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**THIRD COUNCIL DIRECTIVE**

**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**

(90/232/EEC)

(OJ L 129, 19.5.1990, p. 33)

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**THIRD COUNCIL DIRECTIVE**  
**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**

(90/232/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

In cooperation with the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas, by Directive 72/166/EEC <sup>(4)</sup>, as last amended by Directive 84/5/EEC <sup>(5)</sup>, the Council adopted provisions 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 to the enforcement of the obligation to insure against such liability;

Whereas Article 3 of Directive 72/166/EEC requires each Member State to take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance; whereas the extent of the liability covered and the terms and conditions of the insurance cover should be determined on the basis of those measures;

Whereas Directive 84/5/EEC, as amended by the Act of Accession of Spain and Portugal, reduced considerably the disparities between the level and content of compulsory civil liability insurance in the Member States; whereas significant disparities still exist, however, in such insurance cover;

Whereas motor vehicle accident victims should be guaranteed comparable treatment irrespective of where in the Community accidents occur;

Whereas there are, in particular, gaps in the compulsory insurance cover of motor vehicle passengers in certain Member States; whereas, to protect this particularly vulnerable category of potential victims, such gaps should be filled;

Whereas any uncertainty concerning the application of the first indent of Article 3 (2) of Directive 72/166/EEC should be removed; whereas all compulsory motor insurance policies must cover the entire territory of the Community;

Whereas in the interests of the party insured, every insurance policy should, moreover, guarantee for a single premium, in each Member State, the cover required by its law or the cover required by the law of the Member State where the vehicle is normally based, when that cover is higher;

Whereas Article 1 (4) of Directive 84/5/EEC requires each Member State to set up or authorize a body to compensate the victims of accidents caused by uninsured or unidentified vehicles; whereas, however, the said provision is without prejudice to the right of the Member States to regard compensation by this body as subsidiary or non-subsidiary;

<sup>(1)</sup> OJ No C 16, 20. 1. 1989, p. 12.

<sup>(2)</sup> OJ No C 304, 4. 12. 1989, p. 41 and OJ No C 113, 7. 5. 1990.

<sup>(3)</sup> OJ No C 159, 26. 6. 1989, p. 7.

<sup>(4)</sup> OJ No L 103, 2. 5. 1972, p. 1.

<sup>(5)</sup> OJ No L 8, 11. 1. 1984, p. 17.

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Whereas, however, in the case of an accident caused by an uninsured vehicle, the victim is required in certain Member States to prove that the party liable is unable or refuses to pay compensation before he can claim on the body; whereas this body is better placed than the victim to bring an action against the party liable; whereas, therefore, this body should be prevented from being able to require that the victim, if he is to be compensated, should establish that the party liable is unable or refuses to pay;

Whereas, in the event of a dispute between the body referred to above and a civil liability insurer as to which of them should compensate the victim of an accident, Member States, to avoid any delay in the payment of compensation to the victim, should ensure that one of these parties is designated to be responsible in the first instance for paying compensation pending resolution of the dispute;

Whereas motor vehicle accident victims sometimes have difficulties in finding out the name of the insurance undertaking covering the liability arising out of the use of a motor vehicle involved in an accident; whereas, in the interests of such victims, Member States should take the necessary measures to ensure that such information is made available promptly;

Whereas the previous two Directives on civil liability in respect of motor vehicles should, in view of all these considerations, be supplemented in a uniform manner;

Whereas such an addition, which leads to greater protection for the parties insured and for the victims of accidents, will facilitate still further the crossing of internal Community frontiers and hence the establishment and functioning of the internal market; whereas, therefore, a high level of consumer protection should be taken as a basis;

Whereas, under the terms of Article 8c of the Treaty, account should be taken of the extent of the effort which must be made by certain economies which show differences in development; whereas certain Member States should, therefore, be granted transitional arrangements so that certain provisions of this Directive may be implemented gradually,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Without prejudice to the second subparagraph of Article 2 (1) of Directive 84/5/EEC, the insurance referred to in Article 3 (1) of Directive 72/166/EEC shall cover liability for personal injuries to all passengers, other than the driver, arising out of the use of a vehicle.

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Member States shall take the necessary measures to ensure that any statutory provision or any contractual clause contained in an insurance policy which excludes a passenger from such cover on the basis that he knew or should have known that the driver of the vehicle was under the influence of alcohol or of any other intoxicating agent at the time of an accident, shall be deemed to be void in respect of the claims of such passenger.

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For the purposes of this Directive, the meaning of the term 'vehicle' is as defined in Article 1 of Directive 72/166/EEC.

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*Article 1a*

The insurance referred to in Article 3(1) of Directive 72/166/EEC shall cover personal injuries and damage to property suffered by pedestrians, cyclists and other non-motorised users of the roads who, as a consequence of an accident in which a motor vehicle is involved, are entitled to compensation in accordance with national civil law. This

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Article shall be without prejudice either to civil liability or to the amount of damages.

**▼ B***Article 2*

Member States shall take the necessary steps to ensure that all compulsory insurance policies against civil liability arising out of the use of vehicles:

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— 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 in which the vehicle remains in other Member States during the term of the contract; and

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— guarantee, on the basis of the same single premium, in each Member State, the cover required by its law or the cover required by the law of the Member State where the vehicle is normally based when that cover is higher.

*Article 3*

The following sentence shall be added to the first subparagraph of Article 1 (4) of Council Directive 84/5/EEC:

‘However, Member States may not allow the body to make the payment of compensation conditional on the victim's establishing in any way that the person liable is unable or refuses to pay.’

*Article 4*

In the event of a dispute between the body referred to in Article 1 (4) of Directive 84/5/EEC and the civil liability insurer as to which must compensate the victim, the Member States shall take the appropriate measures so that one of these parties is designated to be responsible in the first instance for paying compensation to the victim without delay.

If it is ultimately decided that the other party should have paid all or part of the compensation, that other party shall reimburse accordingly the party which has paid.

**▼ M1***Article 4a*

1. By way of derogation from the second indent of Article 2(d) of Directive 88/357/EEC <sup>(1)</sup>, where a vehicle is dispatched 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.

2. In the event that the vehicle is involved in an accident during the period mentioned in paragraph 1 of this Article while being uninsured, the body referred to in Article 1(4) of Directive 84/5/EEC in the Member State of destination shall be liable for the compensation provided for in Article 1 of the said Directive.

*Article 4b*

Member States shall ensure that the policyholder has the right to request at any time a statement relating to the third party liability claims

(1) Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services (OJ L 172, 4.7.1988, p. 1). Directive as last amended by Directive 2000/26/EC of the European Parliament and of the Council (OJ L 181, 20.7.2000, p. 65).

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involving the vehicle or vehicles covered by the insurance contract at least during the preceding five years of the contractual relationship, or to the absence of such claims. The insurance undertaking, or a body which may have been appointed by a Member State to provide compulsory insurance or to supply such statements, shall provide this statement to the policyholder within 15 days of the request.

*Article 4c*

Insurance undertakings shall not rely on excesses against the injured party to an accident as far as the insurance referred to in Article 3(1) of Directive 72/166/EEC is concerned.

*Article 4d*

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

*Article 4e*

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

In the case of accidents which may be settled by the system of national insurers' bureaux provided for in Article 2(2) of Directive 72/166/EEC, Member States shall establish the same procedure as in Article 4(6) of Directive 2000/26/EC. For the purpose of applying this procedure, any reference to insurance undertaking shall be understood as a reference to national insurers' bureaux as defined in Article 1, point 3 of Directive 72/166/EEC.

**▼B***Article 5***▼M1**

1. Member States shall ensure that, without prejudice to their obligations under Directive 2000/26/EC, the information centres established or approved in accordance with Article 5 of that Directive, provide the information specified in that Article to any party involved in any traffic accident caused by a vehicle covered by insurance as referred to in Article 3(1) of Directive 72/166/EEC.

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2. Not later than 31 December 1995, the Commission shall present to the European Parliament and the Council a report on the implementation of paragraph 1 of this Article.

Where necessary, the Commission shall submit appropriate proposals to the Council.

*Article 6*

1. Member States shall take the measures necessary to comply with this Directive not later than 31 December 1992. They shall forthwith inform the Commission thereof.

2. By way of exception from paragraph 1:

— the Hellenic Republic, the Kingdom of Spain and the Portuguese Republic have until 31 December 1995 to comply with Article 1 and 2,

<sup>(1)</sup> Directive 2000/26/EC of the European Parliament and of the Council 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 vehicles (fourth motor insurance Directive) (OJ L 181, 20.7.2000, p. 65).

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- Ireland shall have until 31 December 1998 to comply with Article 1 as regards pillion passengers of motorcycles and until 31 December 1995 to comply with Article 1 as regards other vehicles and to comply with Article 2.

*Article 7*

This Directive is addressed to the Member States.