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**Main conclusions**

**of the Meeting on**  
**28 September 2006**  
**on the transposition of the 5<sup>th</sup> Motor Insurance**  
**Directive**

**Directive 2005/14/EC**  
**of 11 May 2005**

**amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and**  
**90/232/EEC and Directive 2000/26/EC of the European Parliament and**  
**of the Council relating to insurance against civil liability in respect of**  
**the use of motor vehicles**

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## INTRODUCTION

On 28 September 2006 a working group meeting with Member States was held. The objective was to help Member States to transpose the 5<sup>th</sup> Motor Insurance Directive 2005/14/EC<sup>1</sup> on time, i.e. by 11 June 2007. To that end the discussion focused on issues which were identified as a potential source of difficulty for transposition and which may give rise to a diverging interpretation by the Member States.

The organisation of transposition meetings follows from the Commission Communication of 11 December 2002 on better monitoring of the application of Community law (COM(2002) 725), in which the Commission recalls that the prime responsibility for implementing Community law, both the Treaty and secondary legislation, lies with Member States, while stressing that cooperation between the Commission and Member States, notably when Directives are being transposed, is a crucial element in the effective monitoring of Community law.

This document reflects the main conclusions and majority views as noted by the Services of the Commission. It does not necessarily reflect individual Member States' opinions or those of the Commission, nor does it affect the Commission's right to raise any errors of transposition at a later stage, in the framework of the examination of national implementation of the Directive.

## MAIN ISSUES DISCUSSED

### Article 1 Amendments to Directive 72/166/EEC

#### Art. 1(1)(b) Vehicles bearing false or illegal plates

In accordance with Article 1(4) of Directive 84/5/EEC, the guarantee fund of the country where the accident occurred is responsible for compensation of the victim (*Article 1(4) refers back to Article 1(1) of the same directive which refers to the "normally based rule" contained in Article 3(1) of Directive 72/166/EEC*).

Article 1(1)(b) changes this "normally based concept" as far as "false or illegal plates" are concerned, in order to release the national insurers' bureau of the country that issued the plate from the liability for accidents which do not have any link to it<sup>2</sup>.

A broad range of situations in which the vehicle plate may be considered false or illegal is covered by this provision. The terms "not corresponding" and "no longer corresponding" should include inter alia falsified, suspended or expired plates. In the case of a vehicle bearing a plate that can be only partly identified, this provision does not necessarily apply unless the plate has been identified as being false or illegal.

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<sup>1</sup> Directive 2005/14/EC of the European Parliament and of the Council amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles, OJ L 149, 11.6.2005, p. 14.

<sup>2</sup> Previously, on the basis of the ECJ Fournier judgment of 1992 in case C-73/89, the bureau of the country that issued the plate was liable even if the plate was in reality allocated to another vehicle.

### **Art. 1(3) Exempted vehicles (derogation provision)**

The amendment of Article 1(3) requires Member States to communicate to the Commission the list of persons exempted from the insurance obligation. The Commission should subsequently publish the list. Even though the communication obligation has not been renewed in respect of certain vehicles (or certain types of vehicles), it is in the interest of all Member States as well as of the Commission to have also these other lists in a form that is complete and up to date.

As regards Member States' exemptions from the compulsory insurance obligation, Member States are accordingly invited to bring earlier communications in this respect up to date.

This provision does not cover the issue of subrogation of the guarantee fund in the Member State where the vehicle is normally based to the rights of the injured party against the party liable for the accident. Member States are free to provide for national solutions in terms of recourse rights of the national guarantee fund against the party liable for the accident.

### **Article 2 Amendments to Directive 84/5/EEC**

#### **Art. 2(2)/(3) Minimum amounts of cover**

This provision reflects the fact that the minimum amounts of cover have not been updated since 1982. In respect of personal injuries Member States have the choice of introducing either 1 million EUR per victim or 5 million EUR per claim, whatever the number of victims. A combination of these two criteria/ceilings should not be possible as the wording of the provision is clear at this point ("or"). The word claim should be understood as meaning "accident". This is clear from the other official language versions of the Directive. Moreover, the word claim has been consistently interpreted to mean "accident" since its introduction by Directive 84/5/EEC.

In the case of damage to property the minimum amount of cover is 1 million per claim, whatever the number of victims.

Provided that the minimum amounts of cover are respected, nothing prevents Member States from introducing different amounts for different types of vehicles (categorization of amounts). However, this does not allow a combination of the two criteria/ceilings in respect of personal injuries.

The minimum amounts will be reviewed on a regular basis in line with the EICP (European Index of Consumer Prices) and should be adjusted automatically. In order to avoid practical difficulties when indexing the amounts at national level, the Commission intends to suggest a methodology to that end and to discuss it with Member States at one of the coming EIOPC meetings. As regards the timing of the review of the minimum amounts of cover, these should be reviewed in accordance with paragraph 3 every five years after the entry into force of the Directive (11 May 2010) or the end of any transitional period of up to 5 years from the date of implementation of the Directive (10 June 2012) that Member States may establish. In practical terms, if at least one Member States applied a 5-year transitional period, the first indexation of the minimum amounts of cover would be carried out in 2017. Only in this way can a common regime applying to all Member States be created without the need to amend this provision in the future.

#### **Art. 2(6) Compensation for damage or personal injuries caused by an unidentified vehicle**

In order to prevent fraudulent claims, Article 2(6) grants Member States the possibility to limit or exclude the payment of compensation for damage to property caused by an unidentified vehicle. However, this possibility does not exist in cases where the guarantee fund has paid compensation for significant personal injuries to any victim of the same accident. The relationship between the claimant for damage to property and the person seriously injured in the same accident is not relevant in this respect.

It is up to Member States, in accordance with their national law, to provide for a definition of significant personal injuries. The directive only suggests in this respect that the need for "hospital care" may be taken into account.

According to Article 2(7), Member States may apply a practice which is more favourable to the victim (this is a minimum harmonization clause). Hence, they are not prevented from introducing rules awarding compensation for property damage even in accidents where no compensation has been paid for significant personal injuries. Also in these cases Member States may require the victim who incurred damage to property to bear a franchise of a maximum of 500 Euro.

#### **Article 3 Representatives**

This provision enables branches of insurance undertakings to fulfil the tasks of representatives for motor insurance activities within the meaning of Directive 90/618/EEC. However, the provision of Article 6(4)(5) of Directive 90/618/EEC, stating that the appointment of a representative shall not in itself constitute the opening of a branch or agency for the purpose of Article 6(2)(b) of Directive 73/239/EEC and that the representative shall not be an establishment within the meaning of Article 2(c) of Directive 88/357/EEC, has not been affected by this provision.

A related issue is the role and status of the claims representative under the 4<sup>th</sup> Motor Insurance Directive 2000/26/EC. The claims representative has a role that is different to that of the representative appointed in accordance with Directive 90/618/EC since the claims representative deals merely with claims of visiting victims (accidents occurring outside the victim's country of residence). The representative deals with claims arising from events occurring in the territory of the Member State where the insurer covers the motor insurance risk by way of free provision of services (generally the victim's country of residence). However, nothing prevents insurers from letting the same person fulfil the tasks of both the claims representative and the representative under Directive 90/618/EEC.

#### **Article 4 Amendments to Directive 90/232/EEC**

##### **Art. 4(1) Statutory provisions and contractual clauses (driving under the influence of alcohol or any other intoxicating agent)**

For a better understanding of this provision, it is important to point out that the EU Motor Insurance Directives do not seek to harmonize national civil liability rules. Member States are free to determine the rules of civil liability applicable to road accidents provided that the Directives' provisions on compensation of victims are not deprived of their effectiveness<sup>3</sup>. Accordingly, Member States may continue to apply national rules reflecting passengers' own contribution to the occurrence of their injuries as long as these rules are not established on the basis of general and abstract criteria but are based on an assessment of the circumstances of each particular case.

##### **Art. 4(4)(a) Imported vehicles**

The main aim of this provision is to enable people wishing to buy a new or a second-hand vehicle in another EU Member State (country of origin of the vehicle) to find insurance cover in their home country (country of destination). Therefore, for a period of 30 days as from the acceptance of delivery of the vehicle, the risk is considered to be located in the country of destination. However, it shall be noted that the vehicle remains "normally based" in the country of origin as only the risk moves to the country of destination. This is relevant for the reimbursement regime between the national insurers' bureaus, in case the vehicle were to cause an accident.

If the vehicle is not re-registered in the country of destination within the period of 30 days, the risk moves back to the country of origin. If the original vehicle plate has expired, and the vehicle causes an accident, the regime of Article 1(1)(b) on "false or illegal plates" applies.

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<sup>3</sup> ECJ Case law, C- 348/98 Ferreira, C- 537/03 Candolin.

The purpose of the provision is to ensure that the purchaser of the vehicle shall have the possibility to obtain insurance cover in his home country even though the vehicle still bears a foreign registration plate (plate of the country of origin, generally a temporary plate). In practical terms, this means that insurance shall be sought in the country of destination. Such insurance can be offered by insurance undertakings established in the Member State of destination, or by insurance undertakings established in other Member States which provide services in the Member State of destination by free provision of services or freedom of establishment.

It is left open to Member States to determine the moment of acceptance of delivery; this is a question of national civil law and can be expected to depend on the purchase contract in the individual case.

Equally, the country of destination should be determined in accordance with the circumstances of the transaction (purchase contract, national civil law).

As regards claims relating to accidents occurring during the 30 days period outside the country of origin, these are settled in accordance with the Internal Regulations of the Council of Bureaux contained in Appendix 1 of the Agreement between the national insurers' bureaux of the EEA Member States and other Associate States (the so called COBx Multilateral Agreement)<sup>4</sup>, which is found in Annex to the Commission Decision 2003/54/EC of 28 July 2003 on the application of Directive 72/166/EC. Based on these rules, victims of road accidents caused by foreign vehicles normally based in countries belonging to the Multilateral Agreement may apply for compensation to their national insurer's bureau, irrespective of whether these vehicles were insured or not. It should be noted that a different regime is foreseen under Directive 2000/26/EC for "visiting victims".

In this context, the liability of the guarantee fund of the country of destination established in paragraph 2 of Article 4(4)(a) for accidents caused during the 30 days period by uninsured vehicles bought in another EU country should be understood as a final liability. This means that the victim is compensated by his national insurers' bureau or its national guarantee fund depending on the country where the accident occurred. Based on paragraph 2, this body should subsequently have the right to claim reimbursement of the sum paid as compensation from the guarantee fund of the country of destination.

However, since there is neither an agreement between the national guarantee funds nor an agreement between the national insurers' bureaux and the guarantee funds, it might be difficult in practice to exercise this recourse right against the guarantee fund of the country of destination. This could in particular be the case in countries where the national insurers' bureau and the national guarantee fund are separate entities. Therefore, Member States are invited to consider whether an agreement or some other practical arrangements within the current system should be undertaken in order to achieve the aim of this provision.

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<sup>4</sup> The Multilateral Agreement was signed at Rethymno on 30 May 2002.

#### **Art. 4(4)(b) Statement related to third party liability claims**

The aim of this provision is to ensure that any person wishing to take out a new motor insurance contract with another insurer is in a position to establish his accidents and claims record under the old contract. Insurers or bodies appointed by Member States are obliged at any time, this means not only at the end of the contract but also during the period of the contract - (for example, to enable people shopping around), to issue within 15 days of the policyholder's request a statement noting claims during at least the preceding 5 years of the contractual relationship.

The aim of this provision is not to harmonise the physical appearance of claims statements. However, when transposing this provision, Member States may wish to keep the aim of the provision in mind. Hence, it is important to ensure that claims statements are comparable.

Bonus Malus systems in Member States are organised in different ways. This provision does not prejudge the way in which the new insurer takes account of the claims record statement in assessing the risks and fixing the premium of the new contract, as long as such assessment is not made in a discriminatory way. The directive does not interfere with the principle of freedom to set tariffs nor with national data protection rules.

The Directive is silent on the issue of whether policyholders may be charged for claims statements. However, it shall be noted that national transposition rules must maintain the aim and spirit of the provision. Policyholders should not in any way be discouraged from seeking claims statements.

#### **Article 5(4) Central body**

This provision should facilitate and speed up the settlement of claims by establishing a body in each Member State collecting all the basic data/documents necessary to that end and making them accessible to all the parties involved in a claim. It is up to Member States to decide, in accordance with their national provisions and practice, what kind of data should be collected and be accessible, provided that the spirit of the provision is kept. This means that all data that are basically needed in the Member State concerned to set up and settle a claim should be made available to parties involved at their request. It is at Member States' discretion to establish an electronic depository of these data.

The clear intention of this provision was that the central bodies would carry out their activities in respect of all kinds of motor accidents. However and since this provision appears under the amendments to Directive 2000/26/EC, it could from a legalistic point of view be argued that the directive only requires the central bodies to collect data relating to the settlement of claims of visiting victims under the 4<sup>th</sup> Motor Insurance Directive 2000/26/EC. The Commission Services will consider raising and discussing this issue at a future EIOPC meeting.

**Article 5(1) Insertion of recital 16 - legal proceedings against the civil liability insurance provider brought by injured parties in the Member State in which they are domiciled**

This text merely reflects the fact that Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters was adopted after the 4<sup>th</sup> Motor Insurance Directive 2000/26/EC. The right of the victim to bring legal proceedings against the insurer of the liable party in the Member State in which he/she is domiciled has been granted by the aforementioned Council Regulation and is therefore not dependent on Member States' transposition of the 5<sup>th</sup> Motor Insurance Directive.