

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0346/2003

10 October 2003

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REPORT

on the proposal for a directive of the European Parliament and of the Council amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC, 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council on insurance against civil liability in respect of the use of motor vehicles
(COM(2002) 244 – C5-0269/2002 – 2002/0124(COD))

Committee on Legal Affairs and the Internal Market

Rapporteur: Willi Rothley

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 7 June 2002 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 47, 55 and 95 of the EC Treaty, the proposal for a directive of the European Parliament and of the Council amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC, 90/232/EEC and Directive 2000/26/EC on insurance against civil liability in respect of the use of motor vehicles (COM(2002) 244 – 2002/0124(COD)).

At the sitting of 13 June 2002 the President of Parliament announced that he had referred this proposal to the Committee on Legal Affairs and the Internal Market as the committee responsible and the Committee on Regional Policy, Transport and Tourism for its opinion (C5-0269/2002).

The Committee on Legal Affairs and the Internal Market appointed Willi Rothley rapporteur at its meeting of 20 June 2002.

It considered the Commission proposal and draft report at its meetings of 20 June 2002, 7 October 2002, 5 November 2002, 23 April 2003, 21 May 2003, 10 September 2003 and 7 October 2003.

At the last meeting it adopted the draft legislative resolution by 23 votes to 0 with 2 abstentions.

The following were present for the vote: José María Gil-Robles Gil-Delgado (acting chairman), Bill Miller (vice-chairman), Willi Rothley, rapporteur, Ulla Maija Aaltonen, Paolo Bartolozzi, Maria Berger, Ward Beysen, Michel J.M. Dary, Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Fiorella Ghilardotti, Lord Inglewood, Ioannis Koukiadis, Klaus-Heiner Lehne, Sir Neil MacCormick, Manuel Medina Ortega, Anne-Marie Schaffner, Marianne L.P. Thyssen, Diana Wallis, Joachim Wuermeling, Stefano Zappalà, Piia-Noora Kauppi (for Malcolm Harbour), Marcelino Oreja Arburúa (for Kurt Lechner) and Astrid Thors (for Toine Manders).

The Committee on Regional Policy, Transport and Tourism decided on 11 July 2002 not to deliver an opinion.

The report was tabled on 10 October 2003.

DRAFT LEGISLATIVE EUROPEAN PARLIAMENT RESOLUTION

on the proposal for a directive of the European Parliament and of the Council amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC, 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council on insurance against civil liability in respect of the use of motor vehicles (COM(2002) 244 – C5-0269/2002 – 2002/0124(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2002) 244¹),
 - having regard to Article 251(2) and Articles 47, 55 and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0269/2002),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market (A5-0346/2003),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
RECITAL 3 A (new)

(3a) Claims for damages arising from an accident caused by a vehicle with a trailer often fail because, although the trailer number plate is known, neither the towing motor vehicle nor its insurer can be identified. Hence there is a need to harmonise the various provisions in the Member States and treat a trailer as equivalent to a motor vehicle. For this purpose the definition of a trailer is

¹ OJ C 227, 24.9.2002.

required.

Amendment 2
RECITAL 7 A (new)

(7a) The costs of legal proceedings are as a rule necessary to settle damages. They form part of the damages and cover the costs to the accident victim (telephone charges, postage, etc), medical and technical expert services, out-of-court legal consultations, costs of legal representation and court costs. Such costs should be reimbursed where they are necessary and appropriate. In the event of an accident in another country they are almost always unavoidable.

Amendment 3
RECITAL 8 A (new)

(8a) A review of Article 1(2) of Directive 84/5/EEC is, after nearly twenty years, long overdue. Unlimited cover is rejected by parts of the insurance industry on the grounds that any such form of unlimited cover will entail substantial technical accounting risks. The amount of the minimum sum insured for personal injury must be proportioned to ensure that accident victims with very severe injuries are sufficiently protected. It should be extremely rare for two or more such very severe injuries to occur in a single accident. Hence a minimum sum insured of EUR 10 million per accident seems to be sufficient. The minimum sum insured for damage to property must take account of cases in which damage can occur on a massive scale. Here too a minimum sum of EUR 10 million seems to be sufficient.

Amendment 4
RECITAL 19 A (new)

(19a) Regulation of the period within which accident victims' damage claims lapse varies widely in the European Union. The limitation periods laid down in law range from one year (Spain), through two years (Italy), three years (Germany, Austria, Finland and Portugal), five years (Belgium, the Netherlands and Denmark) and 10 years (France) to 30 years (Luxembourg). Moreover the beginning of the limitation period is determined by either objective or subjective criteria. It therefore seems appropriate to establish a uniform limitation period. The competence of the European Union to introduce a direct claim includes the power to lay down the limitation period. A four-year period from the date of the accident would seem to be appropriate.

Amendment 5
RECITAL 20

(20) To enhance the protection of any victim of a motor vehicle accidents, the 'reasoned offer' procedure provided for in Directive 2000/26/EC should be extended to any kind of motor vehicle accident. With a view to ensuring the proper functioning of this mechanism without duplicating the structure required by that Directive, the representative appointed by the insurance undertaking for the specific purposes of that Directive should also be allowed to take responsibility for handling any motor vehicle accident. That procedure is compatible with the system of Green Card Bureaux laid down in Directive 72/166/EEC for the settlement of claims in respect of accidents caused by

deleted

vehicles normally based in the territory of another Member State.

Amendment 6
RECITAL 21 A (new)

(21a) A trailer represents an independent source of hazard over and above that constituted by the towing vehicle. Hence it would seem justified to treat a trailer as equivalent to a motor vehicle for the purposes of all provisions, including those on compulsory cover.

Amendment 7
RECITAL 21 B (new)

(21b) Under Article 11(2) in conjunction with Article 8(1)(b) of Regulation 44/2001/EC, injured parties may bring legal proceedings against the civil liability insurance provider in the Member State in which they are resident.

Justification

Directive 2000/26/EC (Fourth civil liability insurance directive) was adopted on 16 May 2000; Regulation No 44/2001/EC on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters was adopted on 22 December 2000. The Fourth directive allows for direct proceedings against the civil liability insurance provider. This means that the grounds have been provided for a place of jurisdiction for injured parties in the Member State in which they are resident.¹ It would seem desirable to refer to this new legal position in a recital. It is true that, in the case of the present directive (possibility of direct proceedings for accidents within a given Member State), this provision does not have such immense practical significance as in the case of the Fourth directive (possibility of direct proceedings for accidents in another Member State), but the position will change with the creation of a single market for compulsory liability insurers, which does not yet exist.

¹ Opinion of Parliament's Legal Service of 17 February 2003 (SJ-0001/03).

Amendment 8
RECITAL 22 A (new)

(22a) In many Member States accident documentation by the police, the public prosecutor or other authorities is late in being made available to accident victims and insurers – if it reaches them at all. The result is delays in settling accident claims. Establishing a central office would appear to be the only solution for some Member States.

Amendment 9
ARTICLE 1, PARAGRAPH -1 (new)
Article 1, paragraph 1 and paragraph 1 a (new) (Directive 72/166/EEC)

In Article 1, paragraph 1 is amended as follows:

“For the purposes of this Directive:

1. ‘vehicle’ means any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails;

The following paragraph 1a is inserted:

“1a. ‘trailers’ means caravans and single- or multiple-axle trailers with a permitted maximum weight of more than 750 kg that are intended to be towed by a motor vehicle, whether or not coupled;”

Justification

It is a frequent occurrence that damages claims arising from an accident caused by a vehicle with a trailer fail because, although the trailer number plate is known, neither the towing motor vehicle nor its insurer can be identified. Although the trailer’s owner can usually be identified, the latter will frequently deny having been involved in the accident or fail to reveal the registration number of the towing vehicle. It is therefore necessary for the trailer to be treated as equivalent to a motor vehicle. A trailer represents an independent source of hazard over and above that constituted by the towing vehicle. That justifies also treating a trailer as equivalent to a motor vehicle for the purposes of the provisions relating to claims for damages.

Amendment 10
ARTICLE 1, PARAGRAPH 2
Article 2, paragraph 1 (Directive 72/166/EEC)

(2) In Article 2, paragraph 1 is replaced by the following:

“1. Member States shall refrain from making checks on insurance against civil liability in respect of vehicles normally based in the territory of another Member State and in respect of vehicles normally based in the territory of a third country entering their territory from the territory of another Member State.

However, they may carry out non-systematic checks on insurance provided that they are not discriminatory and are carried out as part of a police control ***which is not aimed exclusively at insurance verification.***”

(2) In Article 2, paragraph 1 is replaced by the following:

“1. Member States shall refrain from making checks on insurance against civil liability in respect of vehicles normally based in the territory of another Member State and in respect of vehicles normally based in the territory of a third country entering their territory from the territory of another Member State.

However, they may carry out non-systematic checks on insurance provided that they are not discriminatory and are carried out as part of a police control.

Justification

Member States should not be constrained from carrying out targeted insurance checks on vehicles whilst circulating within that Member State. Some countries have a high motor insurance evasion rate, the cost of which is funded via the premiums of insured motorists. To combat this problem, checks on insurance in the future are likely to be made increasingly by means of Automated Number Plate Reader (ANPR) technology, whereby roadside cameras will be able to identify potentially uninsured motorists. Whilst these checks would generally seek to verify various aspects of a vehicle's status (i.e. not just insurance status), this might not always be the case.

Amendment 11
(Compromise amendment replacing Amendments 21, 22, 23, 24, 25 and 26)
ARTICLE 1, PARAGRAPH 3
Article 4, letter (b), of Directive 72/166/EEC

(b) the following indent is added:

'- in cases where vehicles do not bear any registration plate or bear a registration plate which does not correspond or no longer corresponds to the vehicle and have been involved in an accident, the territory of the State in which the accident took place, for the purpose of settling the claim as provided for in the first indent of Article 2(2);'

(b) the following indent is added:

' - in the case of certain types of vehicle or certain vehicles not designed to travel on public roads; such vehicles shall be determined by each Member State and shall bear a special registration plate; the Member States shall notify the other Member States and the Commission about these vehicles and their plates.

In that case, the other Member States shall

retain the right to require the driver of such a vehicle, while it is travelling on their territory, to produce insurance cover valid in that Member State. The driver shall be required to carry such proof of insurance with him and to show it voluntarily when checked.'

Amendment 12

ARTICLE 2

Article 1, paragraph 1 (Directive 84/5/EEC)

1. The insurance referred to in Article 3(1) of Directive 72/166/EEC shall cover compulsorily both damage to property and personal injuries.

1. The insurance referred to in Article 3(1) of Directive 72/166/EEC shall cover compulsorily both damage to property and personal injuries, ***together with the necessary and appropriate costs of bringing judicial proceedings.***

Justification

The justification for the Committee's proposed Amendment acknowledges that such costs should be reimbursed "where they are necessary and appropriate". This is the precise terminology used in the Committee's proposed insertion in Article 4(6)(a) of Directive 2000/26/EC (Amendment 7) and the proposed new Recital 7A (Amendment 12). This should be reflected in the Article itself.

Amendment 13

(Compromise amendment replacing Amendments 3, 28, 29, 30, 31 and 45)

ARTICLE 2

Article 1, paragraph 2, of Directive 84/5/EEC

2. Without prejudice to any higher guarantees which Member States may lay down, each Member State shall require insurance to be compulsory at least in respect of the following amounts:

(a) in the case of personal injury, EUR ***1 000 000*** per ***victim***;

(b) in the case of damage to property, EUR ***500 000*** per ***claim, whatever the number of victims.***

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 ***10 million*** per ***accident***;

(b) in the case of damage to property, EUR ***5 million*** per ***claim.***

Member States may request from the Commission an additional transition period

of up to five years after the transposition deadline of this directive to adapt their minimum amounts to the amounts set in paragraph 2(a) and (b).

Amendment 14

ARTICLE 2

Article 1, paragraph 6, of Directive 84/5/EEC

6. Member States may limit or exclude the payment of compensation by the body in the event of damage to property by an unidentified vehicle.

That option shall not apply where, as a result of the *same* accident, the victim has suffered *significant personal* injuries.

The conditions for the personal injuries to be considered significant shall be determined by each Member State's legislation.

6. Member States may limit or exclude the payment of compensation by the body in the event of damage to property by an unidentified vehicle.

That option shall not apply where, as a result of the same accident, the victim has suffered *physical* injuries *that have necessitated a hospital stay*.

The conditions for the personal injuries to be considered significant shall be determined by each Member State's legislation.

Or. de

Amendment 15

ARTICLE 4, POINT 2

Article 1 (Directive 90/232/EEC)

(2) The following Article 1a is inserted:

deleted

“Article 1a

The insurance referred to in Article 3(1) of Directive 72/166/EEC shall cover personal injuries suffered by pedestrians and cyclists as a consequence of an accident in which a motor vehicle is involved, irrespective of whether the driver is at fault.”

Or. it

Justification

This issue is very delicate and controversial, and should therefore be analysed thoroughly, so that it can be dealt with and regulated in its entirety in a specific piece of legislation. The

above provision ought therefore to be deleted.

Amendment 16
ARTICLE 3, PARAGRAPH 3
Article 2, first indent (Directive 90/232/EEC)

(3) In Article 2, the first indent is replaced by the following:

“- cover, on the basis of a single premium and during the whole term of the contract, the entire territory of the Community, including for any period when the vehicle remains in other Member States during the term of the contract; and”.

(3) In Article 2, the first indent is replaced by the following:

- cover, on the basis of a single premium and during the whole term of the contract, the entire territory of the Community, including for any period when the vehicle remains in other Member States during the term of the contract ***and where it is consistent with the relevant national legislation for them to do so***; and

Justification

Insurers have always understood that the compulsory element of their insurance policies applies Europe wide, for the whole of the contract period. This is usually only subject to their policyholders complying with local rules that require the vehicle to be re-registered in a Member State in which the temporary stay occurs (and, in consequence, the necessity to take out insurance with an insurer authorised in that Member State). The Commission has acknowledged this scenario in its Explanatory Memorandum to its proposal. It seems to be appropriate to reflect this in the proposed text.

Amendment 17
ARTICLE 4, PARAGRAPH 4
Article 4a, paragraph 1 (Directive 90/232/EEC)

“Article 4a

1. By way of derogation from the second indent of Article 2(d) of Directive 88/357/EEC, where a vehicle is despatched from one Member State to another, the Member State where the risk is situated ***shall*** be considered to be the Member State of destination immediately upon acceptance of delivery by the purchaser for a period of thirty days, even though the vehicle has not formally been registered in the Member State of destination.

“Article 4a

1. By way of derogation from the second indent of Article 2(d) of Directive 88/357/EEC, where a vehicle is despatched from one Member State to another, the Member State where the risk is situated ***may*** be considered to be the Member State of destination immediately upon acceptance of delivery by the purchaser for a period of thirty days, even though the vehicle has not formally been registered in the Member State of destination.

Justification

The Commission's proposal is very much welcomed. However, it should be borne in mind that an insurer in the Member State in which the vehicle is registered may be quite happy to provide insurance cover to enable the vehicle to be driven to the Member State of destination. For this reason, the derogation should be permissive i.e. the Member State where the risk is situated may, rather than shall, be considered to be the Member State of destination.

Amendment 18 ARTICLE 4, PARAGRAPH 4 Article 4b (Directive 90/232/EEC)

Article 4b

Member States shall ensure that, ***within fifteen days of the termination of an insurance contract concerning a vehicle covered by insurance as referred to in Article 3(1) of Directive 72/166/EEC, the policyholder shall be provided with a statement relating to the claims or the absence of claims involving the vehicle during the preceding five years of the contractual relationship.***

Article 4b

Member States shall ensure that ***during the period in force of an insurance contract concerning a vehicle covered by insurance as referred to in Article 3(1) of Directive 72/166/EEC and within three months of termination), the policyholder shall be provided on request with a statement relating to the claims or the absence of claims involving the vehicle under that contract. The statement must cover all claims made under the contract since inception, but insurers may limit the statement to the previous five years if the contractual relationship exceeds that period.***

Justification

It is important that customers have every opportunity to shop around. However, care needs to be taken to ensure that any new legal requirements on insurers properly balance the benefits to consumers with the costs that will ultimately fall on them. It is right that customers should be provided with swift access to evidence of their previous claims history, but to require insurers to provide a statement automatically will impose an unnecessary administrative and cost burden on insurers. The statement should therefore be provided only at the request of the policyholder. Since an insurer will only be able to provide information about claims or the absence of claims during the period of its own contractual relationship with a policyholder (i.e. not necessarily five years), this is clarified.

Amendment 19
ARTICLE 4, PARAGRAPH 4
Article 4 d (Directive 90/232/EEC)

Member States shall ensure that injured parties to accidents caused by a vehicle covered by insurance as referred in Article 3(1) of Directive 72/166/EEC enjoy a direct right of action against the insurance undertaking covering the responsible person against civil liability.

1. Member States shall ensure that injured parties to accidents caused by a vehicle covered by insurance as referred in Article 3(1) of Directive 72/166/EEC enjoy a direct right of action against the insurance undertaking covering the responsible person against civil liability.

2. That right shall lapse after four years. The limitation period shall run from the time of the accident.

Justification

Regulation of the period within which damages claims by accident victims lapse varies widely in the European Union. The limitation periods laid down in law range from one year (Spain), to two years (Italy), three years (Germany, Austria, Finland and Portugal), five years (Belgium, Netherlands and Denmark), ten years (France) to thirty years (Luxembourg). The details (beginning of the limitation period according to objective or subjective criteria) present an even more confusing picture. It therefore seems appropriate at least to harmonise the limitation period for direct claims, which is in practice of overwhelming importance. The competence of the European Union to introduce a direct claim includes the power to lay down the limitation period applicable. The Third European Traffic Law Seminar in Trier on 7 and 8 November 2002 recommended a three-year period¹. That would seem to be appropriate.

Amendment 20
ARTICLE 4, PARAGRAPH 4
Article 4 e (Directive 90/232/EEC)

Article 4e

1. Member States shall ensure that the representative appointed by an insurance undertaking in accordance with Article 4(1) to (5) of Directive 2000/26/EC of the European Parliament and of the Council*, without prejudice to his obligations under that Directive, may also be responsible for handling and settling the claims arising from any accident caused in the Member State where he is appointed by a vehicle covered by compulsory insurance as referred in

deleted

Article 4e

¹ The recommendations of the Third European Transport Law Seminar are attached.

Article 3(1) of Directive 72/166/EEC and underwritten by the insurance undertaking he represents.

2. Member States shall establish the procedure provided for in Article 4(6) of Directive 2000/26/EC for the settlement of claims arising from any accident caused by a vehicle covered by insurance as referred in Article 3(1) of Directive 72/166/EEC.

3. Paragraphs 1 and 2 are without prejudice to the system of bureaux provided for in Article 2(2) of Directive 72/166/EEC for the settlement of claims in respect of accidents caused by vehicles normally based in the territory of another Member State, whether or not such vehicles are insured.

Member States shall establish the procedure provided for in Article 4(6) of Directive 2000/26/EC for the settlement of claims arising from any accident caused by a vehicle covered by insurance as referred in Article 3(1) of Directive 72/166/EEC.

deleted

Justification

The Green Card Bureaux regulate the damage suffered by accident victims in their own country by a vehicle insured in another country. They have proved their worth magnificently in practice. There is no reason to require claims representatives also to process claims in accordance with the Fourth Motor Insurance Directive. A parallel structure in claims processing would, moreover, only cause accident victims confusion, not to say harm (place of jurisdiction). It is sufficient to specify that the procedure laid down in Article 4 paragraph 6 of Directive 2000/26/EC should also apply to Green Card Bureaux.

Amendment 21

ARTICLE 5, PARAGRAPH –1 (new)
Recital 16 a (new) (Directive 2000/26/EC)

The following recital 16a is inserted in Directive 2000/26/EC:

“(16a) Under Article 11(2) in conjunction with Article 9(1)(b) of Regulation 44/2001/EC, injured parties may bring legal proceedings against the civil liability insurance provider in the Member State in which they are resident.”

Justification

Directive 2000/26/EC (Fourth civil liability insurance directive) was adopted on 16 May 2000; Regulation No 44/2001/EC on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters was adopted on 22 December 2000. The Fourth

directive allows for direct proceedings against the civil liability insurance provider. This means that the regulation has provided grounds for a place of jurisdiction for injured parties in the Member State in which they are resident.¹ It would seem desirable to refer to this new legal position, which has immense practical significance, in a new recital to the Fourth directive.

Amendment 22

ARTICLE 5, PARAGRAPH –1 A (new)

Article 4, paragraph 6, letter (a) (Directive 2000/26/EC)

Article 4(6)(a) of Directive 2000/26/EC is worded as follows:

“(a) the insurance undertaking of the person who caused the accident or his claims representative is required to make a reasoned offer of compensation that shall include reimbursement of the necessary and appropriate costs of bringing judicial proceeding in cases where liability is not contested and the damages have been quantified, or”.

Justification

The justification to Amendment 2 also applies here. Recognition of the costs of bringing judicial proceedings as an integral part of damages will mean that any offer of compensation in accordance with Article 4(6) of Directive 2000/26/EC will also have to include those costs.

Amendment 23

ARTICLE 5, PARAGRAPH 2A (new)

Article 5a (new) (Directive 2000/26/EC)

Corresponding application

The provisions relating to motor vehicles in Directives 72/166/EEC, 84/5/EEC, 88/357/EEC, 90/232/EEC and 2000/26/EC shall apply correspondingly to trailers.

¹ Opinion of Parliament's Legal Service of 17 February 2003 (SJ-0001/03).

Justification

See Amendment to Article 1, paragraph –1 (new).

Amendment 24

ARTICLE 5, PARAGRAPH 2 B (NEW)

Article 6 a (new) (Directive 2000/26/EC)

2 b. The following Article 6a is inserted in Directive 2000/26/EC:

‘Article 6a

Central office

Member States shall take all appropriate measures to authorise a body to be notified without delay, at the same time as the judicial authorities, of all traffic-accident reports filed by police services.

That body shall without delay forward a copy of the document to each insurer or legal practitioner concerned by the accident. If a vehicle is not insured, it shall forward the document without delay to the Guarantee Fund or, if it is insured with a foreign insurer, to the national Office.

Justification

The proposal will undoubtedly facilitate the settlement of claims, for the benefit of policyholders and victims alike, and will help insurance markets to function effectively. While the Central body will be obliged to forward the accident report to the insurer “without delay”, it would be helpful, to improve the situation still further for policyholders and victims, if there was a requirement that the reports should be filed with the Central body also “without delay”.

EXPLANATORY STATEMENT

On 3 July 2001 Parliament adopted the draft for a fifth directive on civil liability insurance and called on the Commission to submit a proposal¹.

The Commission proposal dates from 7 June 2002. In many respects it meets Parliament's concerns².

After adoption of the fourth directive³, it makes sense for Parliament and the Commission to continue with protection for injured parties in a proposal for a fifth directive.

Article 1 (Amendments to Directive 72/166/EEC)

Article 1, paragraph 1:

The Commission proposal needs to include a provision on trailers (Amendment 1). Although Article 1, paragraph 1 of the directive defines a trailer as a vehicle, the consequences arising from this definition in practice in the Member States vary widely. So the text needs to make clear that all provisions for vehicles also apply to trailers.

Article 2 (Amendments to Directive 84/5/EEC)

Article 1, paragraph 1

In addition to personal injury and damage to property, the cost of legal proceedings that are essential and appropriate should also be treated as damages to be covered by compulsory civil liability (Amendment 2).

The conflict of interests that arises if the parties' own insurers or their opponents' carry out the settlement is self-evident.

Recognition of the cost of legal proceedings as part of the damages will mean that the offer of compensation for the claim under Article 4(6) of the fourth civil liability directive must include such costs (Amendment 8).

Article 1, paragraph 2:

After almost 20 years a review is overdue.⁴

But the proposed amount of the minimum sum insured is insufficient (Amendment 3).

Parliament proposed a uniform minimum sum of EUR 2 million, irrespective of the number of injured parties or the nature of the injury.⁵ Even this proposal is insufficient.

¹ A5-0174/2001.

² COM(2002) 244 final.

³ Directive 2000/26/EC, OJ L 181, 20.4.2000.

⁵ European Parliament resolution of 3 July 2001 (A5-0174/2001, annex point 5.5).

A minimum sum insured must provide cover for very severe cases. Accident victims with very severe injuries must be adequately protected.

A figure of EUR 10 million would in the light of current settlement practice and case law seem to be sufficient.

In the worst case known to the rapporteur, the High Court in London awarded an injured party the sum of £9 281 692 (*Martin Willem Otto Biesheuvel v Andrew Birrell (2) (1999) PIQR Q 40*).⁶

The Commission proposal is flawed.

It provides for the amount of the minimum sum insured in the case of personal injuries arising from an accident to be unlimited. The sum of EUR 1 million per accident victim is multiplied by their number when there are several injured parties: with 10 victims, EUR 10 million, 15 victims, EUR 15 million and so on.

This is unsatisfactory for two reasons.

First, accident victims with very severe injuries, such as paraplegia, would not receive sufficient cover with a maximum sum of EUR 1 million, and second, civil liability insurers would have the technical accounting problem of theoretically unlimited liability.

Hence the Commission proposal serves neither side.

For this reason it makes sense not only to provide cover for the severest cases, with EUR 10 million, but also to limit cover to that amount for each accident. It ought to be extremely rare for two or more cases of very severe injuries to occur in a single accident. (The rapporteur has yet to hear of an accident in which two or more cases of paraplegia have occurred.)

The Commission proposal on the minimum sum insured for damage to property is also unsatisfactory.

In the case of accidents in a tunnel, for instance, causing damage not only to vehicles but also to the tunnel itself, the minimum sum proposed by the Commission would only cover a fraction of the claim.

It is right for the proposal to separate personal injury and damage to property and provide minimum sums for both. In extreme cases an overall minimum sum could be depleted solely by the compensation for property damage.

The (alleged) problems in some markets can be solved with appropriate transitional periods.

Article 1, paragraph 6:

The compensation of property damage by the guarantee fund has hitherto been excluded

⁶ See justification to Amendment 3.

because there were, rightly, fears of substantial fraud. So the Member States should continue to be able to restrict compensation for property damage or exclude it altogether. But this option should not be available *if the accident victim has sustained significant personal injuries as a result of a single accident* because – so runs the proposal’s argument – no one does themselves significant injury for the sake of financial reward. The Commission’s solution is the right one, even if the definition of *significant personal injuries* may cause difficulties.

Article 4 (Amendments to Directive 90/232/EEC)

Article 4, paragraph 2:

The Commission deserves support for its view that vulnerable travellers require special protection.

It appears to be making provision for liability cover in cases which are termed liability for exposure to danger.

This form of liability insurance is effective for claims from risks which are not wholly controllable for technical reasons, but which – as in the case of motor vehicles – it is in the general interest to allow. The acceptance of such risks, which no one can evade in our society, is also primarily in the interest of the person requesting it in order to pursue economic and social purposes, as in the case of a motor vehicle’s owner. The owner has the benefit and must therefore, irrespective of fault, accept liability for damage inevitably arising from the operation of a motor vehicle (‘operating risk’).

Not only pedestrians and cyclists, but all third parties who are not themselves drivers – including the vehicle’s passengers – cannot escape exposure to danger from motor vehicles in the reality of our society. So the scope of this provision should cover all third parties who are not themselves drivers (Amendment 4).

The ‘involvement’ of a vehicle in an accident is not sufficient. The text must make clear that the accident happens while a vehicle is being *operated*, and is *caused* by the vehicle (Amendment 4).

For practical reasons it is not possible to justify providing civil liability only for personal injury and not for damage to property (Amendment 4).

The answer to the question as to the pleas which accident victims must allow the defence, whether mildly negligent behaviour, or only grossly irresponsible behaviour, can reduce the claim for damages, or the question whether the person required to pay compensation can appeal to a higher court or claim that the accident was an unavoidable event, continues to be left to the law of the Member States. The text must make clear that the proposal aims to clarify insurance law and not civil liability law (Amendment 4).

Article 4, paragraph 4 (direct right of action)

The proposal is entirely welcome. But direct right of action should be subject to a uniform

period of limitation (Amendment 5).

Moreover, two recitals are needed, in both the fourth and the fifth civil liability directives, to make it clear that direct action can be taken against the civil liability insurers in the Member State in which the injured party is resident (Amendments 17 and 18). Such a place of jurisdiction is justified under Article 11(9)(1)(b) of Regulation 44/2001/EC if direct action is admissible. This is the case under both the fourth and fifth civil liability directives.

Article 4, paragraph 4 (Green Card Bureaux)

It is quite unnecessary to extend the powers of the person responsible for the settlement of claims under the fourth civil liability directive to cases that have hitherto been settled by the Green Card bureaux.

It is sufficient to apply the rules laid down in Article 4(6) of the fourth directive, on procedures and limitation periods, to the Green Card Bureaux as well.

New proposal (Amendment 7)

The proposal for a new provision on the right to inspect documents is needed because in many Member States accident documentation by the police, public prosecutor or other authorities is not available to accident victims and insurers until a late stage – if at all. This delays the settlement of accident claims. The proposed provision cannot be rejected by reference to data protection since the protection of injured parties takes precedence.

A. Proposal to harmonise the prescription rules

According to article 4 d in the 3rd Motor directive (directive 90/232/EEC of 14 May 1990, OJ L 129 of 19 May 1990, p. 33 in the version of the proposal for the 5th Motor directive), Member States must ensure that all victims of accidents caused by a vehicle covered by compulsory motor liability insurance have direct right of action against the insurance company covering the person who is civilly liable. It is proposed to introduce, following this point and before the current article 4e, the following provision:

Article 4 e of the 3rd Motor Insurance directive in the version of the proposal for a 5th Motor Insurance directive:

- ‘1. The prescription period for direct right of action in accordance with article 4 d shall be four years. The period shall start from the date of the accident. The Member States may provide for a longer prescription period.
2. The prescription period for direct right of action shall be suspended when the injured party submits his claim, either directly to the insurance undertaking covering the person who caused the accident or to his claims representative. The suspension of the prescription period shall apply until the insurance company or its claims representative reject definitively totally or partially the claim for damage and inform the victim at the same time in written form or by durable electronic medium that the suspension of the prescription ends with the service of information.
3. The prescription period shall also be suspended when the injured party submits a claim to the compensation body in the Member State in which he/she resides and until such time as the compensation body ceases to intervene (article 6, paragraph 1 of the 4th Motor Insurance directive).
4. The suspension of the prescription period shall mean that the period during which the prescription is suspended is not taken into account in the prescription period.
5. The insurance undertaking covering the person who caused the accident or his claims representative must inform the injured party without delay in writing or on a durable medium of the prescription of the direct right of action once he/she has declared his/her loss or damage.
6. Paragraphs 1 to 5 are applied accordingly for the direct action against the guarantee funds, the Motor Insurers Bureau (Grüne-Karte-Büro) and the competent compensation organism.’

B. Proposals to harmonise the compensation of legal costs

a) In application of article 4 d of the 3rd Motor Insurance directive in the version of the proposal for a 5th Motor Insurance directive, Member States shall ensure that parties injured in an accident caused by a motor vehicle covered by compulsory liability insurance, have direct right of action against the insurer covering the liability of the person causing the accident. It is proposed to complete this provision by adding the following points:

‘2. This direct right of action shall also extend to compensation of legal and other costs incurred by the injured party. Amongst these other costs are fixed general costs, medical and technical assessment costs, out-of-court and in-court lawyers’ fees.

3. At all events, legal costs are reimbursed if and providing that the injured party wins. The other legal costs are only indemnified where they are appropriate. Such is the case if they are in a normal framework and also if they are not disproportionate to the amount of loss/damage properly so-called.

4. If the injured party and the insurer cannot agree on the appropriate nature of the legal costs incurred, the injured party may approach a court or other competent authority for settling claims which must resolve this issue in accordance with the law applicable, taking into account the letter and the spirit of this provision.

b) Article 4, paragraph 6, of the 4th Motor Insurance directive is modified as follows:

After the terms ‘a reasoned offer of compensation’, the following subordinate clause should be inserted:

‘which also includes compensation of the injured party’s relevant legal costs.’