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REPORT

with recommendations to the Commission on a fifth European Parliament and Council directive on motor vehicle liability insurance to improve the legal protection of accident victims
(2000/2126(INI))

Committee on Legal Affairs and the Internal Market

Rapporteur: Willi Rothley

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PROCEDURAL PAGE

At the sitting of 30 November 2000 the President of Parliament announced that the Committee on Legal Affairs and the Internal Market had been authorised to draw up an own-initiative report, pursuant to Rule 163 of the Rules of Procedure, on a fifth European Parliament and Council directive on motor vehicle liability insurance to improve the legal protection of accident victims.

At the sitting of 18 January 2001 the President of Parliament announced that the Committee on Legal Affairs and the Internal Market had been authorised to draw up this report as a legislative initiative report pursuant to Rule 59 of the Rules of Procedure.

The Committee on Legal Affairs and the Internal Market had appointed Willi Rothley rapporteur at its meeting of 17 October 2000.

The committee considered the draft report at its meetings of 30 January 2001, 11 April 2001 and 14 May 2001.

At the last meeting it adopted the motion for a resolution unanimously.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Ward Beysen, vice-chairman; Willi Rothley, vice-chairman and rapporteur; Bert Doorn, Francesco Fiori (for Stefano Zappalà pursuant to Rule 153(2)), Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Malcolm Harbour, The Lord Inglewood, Ioannis Koukiadis, Klaus-Heiner Lehne, Neil MacCormick, Hans-Peter Mayer, Arlene McCarthy, Manuel Medina Ortega, Carlos Ripoll i Martínez Bedoya, Astrid Thors, Gary Titley and Diana Wallis.

The report was tabled on 15 May 2001.

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

MOTION FOR A RESOLUTION

European Parliament resolution with recommendations to the Commission on a fifth European Parliament and Council directive on motor vehicle insurance to improve the legal protection of accident victims (2000/2126(INI))

The European Parliament,

- having regard to Article 192, second paragraph of the EC Treaty,
 - having regard to Rules 59 and 163 of its Rules of Procedure,
 - having regard to European Parliament and Council Directive 2000/26/EC of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles¹,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market (A5-0174/2001),
- A. whereas no proposal within the meaning of Rule 59(2) of the Rules of Procedure is in preparation,
1. Requests the Commission to submit to Parliament by three months after adoption of this resolution, on the basis of Articles 47(2) and 95 of the EC Treaty, a legislative proposal on a fifth European Parliament and Council directive on motor vehicle liability insurance to improve the legal protection of accident victims, following the detailed recommendations below;
 2. Confirms that the recommendations respect the principle of subsidiarity and the fundamental rights of citizens;
 3. Considers that the requested proposal will have no financial implications;
 4. Instructs its President to forward this resolution and the accompanying recommendations to the Commission and Council.

¹ Fourth motor vehicle directive amending Directives 73/239/EEC and 88/357/EEC, OJ L 181, 20.7.2000 p. 65.

**ANNEX TO THE MOTION FOR A RESOLUTION:
DETAILED RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL
REQUESTED**

A. PRINCIPLES AND AIMS OF THE PROPOSAL

1. An improved compensation procedure following accidents in national road traffic (adoption of some provisions of the Fourth Motor Insurance Directive)

- 1.1 The Fourth Motor Insurance Directive facilitated the settlement of claims arising from road accidents that occur in a country other than that in which the injured party is resident.
- 1.2 Some provisions of the directive can also be applied to the settlement of claims for damages suffered in national transport.
- 1.3 These provisions are the following:
- 1.4 Within three months of receiving a claim for compensation the insurer is required either to make an offer or to explain why he is unable to do so. Provision must be made for effective financial penalties or administrative measures to be imposed and for interest to be charged on the amount owed if the insurer fails to satisfy this requirement.
- 1.5 The injured party is to be able to apply to the national information centres for the information needed to identify the other vehicle and the insurer.

2. Insurer's no-claims or number of claims declaration

- 2.1 As a single European insurance market – especially the huge motor insurance business – should live up to consumers' expectations, it should promote cross-frontier competition among insurers.
- 2.2 An insured party can compare different offers only if his insurer is required to give him a no-claims declaration or a declaration of the number of claims made to his insurer in the past five years and if the new insurer is required to take this declaration into account in his system when calculating the insurance premium.
- 2.3 The insurer must make this declaration on the expiry of the annual insurance period if so requested by the insured party.

3. Period for the registration of motor vehicles with foreign number plates

- 3.1 In the internal market, which has established the free movement of goods and services, more and more motor vehicles are being purchased in a Member State other than that in which the purchaser is resident (vehicles with foreign number plates).
- 3.2 Delays in the re-registration of such vehicles in the purchaser's Member State pose a number of problems, particular among them being the following:

- the insurer in the Member State in which the vehicle was purchased must continue to insure the vehicle even if unable to offer his services in the purchaser's country;
- the tax of the country of origin continues to be payable on the insurance premium for the vehicle;
- the charges for the green card bureau and the guarantee fund continue to be paid in the country of origin rather than the country in which the purchaser is resident.

3.3 The periods allowed for re-registration differ widely in the Member States. They range from one day in Ireland, three days in Austria, 14 days in Denmark, one month in Finland and Sweden, three months in France and the United Kingdom and six months in Spain, Greece and Luxembourg to one year in Germany, Italy and the Netherlands.

3.4 The re-registration of all vehicles with foreign number plates should be required within three months throughout the European Union. Provision should be made for penalties where this requirement is not satisfied.

4. Insurance for temporary residents in another Member State

4.1 As citizens increasingly exercise their freedom to live, work, or study in other Member States, they will increasingly wish to take up temporary residence outside their home country. For this period of temporary residence, they may wish to bring their personal motor vehicle with them, and to enjoy its normal use without the inconvenience of re-registration or re-insurance.

4.2 At present, a citizen taking up temporary residence in another Member State, may find that an insurance companies arbitrarily withdraws an existing motor insurance cover on the basis that the driver concerned no longer benefits from cover provided on the basis of residence in their home state. It is difficult and inconvenient for citizens to obtain new insurance cover from a local insurer for a temporary period.

4.3 To obviate this problem motor insurers would be obliged to extend home state cover for citizens who take up temporary residence for up to 12 months in another EU Member State. Citizens would be obliged to notify their insurers if they wished to exercise this right, and to provide the appropriate details of their temporary place of residence. Insurance companies would be allowed to charge a reasonable extra premium for this service, but would be prevented from foreclosing the ability of citizens to exercise this right by making a penal change.

4.4 After 12 months citizens would be obliged to re-register their vehicle (as set out in paragraph 5 and to take out local insurance cover.

5. Increase in minimum amounts insured

5.1 Article 1(2) of Directive 84/5/EEC specifies the minimum sum insured for compulsory motor vehicle insurance:

- in the case of personal injury, EUR 350 000 for each injured party,
- in the case of damage to property, EUR 100 000 per claim, whatever the number of injured parties or the nature of the damage.

5.2 Member States may provide for a minimum amount of:

- EUR 500 000 for personal injury where more than one injured party is involved in a single claim, or
- EUR 600 000 per claim whatever the number of injured parties or the nature of the damage.

5.3 Now that 15 years have passed, this system is in urgent need of reform.

5.4 Even if the price increases of recent years are ignored, the minimum amounts insured are clearly too low.

5.5 It is proposed that a uniform minimum amount insured of EUR 2 000 000 should be required throughout the European Union whatever the number of injured parties or the nature of the damage.

5.6 This amount should be adjusted periodically, taking into account previous year's inflation as determined by the European Central Bank and other relevant factors.

6. Extension of compulsory insurance

6.1 Article 3(1) of the Directive requires all Member States to ensure that civil liability in respect of every vehicle based in its territory is covered by insurance.

6.2 Article 4(b) does however permit Member States to exclude certain types of vehicle (e.g. vehicles that do not exceed a certain speed and agricultural vehicles) and vehicles having special plates (e.g. plates for a limited period) from compulsory insurance.

6.3 A Member State may, however, require that, on their entry into its territory, such vehicles are accompanied by a green insurance card or a frontier insurance policy.

6.4 With the entry into force of the Schengen Agreement and the associated cessation of frontier controls, Article 4(b) of the Directive no longer serves a useful purpose.

6.5 Given the small number of exemptions from compulsory insurance, the derogation for which Article 4(b) provides is no longer justified.

7. Definition of where a vehicle having no or stolen or false registration plates is normally based.

7.1 The first motor vehicle Directive (72/166 as last amended in 1983) settles neither the question of compulsory compensation liability for vehicles with no or with stolen or false

registration plates. There are various approaches in practice. A uniform and simple solution would be desirable.

- 7.2 The Court of Justice relies on the appearance of origin produced by the false or forged registration plates. The Green Card Bureau in the State in which the accident occurred is liable if the registration plate refers to another contracting State. If that is not the case the Guarantee Fund is liable, without this being said in so many words. An example: accident in France, German vehicle, false Dutch vehicle, Dutch driver. In this case the Green Card Bureau in France is liable, which claims against the Dutch Green Card Bureau.
- 7.3 This is a simple solution and offers protection to accident victims. It rightly makes no distinction between official and false registration plates. It does, however, resolve neither the problem of third countries (e.g. false Polish plates) nor cases where the vehicle has no registration plates at all. In such case the Guarantee Fund is called upon to intervene.
- 7.4 Because of these inadequacies the False Plates Agreement was concluded in 1993, under which any registration plate on a vehicle is regarded as false if it is not the last one issued to that vehicle by the competent authority. It also lays down that false registration cannot lead to any conclusions about the State in which the vehicle is normally based. Inquiries therefore have to be instituted into the origin of the vehicle.
- 7.5 These inquiries are often protracted and expensive. Nor does the agreement resolve cases where drivers fail to stop and the identity of the vehicle cannot be determined.
- 7.6 The solution has to be simple and clear and cover all imaginable cases. It might provide that where a vehicle has no or false plates, the guarantee fund in the country in which the accident occurred settles the claims. It would have to be made clear that the territory of the State in which the accident occurred was to be regarded as where the vehicle was normally based.
- 7.7 This solution, which would also cover vehicles from non-Community countries, would be simple and make for the rapid settlement of claims. It is therefore in the interests of accident victims.

8. Scope for settling claims by the branch of an insurer in the Member State in which it operates

- 8.1 The fourth motor vehicle insurance Directive requires all insurance undertakings to appoint a claims representative in each Member State.
- 8.2 It would be appropriate if a branch of an insurance undertaking were able to settle such claims. This is not possible at present (Article 12a, penultimate paragraph, second sentence of Directive 88/357/EEC inserted by Article 6 of Directive 90/618/EEC: 'The appointee shall not take up the business of direct insurance on behalf of the said undertaking.') This sentence should therefore be deleted.

9. Insurance cover on the purchase of a vehicle in another Member State

- 9.1 Many individuals face problems obtaining suitable insurance cover in respect of vehicles with foreign number plates which they wish to purchase and drive back to the Member State of their permanent residence. Invariably, they are only able to purchase the minimum compulsory cover, which leaves them without any insurance protection if the vehicle is stolen, for example. Furthermore, it is possible that the vehicle will only be driven in a Member State other than that of the purchaser's permanent residence for a matter of a few hours or days before it reaches its 'new' home Member State for re-registration.
- 9.2 To resolve these difficulties, it should be permissible for an insurer to provide, for a maximum period of 30 days, insurance for a vehicle purchased and registered in one Member State, provided there is an intention to re-register the vehicle in the Member State of the person's permanent residence.

B. ACTION TO PROPOSE

Proposal for a fifth European Parliament and Council Directive relating to insurance against civil liability in respect of the use of motor vehicles to improve the legal protection of accident victims

1. Member States shall take the necessary measures to ensure that the following provisions of the Directive also apply to compensation for personal injury and damage to property caused by accidents in which vehicles registered and persons resident in one and the same Member State are involved:
 - obligation to provide a reasoned response or offer or refusal of compensation in compliance with the procedure, time limits and conditions applicable to the offer or refusal of compensation set out in Article 4(4) of the Directive. For the avoidance of doubt, the provision shall not be extended to include the involvement of the national compensation body,
 - penalties for failure to fulfil this obligation and the other aforementioned requirements set out in Article 4(4) of the Directive,
 - a national information centre's concurrence with the requirements set out in Article 5 of the Directive.
2. Member States shall take the necessary measures to ensure that all insurance undertakings covering the civil liability of vehicles in road traffic (risks listed under point 10 of Annex A to Directive 73/239/EEC) – excluding the civil liability of carriers – delivers to the insured party on the expiry of the annual insurance period on request a no-claims declaration or a declaration of claims reported to that insurer in the past five years (or for the period during which the said party was insured by the insurance undertaking, if shorter).

The new insurer shall take account of this declaration in his system when calculating the insurance premium as if the declaration had been provided by a national citizen.

Member States shall take the necessary measures to ensure that the certificate provided for in paragraph 1 represents sufficient evidence for the assessment of the risks to be insured and the calculation of the premium.

3. Member States shall take the necessary measures to ensure that any vehicle to which the registration requirement in their territory applies and which bears a number plate of another country is re-registered within a period of three months. Provision shall be made for suitable administrative and financial penalties should this requirement not be satisfied.
4. Member States shall take the necessary measures to require insurance companies to extend private motor vehicle insurance cover for any policy holder who takes up temporary residence in another EU Member State, for a maximum period of twelve months from the date at which the re-location took place. Insurance companies will be allowed to make a reasonable, cost-related, supplementary premium for the provision of this cover.
5. Article 1(2) of Directive 84/5/EEC is amended as follows:

Member States shall take the necessary measures to ensure that the amount insured in the context of compulsory motor vehicle insurance is at least EUR 2 000 000.

The Commission shall put in place a mechanism to ensure that the monetary amount specified in Article 1(2) of Directive 84/5/EEC is adjusted periodically, taking into account the rate of inflation determined by the European Central Bank and other relevant factors.

Member States may provide for a higher amount insured.

6. Article 4(b) of Directive 72/166/EEC as amended by Article 4 of Directive 84/5/EEC is deleted.
7. In Article 1(4) of Directive 72/166/EEC as amended by Article 4 of Directive 84/5/EEC, insert a second indent:

‘- if a vehicle of the category mentioned above bears no plates or plates not or no longer legally issued to it, the territory of the State in which the claim arose.’
8. Article 12a, penultimate paragraph, second sentence of Directive 88/357/EEC, inserted by Article 6 of Directive 90/618/EEC (‘The appointee shall not take up the business of direct insurance on behalf of the said undertaking’) is deleted.
9. By way of derogation from Article 2(d) of Directive 88/357/EEC, an insurer may, for a maximum period of 30 days, provide insurance for a vehicle registered in one Member State and purchased by a person with a permanent residence in another Member State, provided there is an intention to re-register the vehicle in the Member State of the person’s permanent residence.