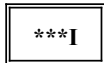


2 July 1998 A4-0267/98



REPORT

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)
(COM(97)0510 - C4-0528/97 - 97/0264(COD))

Committee on Legal Affairs and Citizens' Rights

Rapporteur: Mr Willi Rothley

Draftsman of the opinion: Mr Mathieu Grosch, Committee on Transport and Tourism*

(*Hughes procedure)

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(*Hughes procedure)

By letter of 13 October 1997 the Commission submitted to Parliament, pursuant to Article 189b(2), Article 57(2) and Article 100a of the EC Treaty, 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) (COM(97)0510 - C4-0528/97 - 97/0264(COD)).

At the sitting of 24 October 1997 the President of Parliament announced that he had referred this proposal to the Committee on Legal Affairs and Citizens' Rights as the committee responsible and to the Committee on Transport and Tourism for its opinion.

The Committee on Legal Affairs and Citizens' Rights appointed Mr Willi Rothley rapporteur at its meeting of 4 November 1997.

At the sitting of 21 November 1997 the President of Parliament announced that the report would be drafted by the committee responsible, the Committee on Legal Affairs and Citizens' Rights and by the committee asked for its opinion, the Committee on Transport and Tourism, in accordance with the Hughes procedure.

The Committee on Legal Affairs and Citizens' Rights considered the Commission proposal and the draft report at its meetings of 4 November 1997, 3 February, 26 February, 14 April, 19 May and 29-30 June 1998.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: De Clerq, chairman; Rothley, vice-chairman and rapporteur; Berger, Buffetaut, Casini C., Cassidy, Cot, Gebhardt, Janssen van Raay, Medina Ortega, Mosiek-Urbahn, Sierra González and Wijsenbeek.

The opinion of the Committee on Transport and Tourism is attached.

The report was tabled on 2 July 1998.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

A
LEGISLATIVE PROPOSAL

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) (COM(97)0510 - C4-0528/97 - 97/0264(COD))

This proposal is approved with the following amendments:

Text proposed by the Commission()

Amendments by Parliament

(Amendment 1)
Recital 4a (new)

Whereas the green card bureau arrangements ensure that claims in the victim's own country are satisfactorily dealt with even when the other party comes from another European country;

(Amendment 2)
Recital 4b (new)

Whereas the green card bureau system does not solve the problems of a victim having to claim in another country against a party resident there and an insurance undertaking authorized there (a foreign legal system, a foreign language, unfamiliar settlement procedures and often unreasonably delayed settlement);

(¹) OJ C 343, 13.11.1997, p.11

(Amendment 3)
Recital 5

Whereas, the European Parliament, by its Resolution of 26 October 1995 on the settlement of claims arising from traffic accidents occurring outside the claimant's country of origin⁽⁷⁾, took an initiative under

Whereas the European Parliament, by its Resolution of 26 October 1995 on the settlement of claims arising from traffic accidents occurring outside the claimant's country of origin⁽⁷⁾, took an initiative under

the second paragraph of Article 138b of the EC Treaty calling on the Commission to submit a proposal for a European Parliament and Council Directive on this matter,

⁽⁷⁾ OJ C 308, 20.11.1995, p. 108

the second paragraph of Article 138b of the EC Treaty calling on the Commission to submit a proposal for a European Parliament and Council Directive to solve this problem,

⁽⁷⁾ OJ C 308, 20.11.1995, p. 108

(Amendment 4)
Recital 6

Whereas, it is in fact appropriate to supplement the arrangements established by Directives 72/166/EEC, 84/5/EEC⁽⁸⁾ and 90/232/EEC in order to guarantee motor vehicle accident victims comparable treatment irrespective of where in the Community accidents occur; whereas, for accidents occurring in a Member State other than that of the victim's residence, there are gaps with regard to the settlement of victims' claims;

Whereas it is in fact appropriate to supplement the arrangements established by Directives 72/166/EEC, 84/5/EEC⁽⁸⁾ and 90/232/EEC in order to guarantee road accident victims comparable treatment irrespective of where accidents occur; whereas, for accidents occurring outside the victim's country of residence, there are gaps with regard to the settlement of claims;

(Amendment 5)
Recital 6a (new)

Whereas one satisfactory solution might be for the victim of an accident outside his country of residence to be entitled to claim in his own country against a claims representative appointed there by the other party's insurers;

(Amendment 6)
Recital 6b (new)

Whereas this solution would allow damage suffered by victims outside their country of residence to be dealt with by procedures familiar to them;

(Amendment 7)
Recital 6c (new)

Whereas this system of having claims representatives in victims' countries of residence affects neither the substantive law to apply in each individual case nor the matter of jurisdiction;

(Amendment 8)
Recital 6d (new)

Whereas this system may therefore be of great practical importance as some 90% of all accident claims are settled out of court;

(Amendment 9)
Recital 6e (new)

Whereas such a system does mean giving the victim a direct right of action against the other party's insurer, and whereas such a direct right of action should not be restricted to the scope of this Directive but be introduced to cover all cases;

(Amendment 10)
Recital 7

Whereas in order to fill such gaps at least in part, it should be provided that the Member State where the insurance undertaking is established require the undertaking to appoint representatives resident or established in the other Member States to collect all necessary information in relation to claims resulting from such accidents with sufficient powers to represent the undertaking in relation to persons suffering damage from such accidents, including the payment of compensation therefor, and to represent it or, where necessary, have it

Whereas in order to fill such gaps it should be provided that the Member State where the insurance undertaking is authorized require the undertaking to appoint a claims representative in each other Member State to collect all necessary information on the road accident in question and take appropriate action to settle the claim; whereas he must be instructed and empowered to settle accident claims on behalf of and for the account of the insurance undertaking.

represented in relation to such claims before the courts, in so far as this is compatible with the rules of private international law on the determination of jurisdiction, and before the authorities of the other Member States;

(Amendment 11)
Recital 9

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

Delete

(Amendment 12)
Recital 11

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

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

(Amendment 13)
Recital 12

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

Whereas it is necessary to make provision for a compensation body to which the victim may apply where the insurer cannot be identified, has failed to appoint a claims representative or is manifestly dilatory in settling the claim;

(Amendment 14)
Recital 13

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

Delete

(Amendment 15)
Article 1
(Scope)

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

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

victims of accidents

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

persons resident in a Member State who are injured parties in traffic accidents

- (a) occurring outside their Member State of residence, and
- (b) caused by a vehicle
 - insured by an undertaking established in a Member State other than the State of residence of the injured party, and
 - normally parked in a Member State other than the State of residence of that person.

(Amendment 16)
Article 2

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

Each Member State shall ensure that injured parties according to the definition in Article 1 of this Directive enjoy a direct right of action against the insurer providing the party or parties who caused the damage with cover against civil liability

(Amendment 17)
Article 3(1)

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

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

freely appoint in each Member State other than that in which they are established a body (hereinafter referred to as "the claims representative"). The claims representative

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

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

freely appoint in every other Member State a claims representative instructed and authorized to settle claims arising from road accidents as defined in Article 1 of this

shall be responsible for handling and settling claims arising from accidents occurring in a Member State other than the State where the victim resides and caused by a vehicle insured by such undertakings and registered in a Member State other than the State where the victim resides. The claims representative shall be resident or established in the Member State where the victim resides.

directive on behalf of and for the account of the insurance undertaking.

(Amendment 18)
Article 3(1a) (new)

1a. The claims representative may work for one or more insurers.

He must be able to examine the case in the official language(s) of the country of residence of the injured party.

(Amendment 19)
Article 3(1b) (new)

The choice of its claims representative shall be at the discretion of the insurer (for example, one of its branch offices, a subsidiary, another insurance undertaking operating there, a green card bureau, an association of insurers, an independent claims settlement body or a firm of solicitors).

The Member States may not restrict this choice.

(Amendment 20)
Article 3(3)

3. The claims representative shall, in relation to such claims, collect all information necessary in connection with compensation and shall take the measures necessary to

3. The claims representative shall, in relation to such claims, collect all information necessary in connection with compensation and shall take the measures necessary to

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

negotiate and obtain a settlement of claims. He shall act in accordance with the instructions of the insurer, the rules on compulsory insurance against civil liability as these rules are defined in the last indent of Article 2 of Directive 90/232/EEC and the rules on civil liability of the country in which the accident took place.

(Amendment 21)
Article 3(4)

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

(Amendment 22)
Article 3(5)

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

(Amendment 23)

Article 3(6)

6. The Member State shall create a duty, backed by penalties, to the effect that, within a time-limit of three months from the date when the victim presented his claim for compensation either directly to the insurer or to the claims representative,

Delete

- the insurer of the person causing the accident or his claims representative is required to make an offer of compensation, in cases where liability is not contested and the damages have been quantified, and
- the insurer to whom the claim for compensation has been addressed or his claims representative is required to provide an appropriate reply to the points made in the claim, in cases where liability has not been clearly determined and the damages have not been fully quantified.

(Amendment 24)
Article 3(7)

7. The last subparagraph of Article 12a(4) of Directive 88/357/EEC shall apply.

7. The activities of the claims representative shall not establish jurisdiction in the victim's country of residence.

(Amendment 25)
Article 3a (new)

3a. Nothing in this Directive shall affect the injured party's right to make a claim directly against the driver, owner or insurer at any time.

(Amendment 26)
Article 3b (new)

1. The Member States shall adopt requirements to ensure that, within a time-limit not exceeding three months from the date of the accident, the insurer of the person causing the accident or his claims representative is required

- either to make the injured party an offer of compensation for the damage or injuries referred to in Article 1 of Directive 84/5/EEC in cases where liability has been established and the damages have been determined

- or to reply, giving reasons, to the points referred to in the injured party's compensation claim in cases where liability has not been clearly established and the damages suffered by the injured party have not been clearly quantified.

2. The offer may be provisional if the insurer or his claims representative has not, within a period of four months from the date

of the accident, been informed that the injured party's state of health has stabilized. The final offer of compensation must be made within a period of five months from the date on which it comes to the insurer or claims representative's knowledge that the state of health of the injured party has stabilized.

3. If the injured party does not reply to legitimate requests made by the insurer or his representative with a view to finalizing the compensation file, the time-limits shall be suspended.

(Amendment 27)
Article 3c (new)

Where the offer is not made within the time-limits laid down in Article 3b, interest shall be payable automatically on the amount of compensation offered by the insurer or awarded by the judge to the injured party, at a rate 8% above the European Central Bank tender (repo) interest rate (reference rate), for the period running from the day on which the time-limit expires until the day on which the offer is made or the award becomes final. This penalty may be reduced by the judge if the situation is deemed not to be of the insurer's making.

(Amendment 28)
Article 4 (1)

Information centres

1. Each Member State shall establish or approve a body (hereinafter referred to as "the information centre") responsible for keeping a register of motor vehicles registered in the territory of that State, insurance undertakings providing civil liability cover for such vehicles and the

Registration and information centres

1. Each Member State shall establish or approve a body keeping a register of :
- vehicles registered in the territory of that State,
- insurance undertakings insuring such vehicles or in the case of vehicles not

claims representatives appointed by such undertakings in accordance with Article 3 whose name shall be notified to the information centre in accordance with paragraph 2 below, or for coordinating the compilation and dissemination of that information; the information centre shall also be responsible for assisting victims in identifying the name of motor insurance undertakings providing cover for vehicles registered in that Member State and of the claims representatives notified to it.

required to be insured, such as military and government vehicles, the body responsible for meeting claims for damage caused by such vehicles, and
- the claims representatives appointed in accordance with Article 3.

(Amendment 29)
Article 4(2)

2. Insurance undertakings providing cover against civil liability in respect of the use of motor vehicles shall notify to the information centre in the Member State in whose territory they are established the registration numbers of the vehicles they insure which are registered in that State, the number of the insurance policy and the name and address of the insured. It shall notify to the information centres of the other Member States the name and address of the claims representative which they have appointed in accordance with Article 3 in each of the Member States and the corresponding information concerning vehicles registered in those countries which they insure by way of provision of services.

2. Insurance undertakings shall notify the information centre in the Member State in whose territory they are authorized of the registration numbers of the vehicles they insure which are registered in that State, the numbers of the insurance policies, the names and addresses of the owner and the persons insured, the periods of validity of the policies relating to those vehicles and the name and address of the claims representative. They shall notify the information centres of the other Member States of the names and addresses of the claims representatives whom they have appointed in accordance with Article 3 in each of the Member States and the corresponding information concerning vehicles registered in those countries which they insure by way of provision of services.

(Amendment 30)
Article 4(3)

3. The Member States shall ensure that the victim of an accident occurring in a Member State other than the State where he resides shall be entitled to obtain from the information centre of the State where he resides or the State where the vehicle is

3. The injured party shall be entitled to obtain these details on application from the information centres of the Member States and in particular of the State where he resides.
No more than ten working days may elapse

registered the name and address of the insurer, the number of the insurance policy and the name of the insurer's claims representative in the State of residence of the victim. If the vehicle is not duly insured, the information centre shall provide the victim with the name and address of the owner or usual driver of the vehicle.

between receipt of his request and the provision of the information. If the vehicle is not duly insured, the information centre shall provide the injured party with:

- the name and address of the vehicle owner and
- the address of the compensation body in the person's country of residence as referred to in Article 1(4) of Directive 84/5/EEC.

(Amendment 31)
Article 4(4) (new)

The Member States shall ensure that the information centres promptly disclose the information required to identify motor vehicles, their owners and insurers.

(Amendment 32)
Article 4(5) (new)

5. A charge may be made for the information mentioned in paragraph 3, based on the cost actually incurred.

(Amendment 33)
Article 5
(Compensation bodies)

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

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

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

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

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

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

2. The injured party may refer the matter to the compensation body if

(a) the insurer has failed to appoint a claims representative or

(b) the insurer has not been identified within two months of the accident or

reimbursement.

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

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

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

(c) the claims representative has not handled the claim within the time limit laid down in Article 3b.

3. The injured party shall not be entitled to refer the matter to the compensation body if:

a. the insurer or claims representative declines all liability and has given the injured party a reply with reasons, or

b. the injured party does not accept the offer with reasons made by the insurer or claims representative.

4. This compensation body may be the guarantee fund mentioned in Article 1(4) of Directive 84/5/EEC⁽¹⁾ or the green card bureau.

5. The compensation body shall have a degree of discretion in settling claims and a right of recourse pursuant to the procedures to be laid down by a Convention to be drawn

up between the compensation bodies.

6. The activities of the compensation body shall not establish jurisdiction.

7. The compensation body shall act within two months of the application by the injured party.

8. The compensation body shall inform the insurer or his representative that it has received a claim and that it will respond to that claim within a period of two months from the injured party's claim.

⁽¹⁾ Second Council Directive of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, OJ L 8, 11.1.1984, p. 17.

(Amendment 34)

Article 6

If it is impossible to identify the insurer, the vehicle shall be treated as uninsured. Compensation for damage to property or personal injury caused to the victim shall be provided by the body within the limits laid down in Article 1(4) of Directive 84/5/EEC.

The victim shall be compensated by that body in the Member State where he resides.

The body shall then have a claim, on the conditions laid down in Article 5(2) of this Directive, against the body in the Member State where the vehicle in question is normally based or, depending on the circumstances, against the green-card bureau in that Member State.

Delete

(Amendment 35)
Article 7
Paragraph 1a (new)

1a. When Member States adopt provisions pursuant to paragraph 1, they shall contain a reference to this directive or be accompanied by such reference at the time of their official publication. The procedure for making such reference shall be adopted by the Member States.

(Amendment 36)
Article 9

The Member States shall fix penalties for breaches of the national provisions they adopt in implementation of this Directive and take the steps necessary to secure their application. The penalties shall be effective, proportional and dissuasive. The Member States shall notify these provisions, together with any amendments thereof, to the Commission not later than the date mentioned in Article 7.

Member States shall ensure that their insurance supervisory authorities monitor compliance with the provisions they adopted in implementation of this Directive.

DRAFT LEGISLATIVE RESOLUTION

Legislative resolution embodying Parliament's opinion 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) (COM(97)0510 - C4-0528/97 - 97/0264(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council, COM(97)0510-97/0264(COD)(),
 - having regard to Article 189b(2), Article 57(2) and Article 100a of the EC Treaty, on the basis of which the Commission submitted its proposal (C4-0528/97),
 - having regard to Rule 58 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and Citizens' Rights and the opinion of the Committee on Transport and Tourism (A4-0267/98),
1. Approves the Commission proposal subject to Parliament's amendments;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 198a(2) of the EC Treaty;
 3. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 189b(2) of the EC Treaty;
 4. Should the Council intend to depart from the text approved by Parliament, calls on the Council to notify Parliament and requests that the conciliation procedure be initiated;
 5. Points out that the Commission is obliged to submit to Parliament any modification it may intend to make to its proposal as amended by Parliament;
 6. Instructs its President to forward this opinion to the Council and Commission.

^(b) OJ C 343, 13.11.1997, p. 11.

B **EXPLANATORY STATEMENT**

I.1. The problem

Road accidents in which the owners of the vehicles reside in different States and the vehicles are registered in different States may take one of two forms. Either the accident occurs in the victim's State of residence ('incoming motorist') or it occurs in the country of residence of the person causing the accident or in another State ('visiting motorist').

In either case claims settlement must be made easier for the sake of the victims. It is often difficult to identify the vehicle owner and his insurer, as the relevant data are not always available from a central point. The victim has to make his claim in a foreign language. The other party's insurers frequently delay the settlement of claims in the hope that the victim will eventually abandon his claim. Claims taken to court abroad are at least 15% more expensive and in general last up to eight years.

The first case, that of the 'incoming motorist', was dealt with in 1991 on the basis of a recommendation by the UN Economic Commission for Europe by private law agreement between the national motor insurance associations (bureaux). This procedure, known as the green card system, works on the basis that the insurance associations party to it authorize each other to settle claims for damage caused by incoming motorists. The bureau settling a claim is reimbursed by the association to which the insurer liable for the claim belongs(

). This system works to general satisfaction, but does not solve the problem of the case of the 'visiting motorist', of which some 500 000 a year are estimated to take place.

It might seem obvious to have such cases also settled via a private agreement between the national insurance associations. A draft agreement to this effect was prepared but not concluded, as one association was unable to sign it. All parties considered that only a universally applicable solution would be appropriate. Moreover, all parties regarded the introduction of a direct right of action by the victim against the insurer under national law to be necessary, which would not be possible by way of a private agreement.

This makes a Community harmonization directive indispensable. To start the process, the Committee on Legal Affairs and Citizens' Rights for the first time used the instrument of legislative initiative pursuant to Article 138b of the EC Treaty, which had been introduced by the Maastricht Treaty, and submitted a draft resolution to Parliament which contained all the components for a directive to that effect. Parliament adopted this initiative by the majority of its members required under Article 138b of the EC Treaty(.

Parliament's initiative was unanimously welcomed by the insurance industry, the automobile clubs and the accident victims' organizations, and led to the present Commission proposal.

() This system works to general satisfaction, but does not solve the problem of the case of the 'visiting motorist', of which some 500 000 a year are estimated to take place.

) The multilateral guarantee agreement between national insurers' bureaux of 15.3.1991.

(¹) Resolution A4-0201/95 of 26.10.1995, OJ No C 308, 20.11.1995, p. 108.

I.2. The solution

The solution proposed by Parliament to the problem of 'visiting motorist' victims is based on the following considerations:

The proposed Community directive is pragmatic and does not interfere in either national liability law or the rules governing Member States' jurisdiction (international private law). To do so would have been neither easy nor absolutely necessary, as the actual problem is not so much the differing levels of protection of traffic accident victims but the assertion of their claims in other Member States. In addition, over 90% of all claims are settled out of court, so rules affecting out of court settlements are of considerable practical importance.

By

Directive

72/166/EEC(

) the Member States were obliged to introduce compulsory motor vehicle insurance covering the entire Community. It is now a matter of making the ins

- first of all the introduction in national laws of a direct right of action, i.e. a right enabling the victim to make a direct claim and if necessary take legal action against the insurer providing cover for the vehicle as well as the driver responsible for the accident and the vehicle owner. This is the only point affecting substantive law in the Member States associated with this proposal for a directive.
- Secondly, every insurance undertaking operating in the Community must be required to appoint a representative in each other Member State, responsible for settling claims on its behalf of and for its account, and in the language of the respective countries. This ensures that the victim can deal with somebody in his own country.
- And thirdly, the establishment of information centres will enable victims at any time to identify the appropriate claims representative.

By contrast with the green card bureaux system set up for 'incoming motorists' it is noticeable that the visiting motorist continues to have no legal recourse in his own country, i.e. no scope to start proceedings. This difference is however based on the fact that proceedings arising from a road accident, i.e. an offence, generally fall within the exclusive jurisdiction of the local courts, where the accident occurred.

In its proposal the Commission adopted these three elements and added two others:

- it expanded the role of the information centres to make them responsible not only for disclosing the name of the relevant claims representative but also for keeping a register of motor vehicles registered, of insurance undertakings providing cover for those vehicles, the numbers of the insurance policies involved and the names and addresses of the insured.

() the Member States were obliged to introduce compulsory motor vehicle insurance covering the entire Community. It is now a matter of making the insurer who is financially liable to meet a given claim more accessi
) 24 April 1972, OJ L 103, 2.5.1972, p. 1-4.

- The Member States are also required to establish compensation bodies required to act within two months of the presentation of a claim by a victim, if the insurer has failed to appoint a claims representative or the insurer or its representative has failed to make an offer of compensation or to provide a reply with reasons to a claim within three months.

The compulsory establishment of information centres to provide information on insurers is a useful addition to the system proposed by Parliament, as in the past the bodies registering motor vehicles did not have this data in all the Member States. This had in fact already been requested by the EUI (European Insurance Committee).

The introduction of compensation bodies to intervene as a back stop can be approved on the terms set out below, as they will be a way of exerting pressure on the insurers concerned.

I.3. Earlier directives

The system proposed is compatible with the basic principles of the Community and the internal market. As the Commission points out in its explanatory memorandum, three motor insurance directives have already been adopted. The first made third party insurance compulsory throughout the Community(

) The second extended compulsory cover to material damage, set minimum figures for compulsory insurance and required each Member State to set up

) The third directive settled a number of doubtful points and filled gaps, requiring for example that guarantee funds may not make payment of claims conditional on the victim's establishing in any way that the person liable

These three directives based on Article 57(2) of the EC Treaty do each seek to harmonize the motor insurance system in the Community, but none of them takes the situation of the visiting motorist into account. This shortcoming, which affects freedom of movement, the operation of insurance companies and the internal market in general, is the target of this directive.

II. The amendments

In the light of the above, amendments 1 - 14 require no further explanation.

() The second extended compulsory cover to material damage, set minimum figures for compulsory insurance and required each Member State to set up or recognize a body to settle claims for damage caused by unidentified persons.
) 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, OJ L 103, 2.5.1972, p. 2.

() The third directive settled a number of doubtful points and filled gaps, requiring for example that guarantee funds may not make payment of claims conditional on the victim's establishing in any way that the person liable
) Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, OJ L 8, 11.1.1984, p. 17.

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

Amendment 15 corrects and expands the scope of the Commission proposal to cover road accidents occurring outside the victim's Member State of residence and regardless of whether it occurs in another Member State or outside the Community. There is no apparent reason why an accident between an Italian and a Frenchman but occurring in Switzerland should not be covered by the Directive.

Amendments 9 and 16 would give victims a direct right of action against the other party's insurer which, where visiting motorists are concerned, will not be very controversial. This right has proved a success wherever it has been introduced and it should therefore apply universally and not only where foreign motorists are concerned. The United Kingdom and Ireland, where this right does not yet exist, would be most affected. If these two Member States were unable to carry out this important reform, the result would be a remarkable situation in which motorists from other Member States would be better placed than their own citizens. The committee's report, in introducing an entitlement to claim directly, restricts itself to the case of visiting motorists.

Amendments 10 and 17 - 24 relate to the new institution of claims representatives. Amendment 10 establishes that the representative may role only outside the courts. Amendments 18-20 clarify important details of the operation and status of representatives not dealt with in the Commission proposal.

Amendments 21 - 23 delete material which reappears in other amendments.

Amendment 24, which is linked to Amendment 7, is in legal terms only declaratory, in making it clear that the Directive will not affect the Member States' arrangements under international private law.

Amendment 25 is also no more than a clarification.

Amendments 26 and 27 are in essence a reformulation of Article 3(6) deleted by Amendment 23. The system they propose is based on the one recently introduced in France which has proved a great success.

Amendments 28 - 32 relate to the establishment of information centres, and in substance defer little from the proposal; the intention is to clarify the text for the reader.

Amendment 33 relates to the establishment of compensation bodies which in certain circumstances are required to act in place of the insurer or its claims representative. Paragraph 4 of the amendment makes it clear that the body may not be a government body; paragraph 5 refers the important matter of the degree of discretion and the right of recourse of this body, for the sake of flexibility, to an agreement to be concluded between the compensation bodies.

Amendment 36 entrusts the monitoring of compliance by insurers with the national provisions adopted in implementation of the Directive to the insurance supervisory authorities, as they have the necessary knowledge and sanctions at their disposal.

OPINION
(Rule 147 of the Rules of Procedure)

for the Committee on Legal Affairs and Citizens' Rights

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)

(COM(97)0510 - C4-0528/97 - 97/0264(COD) (Rothley report))

Committee on Transport and Tourism

Draftsman: Mr Mathieu Grosch

PROCEDURE

At its meeting of 25 November 1997 the Committee on Transport and Tourism appointed Mr Grosch draftsman.

The committee considered the draft opinion at its meetings of 3 February, 25 February and 17 March 1998.

At the last meeting it unanimously adopted the following conclusions.

The following took part in the vote: Lüttge, vice-chairman and acting chairman; Sisó Cruellas, vice-chairman; Grosch, draftsman; Aparício Sánchez, Baldarelli, Castricum, Cornelissen, Cunningham (for Klironomos), Danesin, van Dam, Jarzembowski, Kaklamanis (for Parodi), Koch, Konrad (for Ferri), Langenhagen, McIntosh, Megahy, Paasio (for Sindal), Piecyk, Sarlis, Schlechter, Schierhuber (for Camisón Asensio), Schmidbauer, Seal, Simpson, Stenmarck, Tamino (for Van Dijk), Väyrynen (for Wijsenbeek) and Watts.

GENERAL REMARKS

This Commission proposal is the result of a legislative initiative taken by Parliament under the second paragraph of Article 138b of the EC Treaty and is therefore one of the rare cases in which Parliament has availed itself of its right of legislative initiative. The initiative originated in September 1995 in the Legal Affairs Committee and was subsequently taken up in plenary (rapporteur: Mr Rothley - PSE).

The reasons for the proposal are that:

- (1) procedures for settling damages arising from accidents abroad are protracted and cumbersome;
- (2) the agreement to improve the protection of victims of traffic accidents abroad (under which the green card bureaux are supposed to render assistance in supplying the necessary information) is not working satisfactorily;

- (3) borders have come down in the internal market, enabling insurers to increase their activities in other Member States; and
- (4) the traffic of EU citizens to other Member States is increasing.

We are probably talking about some 500 000 cases of loss or damage each year which arise when EU citizens are involved in accidents in Member States other than their own. In many cases it proves extremely difficult to settle the claim, not only because of language problems or geographical factors but also because of procedural and legal difficulties or a lack of goodwill. Parliament called on the Commission to propose a directive introducing an arrangement in the European Union whereby the accident victim could apply directly to the liability insurer of the other party to the accident and, if necessary, take legal action ('direct claim').

The Member States are required to secure the appointment by all insurance undertakings of a representative responsible for settling accident claims in each Member State.

The Commission also proposes that:

- information centres be set up and made responsible for identifying the claims representatives as well as the insurer providing cover and the vehicle involved in the accident;
- a compensation body be established with responsibility for settling claims in cases where there is no claims representative or the insurer proves dilatory;
- the guarantee fund be responsible for compensating the accident victim if the insurer cannot be identified.

These are for the most part legal considerations which fall within the terms of reference of the Committee on Legal Affairs. It is therefore a matter for that committee to table any appropriate amendments. From its own standpoint, the Committee on Transport and Tourism would state that this proposal contains much that is positive and can in principle be supported.

It is an important proposal which meets some of the automobile and tourism associations' fundamental demands; it does not, however, resolve all the issues which arise in actual cases.

CONCLUSIONS

The Committee on Transport therefore attaches importance to the following points:

- (1) the Commission should be reminded to adapt the directive on minimum amounts of compensation without delay;
- (2) the time limit and arrangements for compensation should be determined so as to ensure that the compensation body can also be compelled to settle;
- (3) vehicles belonging to the civilian or military authorities must also be included in the legislation, particularly where the information centre is concerned;
- (4) the information centre must supply all the information needed by the victim within a maximum time limit of two weeks;

- (5) greater consideration should be paid to this Directive in the EU's cooperation agreements with third countries;
- (6) the Directive should also allow for situations such as where: the insurer is established in a country other than the state of residence of the insured and the accident occurs in a third EU country. This situation is occurring increasingly in border areas.

The internal market is now open to insurance undertakings. This must not result in a situation in which compensation for EU citizens involved in accidents outside their country of residence or insurance is delayed, reduced or even withheld, or is subject to hefty additional administrative charges.