law of 5 July 1985. This scheme, which includes cash penalties where no offer is made or an offer is unsatisfactory, has been operating for more than ten years to the satisfaction of both insurers and policyholders.

3.18. Still with regard to the French experience, it has been observed that the smooth operation of the duty to offer compensation which is incumbent upon the insurer of the person responsible for causing an accident depends on a realistic evaluation being made of the procedures for assessing personal injury and damage to property. It is for this reason that reference is made in the Insurance Code to the concept of consolidating the state of the victim.

3.19. This reference, which corresponds to a measure used on other EU markets (Belgium, Spain, Portugal, Italy ...) is worth examining carefully, as it could

guarantee greater efficiency both from the insurers' and the victims' point of view.

3.20. The ESC wonders whether agreement might not be reached on inserting such a reference, which could take the form of an addition at the end of the first indent in Article 3(6) reading 'and, in particular, the state of consolidation of the victim'. But such a change would be meaningless unless this reference is in general use in the Member States.

3.21. This concern for realism should also lead to the remark that the request for compensation submitted by the victim himself or one of his representatives must be duly motivated and contain all the facts necessary for an assessment to be made of personal injury and damage to property.

Drawing-up of a register

3.22. The basic task of the information centre described in Article 4.1 is to keep 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...' so as to facilitate identification of the insurer necessary to start the claims settlement procedure.

3.23. The ESC cannot but support the setting-up of such a structure to help accident victims, which in addition should provide additional resources for combating non-insurance; however, it wonders whether it is feasible for such arrangements to be in place within the time limits set by the proposal.

3.24. Several difficulties must be mentioned here:

- in several Member States, insurers who provide civil liability cover for car fleets do not have systematic information on the registration number of each vehicle;
- it is not currently possible in all Member States to identify the insurer from the number plate; such a system does exist in Germany or Austria, but in France or Italy the link is between the number plate and the policyholder;
- existing files which do more or less correspond to the content of Article 4 are managed by one or more entities (public authorities, professional associations, independent bodies ...) which must be given the time to arrange their partnership for setting up a single 'counter'.

3.25. The ESC urges that, whatever happens, an additional time limit of, for example, 30 months instead of 24 should be granted. Such a time limit seems realistic

for allowing all the Member States, in accordance with national and EU rules on personal data protection, to set up a single access point for assembling in a reliable manner, and if possible in accordance with common standards, all this information, knowing that this 'address' will be, according to the situation, either created from scratch or developed from existing but fragmentary registers.

3.26. Such a time limit would also make it possible for all concerned to make the most of national experiences in the field of registration. Such a register has been operating smoothly on the Spanish market since March 1996. Since this date insurers have been informing their guarantee fund, apparently without any major difficulties, of the registration numbers of the vehicles covered by them, the names and addresses of the vehicles' owners, the nature of the contract (annual, temporary, etc.), its period of validity and the references relating to the make of vehicle and the company's registration number with the monitoring authority.

Conditions for intervention by compensation bodies

3.27. The proposal describes in detail the conditions under which compensation bodies may compensate victims if firms do not comply with Article 3.

3.27.1. Article 5 is a safety net and, as the Commission itself acknowledges in its explanatory memorandum, 'will only be applied in very rare cases'.

3.28. Depending on the Member State, this compensation body will probably be either the guarantee fund or the green card bureau. Whatever happens, when the directive is transposed into national law steps will have to be taken to see that the Member States take the measures necessary to achieve the two objectives of this article:

- provide existing structures with the material and financial resources to compensate victims, sometimes to a very significant extent; and
- guarantee smooth settlement between compensation bodies which, while being 'counterparts' according to the terms of the explanatory memorandum, may very well not be similar structures if, for instance, a guarantee fund in the state of residence has to be reimbursed by the green card bureau in the state where the accident occurred.

3.29. If two existing structures are in a position to play this role, it could be useful to provide a list in an appendix to the directive showing the compensation

bodies within the meaning of Article 5 in each Member State. Such a list, which would have to be updated regularly, could represent an element of legal security.

3.30. The solution of an additional clause to existing agreements between bureaux and guarantee funds will also have to be considered to ensure that the two month time limit covering the proceedings is respected.

3.30.1. Moreover, such a solution would make it possible to organize bilateral exchanges of information on the estimated value of damage, so as to avoid unsafe assessments.

3.31. Article 6 covers cases where the insurer cannot be identified and provides for the payment of compensation to the victim by the guarantee fund in his/her state of residence. It would be useful to have some details from the EU Commission on exactly what situations it has in mind.

3.31.1. For:

- either the information centre referred to in Article 4 has not done its job properly and has been unable, for various reasons, to provide the name and address of the civil liability insurer and its representative;
- or it has been impossible to identify the insurer for objective reasons: 'hit and run', where the number plate of the vehicle causing the accident has not been noted, invalid contract, etc.

4. Specific comments

Article 1

4.1. Under the terms of this article the directive will only cover the territory of the European Union. The ESC wonders whether it would not be feasible and advisable to extend the directive's scope to cover other countries.

4.2. Several situations should be borne in mind:

- The member countries of the European Economic Area (Iceland, Norway, Liechtenstein) should be covered by the EU directive after its adoption within the framework of the agreements concluded between the EU and the EEA.

- Switzerland, which has a frontier with several EU Member States, poses a particular problem as it is not a member of the EEA. Bilateral negotiations are in progress between the EU and Swiss authorities but these have recently been stalled over road transit procedures. The ESC wonders what existing legal

instruments could, in the interests of victim protection, extend the benefits of the measures provided for in the directive to EU citizens who are victims of a road accident on Swiss territory. A solution along the lines of the multilateral guarantee convention could be envisaged in the short term.

- The countries of central and eastern Europe also have common frontiers with several Member States and are recording increased road traffic flows. They are due to become EU members and for some of them the enlargement negotiations are to begin on 31 March 1998. They have joined the green card scheme and are parties to the multilateral guarantee agreement. One should therefore explore the agreement option pending their membership of the EU.
- The situation of other non-EU countries is more delicate from the legal principles angle. However, one wonders about one case not covered by Article 1, namely that, for instance, of an accident caused by a vehicle not registered in the EU, driven by an American owner covered by a guarantee of frontier insurance issued by an insurer established in the EU.

4.2.1. In fact under Article 1 registration cannot be separated from insurance. But there may be situations where these two inseparable conditions are not fulfilled.

4.3. The ESC also notes some big differences between registration systems in the EU regarding the authorities responsible for issuing number plates, the information required, the time limits for changing them ... and the car directives have not touched on this subject.

4.3.1. This issue should be put on the agenda in a context characterized by the appearance of some cases of wildcat free supplying of services in the car sector.

Article 2

4.4. The ESC is in favour of extending the direct right of action to all injured parties within the meaning of Article 1(2) of Directive 72/166/EEC. It therefore suggests the following new wording for Article 2:

‘Each Member State shall ensure that any injured party within the meaning of Article 1(2) of Directive 72/166/EEC enjoys a direct right of action against the insurer covering the other party against civil liability.’

Article 3

4.5. It seems relevant to insert a reference to the claims representative’s obligation to communicate with victims in their own language. This detail could be added at the end of Article 3(4) as follows:

‘He must communicate with the victim in the official language or languages of the victim’s state of residence.’

4.6. Article 3(6) is essential to ensuring that the obligation to offer victims compensation operates smoothly; its wording should be amplified on three points.

4.7. First, provision should be made for cases where the victim’s claim for compensation is exorbitantly high and is therefore rejected by the insurer, who must then give reasons for his refusal within a period of three months.

4.7.1. The expression ‘offer of compensation’ doubtless also covers cases where a claim is refused, but the ESC thinks it would be wiser to use an explicit form of wording like that in the second indent of Article 5(1), where the expression ‘reply answering with reasons’ is used.

4.7.2. The following phrase could thus be inserted after ‘offer of compensation’: ‘or give his exact reasons for rejecting the claim for compensation’.

4.8. A similar detail should be added with regard to the form of the claim for compensation. In view of the penalties involved in not replying or giving an unsatisfactory reply, steps should be taken to see that a reply is as complete and reasoned as possible.

4.8.1. It would therefore be useful to add the words ‘giving reasons’ after ‘claim for compensation’ in the first paragraph.

4.9. The wording of the second indent, which covers cases where the insurer is authorized to ‘provide an appropriate reply’ instead of being ‘required to make an offer’, must be clarified in the French version. The two conditions mentioned may be either cumulative or alternatives. The word ‘and’ would then have to be replaced by ‘and/or’.

Article 4

4.10. It could be relevant to insert a reference to the guarantee fund in Article 4. The following expression could be inserted at the end of the last sentence in

Article 4(3): 'together with the name and address of the body referred to in Article 1(4) of Directive 84/5/EEC'.

4.11. This article sets out in detail the content of the information required to facilitate settlement of a claim and lays down obligations in terms of exchanges between Member States and insurance firms. It is regrettable that no mention is made of an obligation for compensation bodies in the different Member States to exchange such information among themselves. The EU Commission acknowledges in its explanatory statement that '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'.

4.11.1. The ESC thinks it would be useful to refer explicitly to such cooperation in Article 4. It proposes that the following be inserted in the form of a new Article 4(4):

Brussels, 25 March 1998.

'4. The Member States shall take the measures necessary to facilitate exchanges of information between information centres set up in accordance with Article 4(1).'

Article 6

4.12. To remove any misunderstanding about the cases referred to in this article it might be useful to replace the beginning of the first sentence, 'If it is impossible to identify the insurer', by the following wording, which is more precise:

'When an information centre has not managed to identify the insurer of a vehicle registered on its territory ...'.

Article 7

4.13. In view of the practical difficulties of setting up the register described in Article 4 the ESC recommends that the time limit envisaged in Article 7(1) be extended from 24 to 30 months.

*The President
of the Economic and Social Committee*

Tom JENKINS
