

# EUROPEAN PARLIAMENT

1999



2004

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*Session document*

FINAL  
**A5-0086/1999**

1 December 1999

**\*\*\*II**

## **RECOMMENDATION FOR SECOND READING**

on the common position adopted by the Council with a view to adopting 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 88/357/EEC (Fourth Motor Insurance Directive)  
(14247/1/1999 – C5-0027/1999 – 1997/0264(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)

### ***Abbreviations for committees***

- I. AFET Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy
- II. BUDG Committee on Budgets
- III. CONT Committee on Budgetary Control
- IV. LIBE Committee on Citizens' Freedoms and Rights, Justice and Home Affairs
- V. ECON Committee on Economic and Monetary Affairs
- VI. JURI Committee on Legal Affairs and the Internal Market
- VII. INDU Committee on Industry, External Trade, Research and Energy
- VIII. EMPL Committee on Employment and Social Affairs
- IX. ENVI Committee on the Environment, Public Health and Consumer Policy
- X. AGRI Committee on Agriculture and Rural Development
- XI. PECH Committee on Fisheries
- XII. REGI Committee on Regional Policy, Transport and Tourism
- XIII. CULT Committee on Culture, Youth, Education, the Media and Sport
- XIV. DEVE Committee on Development and Cooperation
- XV. AFCO Committee on Constitutional Affairs
- XVI. FEMM Committee on Women's Rights and Equal Opportunities
- XVII. PETI Committee on Petitions

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At its sitting of 16 July 1998 Parliament delivered its opinion at first reading 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 88/357/EEC (Fourth Motor Insurance Directive) (COM(1997) 510 – 1997/0264(COD)).

At the sitting of 7 October 1999 the President of Parliament announced that the common position had been received and referred to the Committee on Legal Affairs and the Internal Market (14247/1/1999 – C5-0027/1999).

The committee had appointed Mr Willi Rothley rapporteur at its meeting of 27 and 28 July 1999.

It considered the common position and the draft recommendation for second reading at its meetings of 11-13 October, 8 and 9 November and 29 and 30 November 1999.

At the last meeting it adopted the draft legislative resolution by 15 votes to 1, with no abstentions.

The following were present for the vote: Rainer Wieland, acting chairman, Willi Rothley, rapporteur, Luis Berenguer Fuster, Maria Berger, Enrico Ferrer, Marie-Françoise Garaud, Evelyne Gebhardt, Françoise D. Grossetête, Gerhard Hager, Malcolm Harbour, The Lord Inglewood, Kurt Lechner, Klaus-Heiner Lehne, Donald Neil MacCormick, Toine Manders and Diana Paulette Wallis.

The recommendation for second reading was tabled on 1 December 1999.

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

## DRAFT LEGISLATIVE RESOLUTION

**Legislative resolution of the European Parliament on the common position adopted by the Council with a view to adopting 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 88/357/EEC (Fourth Motor Insurance Directive) (14247/1/1999 – C5-0027/99 – 1997/264(COD))**

**(Codecision procedure: second reading)**

*The European Parliament,*

- having regard to the Council common position (14247/1/1999 – C5-0027/1999),
  - having regard to its position at first reading<sup>1</sup> on the Commission proposal to Parliament and the Council (COM(1997) 510<sup>2</sup>),
  - having regard to the Commission's amended proposal (COM(1999) 147<sup>3</sup>),
  - having regard to Article 251(2) of the EC Treaty,
  - having regard to Rule 80 of its Rules of Procedure,
  - having regard to the recommendation for second reading of the Committee on Legal Affairs and the Internal Market (A5-0086/1999),
1. Amends the common position as follows;
  2. Instructs its President to forward Parliament's position to the Council and Commission.

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<sup>1</sup> OJ C 292, 21.9.1998, p. 104.

<sup>2</sup> OJ C 343, 13.11.1997, p. 11.

<sup>3</sup> OJ C 171, 18.6.1999, p. 4.

(Amendment 1)

Recital 8

(8) Whereas it is in fact appropriate to supplement the arrangements established by Directives 72/166/EEC<sup>(2)</sup>, 84/5/EEC<sup>(3)</sup> and 90/232/EEC in order to guarantee injured parties suffering loss or injury as a result of a motor vehicle accident comparable treatment irrespective of where in the Community accidents occur; whereas, for accidents occurring in a Member State other than that of the injured party's residence, there are gaps with regard to the settlement of injured parties' claims;

<sup>(2)</sup> Second Council Directive (84/5/EEC) of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ L 8, 11.1.1984, p. 17). Directive as last amended by Directive 90/232/EEC (OJ L 129, 19.5.1990, p. 33).

<sup>(3)</sup> Third Council Directive (90/232/EEC) of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ L 129, 19.5.1990, p. 33).

(8) Whereas it is in fact appropriate to supplement the arrangements established by Directives 72/166/EEC<sup>(2)</sup>, 84/5/EEC<sup>(3)</sup> and 90/232/EEC in order to guarantee injured parties suffering loss or injury as a result of a motor vehicle accident comparable treatment irrespective of where in the Community accidents occur; whereas, for accidents occurring in a State other than that of the injured party's residence, there are gaps with regard to the settlement of injured parties' claims;

<sup>(2)</sup> Second Council Directive (84/5/EEC) of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ L 8, 11.1.1984, p. 17). Directive as last amended by Directive 90/232/EEC (OJ L 129, 19.5.1990, p. 33).

<sup>(3)</sup> Third Council Directive (90/232/EEC) of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ L 129, 19.5.1990, p. 33).

(Amendment 2)

Recital 10

(10) Whereas one satisfactory solution might be for injured parties suffering loss or injury as a result of a motor vehicle accident occurring in a Member State other than that of their residence to be entitled to claim in their Member State of residence against a claims representative appointed there by the insurance undertaking of the responsible party;

(10) Whereas one satisfactory solution might be for injured parties suffering loss or injury as a result of a motor vehicle accident occurring in a State other than that of their residence to be entitled to claim in their Member State of residence against a claims representative appointed there by the insurance undertaking of the responsible party;

(Amendment 3)

Recital 14

(14) Whereas, in order to fill the gaps in question, it should be provided that the Member State where the insurance undertaking is authorised should require the undertaking to appoint claims representatives resident or established in the other Member States to collect all necessary information in relation to claims resulting from such accidents and to take appropriate action to settle the claims on behalf and for the account of the insurance undertaking, including the payment of compensation therefor; whereas claims representatives should have sufficient powers to represent the insurance undertaking in relation to persons suffering damage from such accidents, and also to represent the insurance undertaking before national authorities including, where necessary, before the courts, in so far as this is compatible with the rules of private international law on the conferral of jurisdiction;

(14) Whereas, in order to fill the gaps in question, it should be provided that the Member State where the insurance undertaking is authorised should require the undertaking to appoint claims representatives resident or established in the other Member States to collect all necessary information in relation to claims resulting from such accidents and to take appropriate action to settle the claims on behalf and for the account of the insurance undertaking, including the payment of compensation therefor; whereas claims representatives should have sufficient powers to represent the insurance undertaking in relation to persons suffering damage from such accidents, and also to represent the insurance undertaking before national authorities;

(Amendment 4)  
Recital 26

- (26) Whereas legal persons who are subrogated by law to the injured party in his claims against the person responsible for the accident or the latter's insurance undertaking (such as, for example, other insurance undertakings or social security bodies) should not be entitled to present the corresponding claim to the compensation body; Deleted

(Amendment 5)  
Recital 27

- (27) Whereas the compensation body should have a right of subrogation in so far as it has compensated the injured party; whereas in order to facilitate enforcing the compensation body's claim against the insurance undertaking where it has failed to appoint a claims representative or is manifestly dilatory in settling a claim, the body providing compensation in the injured party's State should enjoy an automatic right of reimbursement with subrogation to the rights of the injured party on the part of the corresponding body in the State where the insurance undertaking is established; whereas the latter body is the best placed to institute proceedings for recourse against the insurance undertaking; Deleted



(Amendment 6)

Recital 28

- (28) Whereas, even though Member States may provide that the claim against the compensation body may be subsidiary, the injured person may not be obliged to present his claim to the person responsible for the accident before presenting it to the compensation body; whereas in this case the injured party should be in at least the same position as in the case of a claim against the guarantee fund under Article 1(4) of Directive 84/5/EEC; Deleted

(Amendment 7)

Recital 29

- (29) Whereas the functioning of this system can be effected by means of an agreement between the compensation bodies established or approved by the Member States relating to their functions and obligations and the procedures for reimbursement; Deleted

(Amendment 8)

Article 1

Scope

The objective of this Directive is to lay down special provisions applicable to injured parties entitled to compensation in respect of any loss or injury resulting from accidents occurring in a Member State other than the State of residence of the injured party which are caused by the use of vehicles insured and normally based in a Member State.

Scope

The objective of this Directive is to lay down special provisions applicable to injured parties entitled to compensation in respect of any loss or injury resulting from accidents occurring in a State other than the State of residence of the injured party which are caused by the use of vehicles insured and normally based in a Member State.

(Amendment 9)

## Article 3

### Direct right of action

Each Member State shall ensure that injured parties in accidents occurring in a Member State other than the State of residence of the injured party enjoy a direct right of action against the insurance undertaking covering the responsible person against civil liability.

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(Amendment 10)  
Article 4(1a) (new)

1a. The choice of its claims representative shall be at the discretion of the insurer.

The Member States may not restrict this choice.

(Amendment 11)  
Article 4(1b) (new)

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

(Amendment 12)  
Article 4(3)

3. Claims representatives shall possess sufficient powers and linguistic ability to represent the insurance undertaking in relation to injured parties in the cases referred to in Article 1 and to meet their claims in full.

3. Claims representatives must possess sufficient powers to represent the insurance undertaking in relation to injured parties in the cases referred to in Article 1 and to meet their claims in full. They must be capable of examining cases in the official language(s) of the Member State of residence of the injured party.

(Amendment 13)

Article 5(3)

3. The Member States shall ensure that the injured party is entitled within a period of seven years of the accident to obtain from the information centre of the Member State where he resides or of the Member State where the vehicle is normally based or where the accident occurred the following information:

- (a) the name and address of the insurance undertaking;
- (b) the number of the insurance policy; and
- (c) the name and address of the insurance undertaking's claims representative in the State of residence of the injured party.

Information centres shall cooperate with each other.

3. The Member States shall ensure that the injured party is entitled for a period of seven years after the accident to obtain immediately from the information centre of the Member State where he resides or of the Member State where the vehicle is normally based or where the accident occurred the following information:

- (a) the name and address of the insurance undertaking;
- (b) the number of the insurance policy; and
- (c) the name and address of the insurance undertaking's claims representative in the State of residence of the injured party.

Information centres shall cooperate with each other.

(Amendment 14)

Article 6(1), fourth paragraph

The compensation body shall take action within two months of the date when the injured party presents a claim for compensation to it but shall terminate its action if the insurance undertaking, or its claims representative, subsequently makes a reasoned reply to the claim.

The compensation body shall take action within two months of the date when the injured party presents a claim for compensation to it.

(Amendment 15)

Article 6(1), fifth paragraph

The compensation body shall immediately inform:

- (a) the insurance undertaking of the vehicle the use of which caused the accident or the claims representative;
- (b) the compensation body in the Member

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- (b) the compensation body in the Member

State of the insurance undertaking's establishment which issued the policy;

- (c) if known, the person who caused the accident,

that it has received a claim from the injured party and that it will respond to that claim within two months of the presentation of that claim.

State of the insurance undertaking's establishment which issued the policy;

- (c) if known, the person who caused the accident,

that it has received a claim from the injured party.

(Amendment 16)  
Article 6(1), sixth paragraph

This provision shall be without prejudice to the right of the Member States to regard compensation by that body as subsidiary or non-subsidiary and the right to make provision for the settlement of claims between that body and the person or persons who caused the accident and other insurance undertakings or social security bodies required to compensate the injured party in respect of the same accident. However, Member States may not allow the body to make the payment of compensation conditional on the injured party's establishing in any way that the person liable is unable or refuses to pay.

Deleted

(Amendment 17)  
Article 6(3)

3. This Article shall take effect:

3. The Commission shall report to the European Parliament and the Council on the implementation of this Article and on its effectiveness before ... (\*) and shall submit proposals if necessary.

- (\*) Five years from the entry into force of this Directive.

(a) after an agreement has been concluded between the compensation bodies established or approved by the Member States relating to their functions and obligations and the procedures for reimbursement;

(b) from the date fixed by the Commission upon its having ascertained in close cooperation with the Member States that such an agreement has been concluded.

and shall apply for the whole duration of that agreement.

The Commission shall report to the European Parliament and the Council on the implementation of this Article and on its effectiveness before ... (\*) and shall submit proposals if necessary.

(\*) Five years from the entry into force of this Directive.

(Amendment 18)  
Article 10(3)

3. Without prejudice to paragraph 1 the Member States shall establish or approve the compensation body in accordance with Article 6(1) before ... (\*). If the compensation bodies have not concluded an agreement in accordance with Article 6(3) before ... (\*\*), the Commission shall propose measures designed to ensure that the provisions of Articles 6 and 7 take effect before ... (\*\*\*).

(\*) 18 months from the date of entry into force of this Directive.

(\*\*) 24 months from the date of entry into force of this Directive.

(\*\*\*) 30 months from the date of entry into force of this Directive.

3. Without prejudice to paragraph 1 the Member States shall establish or approve the compensation body in accordance with Article 6(1) before ... (\*).

(\*) 18 months from the date of entry into force of this Directive.

(Amendment 19)  
Article 10(4)

4. Member States may, in accordance with the Treaty, maintain or bring into force provisions which are more favourable to the injured party than the provisions necessary to comply with this Directive. Deleted

## EXPLANATORY STATEMENT

### 1. Background

On 26 October 1995 the European Parliament adopted a resolution pursuant to Article 138b of the EC Treaty calling on the Commission to propose a Council and European Parliament directive on the settlement of claims arising from traffic accidents occurring outside the claimant's country of origin (doc. A4-0201/95). The resolution was based on a report by the Committee on Legal Affairs and Citizens' Rights, and was a legislative initiative in accordance with Article 138b of the EC Treaty (now Article 192 of the EC Treaty.)

The Commission subsequently (10 October 1997) submitted such a proposal (COM(97) 510 final), which was examined by the Committee on Legal Affairs and Citizens' Rights and the Committee on Transport and Tourism (doc. A4-0267/98). Parliament delivered its opinion on 16 July 1998 and approved virtually all the amendments proposed by the committees concerned.

The Council then reached a political agreement on 7 December 1998 on a common position text. A formal decision was not taken at that stage, since an amended proposal was awaited from the Commission.

That amended proposal was presented on 31 March 1999 (COM(1999) 147 final).

The Council adopted its common position on 21 May 1999 (1997/0264(COD)).

### 2. Purpose of the initiative

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').

The first case, that of the 'incoming motorist', was dealt with in 1991 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 authorise each other to settle claims for damage caused by incoming motorists. This system works to general satisfaction, but does not solve the problem of the case of the 'visiting motorist', referred to above; some 500 000 such cases a year are estimated to take place.

A European Community directive to harmonise current provisions is indispensable for the latter case.

### **3. The solutions proposed**

The proposal for a directive submitted by the Commission is pragmatic and does not interfere in either national liability law or the rules governing Member States' jurisdiction (international private law).

It is now a matter of making the insurer who is financially liable to meet a given claim more accessible to the victim. This will be done in three stages:

- the introduction in national laws of a direct right of action for the 'visiting motorist', i.e. a right enabling the victim to make a direct claim against the insurer providing cover for the vehicle;
- 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 and for its account. This will ensure that the victim can deal with somebody in his own country;
- the establishment of information centres to enable victims at any time to identify the appropriate claims representative.

The Commission added two other elements to these three, which were initially proposed by Parliament:

- first, it expanded the role of the information centres and, secondly, the Member States are required to establish compensation bodies required to act if the insurer has failed to appoint a claims representative or the insurer or its representative has failed to make an offer of compensation.

### **4. Assessment of the common position in relation to the initial proposal**

The common position is based on an overall compromise among the Member States, and takes account of most of the amendments that Parliament adopted and that the Commission incorporated into its amended proposal.

There remains a point of divergence between the common position and Parliament's opinion. This concerns Parliament's Amendment 15, which would have enlarged the scope of the directive by extending it to cover accidents occurring in third countries.

Despite the counter-arguments put forward by the Commission and the Council, it seems both reasonable and feasible for an accident between a Frenchman and a German in, say, Switzerland to be dealt with according to the rules of the directive.

The Council has also made other changes to enhance the proposal's clarity and consistency.

It is impossible to review all the details of the changes made by the Council within this explanatory statement. In this connection, readers are referred to the Commission communication pursuant to Article 251(2) of the EC Treaty (SEC(1999) 1553 final).



Although the Council has opted, in some respects, for a different approach from that of the initial proposal, it has to be said that in terms of its substance the Council's text does not diverge from that on which Parliament has already delivered its opinion.

## **5. Justification of the amendments**

5.1. Amendments 1, 2, 8 and 9 concern the question of the scope of the directive, over which Parliament still takes issue with the Commission and the Council. As already indicated under 4., it is a question of whether the directive's system for the settlement of traffic accidents between vehicles which are registered and insured in two different Member States can also be used if the accident does not take place in a Member State, but in a third country. Your rapporteur continues to take the view that this is both legally possible and inherently advisable. As explained above, there are no reasonable grounds for an accident which takes place, say, in Switzerland between a vehicle registered in Germany and a vehicle registered in France not to be settled between the injured party and the claims representative of the other party's insurer in the former's country of origin. The arguments put forward against this from the outset, such as 'inadmissible extraterritorial application of a Community directive', or 'undue burden on the claims representative, owing to inadequate knowledge of the *lex loci*', are misplaced.

5.2. Amendment 3 corrects an intrusion into national procedural rules and regulations concerning the representation of parties before the courts: this is neither sought by the directive, nor covered by its legal basis. In addition, the Council's version of Recital 14 is technically incorrect, because the issue of the representation of parties in court has nothing to do with international private law, but with procedural law and the law governing the administration of justice.

5.3. Amendment 4 seeks to delete Recital 26, because your rapporteur fails to see why legal persons who, for whatever reason, pay compensation to the injured party for damage suffered by him, should not be entitled to assume the legal position of the injured party in relation to the compensation body.

5.4. Amendments 5, 6 and 7 also concern deletion, specifically of Recitals 27, 28 and 29, because it would be better for the matters addressed therein to be dealt with by a voluntary agreement between the compensation bodies concerned.

5.5. Amendment 10 reinstates Parliament's position at first reading with regard to the choice of claims representative, since any restriction in this respect seems neither advisable nor beneficial in any way.

5.6. Amendment 11, too, reinstates Parliament's position at first reading, since it should be quite clear that the claims representative will work for several foreign insurers, which may make very good economic sense.

5.7. Amendment 12, again reflecting Parliament's position at first reading, clarifies the likely purpose of the version of this provision in the common position.

5.8. Amendment 13 is self-explanatory.

5.9. The aim of Amendment 14 is to forestall the possibility of a case shuttling backwards and forwards between a compensation body and an insurer, to the detriment of the injured party. This also applies to Amendment 15.

5.10. Amendment 16 seeks to delete a provision the object of which falls within the regulatory powers of the Member States, which are not the concern of this directive.

5.11. Amendment 17 corrects the common position version of Article 6(3). This provision has to be rejected because it is not clear: is the date when the agreement is concluded between the compensation bodies the determining factor, or the date fixed by the Commission? Moreover, it would hardly be conducive to legal clarity to make the entry into force of a provision in a directive depend on the date on which private parties concluded an agreement to implement that provision. Amendment 18 concerns the same question.

5.12. The final amendment, Amendment 19, seeks to delete Article 10(4), because your rapporteur is unable to imagine any case in which this provision might be of practical use.