



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31.03.1999  
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97/0264 (COD)

Amended 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 92/49/EEC**

(presented by the Commission pursuant to Article 189 a (2)  
of the EC-Treaty)

## EXPLANATORY MEMORANDUM

### INTRODUCTION

On 10 October 1997 the Commission adopted a Proposal for a 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 92/49/EEC (Fourth motor insurance directive)<sup>1</sup>. The proposal was submitted to Parliament and Council by letter on 13 October 1997.

At its 353<sup>rd</sup> plenary session on 25 March 1998, the Economic and Social Committee adopted a favourable opinion<sup>2</sup> (unanimity) on the Proposal for a Directive and suggested certain amendments.

The Parliament adopted a legislative resolution embodying its opinion<sup>3</sup> on the Commission's Proposal for a Directive at its plenary session on 16 July 1998. The Parliament's opinion includes 36 amendments. A large number of these amendments, which will contribute to clarify and improve the Proposal, were accepted by the Commission, some totally, others in part, either in accordance with their spirit or with some adaptation of their text.

The amended proposal has been drafted to take account of the opinions of both institutions.

### COMMENTS ON THE AMENDMENTS INTRODUCED INTO THE PROPOSAL

#### **Recitals 4a [new] and 4b [new]**

References to the functioning and the deficiencies of the Green Card mechanism have been introduced in the text incorporating Parliament Amendments 1 and 2 on the same issues. The introduction of these two new recitals helps to understand that though there is a system for the settlement of claims already in place there are still some additional practical difficulties to be solved.

#### **Recital 5**

The text has been improved to take account of Parliament Amendment No 3

#### **Recital 6**

The wording has been improved (replacement of the word "victim" by the words "injured party" as suggested in Parliament Amendment No 4 – this term has also been replaced in all other recitals and provisions of the Directive; reference to the notion of "loss or injury") in order to ensure coherence with previous Directives (Article 1(2) of Directive 72/166/EEC).

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<sup>1</sup> OJ C 343, 13.11.1997, p. 11.  
<sup>2</sup> OJ C 157, 25.05.1998, p. 6.  
<sup>3</sup> OJ C 292, 21.09.1998, p. 123.

### **Recital 6a [new]**

The text incorporates Parliament Amendment No 9. It provides a clear reference to the need to create a direct right of action which establishes a legal link between the injured party and the insurer.

### **Recital 6 b [new] and 6 c [new]**

The text incorporates Parliament Amendments 5 and 6; it includes a reference to the principle and the advantages of settling the claim via the claims representative.

### **Recital 6d [new]**

The text incorporates Parliament Amendment No 7 stating clearly that the creation of claims representatives does not affect either the rules of applicable law nor the matter of jurisdiction. Furthermore, this recital has been enriched by including a clear precision that the activities of the claims representative are not sufficient to establish jurisdiction in the injured party's Member State of residence or imply the application of the laws of that State as far as the settlement of the claim is concerned.

### **Recitals 6e [new] and 9 [deleted]**

Recital 6f [new] replaces the initial recital 9. The text has been improved in order to show more clearly the complementary functions of the claims representative and the direct right of action and to avoid misleading interpretation that the activities of the claims representative establish jurisdiction in the injured party's Member State of residence, unless this is provided by the Brussels Convention<sup>4</sup> – which is not the case, at least at present – or any other international agreement dealing with the matter of jurisdiction.

### **Recital 7**

The text has been modified in order to take into consideration part of the changes proposed in Amendment No 10. There are also some improvements related to the description of the powers of the claims representative. Reference to representation of the undertaking by its claims representative before the courts has been maintained in the new text; though the current situation of private international law on determination of jurisdiction does not give the option to the injured party to bring an action against the claims representative in his/hers Member state of residence, further developments in that field (i.e. eventual modification of the Brussels Convention) cannot be ruled out.

### **Recitals 10 and 10a [new]**

The text has been modified in order to take into consideration the spirit of Amendments 26 and 27 implying the application of reinforced penalties in case the insurer does not provide a reasoned reply within a certain time limit. The nature of the sanctions to be imposed has been specified; those have to be systematic and effective.

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<sup>4</sup> Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters.

Regarding the content of those penalties a clear reference to both financial and equivalent administrative sanctions has been added whereas a list of a wide range of important administrative penalties has been included in recital 10. Also in recital 10 a reference to additional civil law financial sanctions, i.e. interest rates for late payment has been included. The recital has been adapted to correspond to the revised text of Article 3(6).

#### **Recitals 11 and 11 a [new]**

As suggested by the Parliament (Amendment No 12) the wording of recital 11 has been improved. Also some clarification regarding gathering information about termination of insurance cover – which does not have necessarily to coincide with the original validity of the insurance contract - has been added. Moreover, in recital 11 a the text has been completed by reference to the cases of vehicles (for example government or military vehicles) which fall under the exceptions from the obligation to be insured against third party liability; this ensures coherence with the revised version of Article 4(4) which includes a new provision covering those vehicles.

#### **Recital 11 b [new] and 11 c [new]**

The text of the directive has been made more clear as far as justification for providing information regarding the person who is in possession of the vehicle is concerned: in both recital 11 b [new] as well as in Article 4(4) the concept of legitimate interest, which is a principle generally accepted in the laws of the various Member States has been introduced. A reference to directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>5</sup> has been added to correct an omission in the initial Proposal. This reference ensures the necessary coherence with provisions regarding data protection and the general Commission policy in that field, since, in the case of an uninsured or non duly insured vehicle, the processing of personal data and, in particular, the name and address of the owner or usual driver of the vehicle, which belong to this type of data, have to be communicated. Article 4 has been completed along the same line (introduction of a new paragraph 5).

#### **Recitals 12, 12 a [new] and 13**

Those recitals have been modified, firstly, in order to take into consideration part of the suggestions in the Parliament Amendment No 13. Recital 13 announces that the cases where the insurer cannot be identified can also be settled by the Compensation body in the injured party's Member State of residence, in order to make it easier for the visiting victim by establishing only one contact point. However, this new arrangement has been supplemented by a clear reference in recital 13 that the existing system of insurance directives has to be respected: uninsured or unidentified vehicles are treated under Directive 84/5/EEC<sup>6</sup> and fall within the competence of the guarantee funds. In order to ensure coherence with that directive recital 13 clearly states that the

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<sup>5</sup> OJ L 281, 23.11.1995, p. 31.

<sup>6</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.

final responsibility lies with the guarantee funds according to Article 1(4) of Directive 84/5/EEC.

Secondly, the text of recital 12a [new] has been completed by a reference to an agreement to be signed between the compensation bodies relating to the modalities of reimbursement to correspond with the equivalent provision included in Article 5(2).

### **Article 1**

The wording has been improved to take into consideration, at least in part, Parliament Amendment No 15 and also to clarify what is meant by "victim" (i.e. the injured party) in the initial proposal and ensure coherence with previous motor insurance directives. Regarding extension of the scope of the Directive to all accidents occurring outside the M.S. of the victim's residence (i.e. to cover also accidents in third countries) Article 8(a) [new] has been inserted, establishing for the Commission an obligation to explore the possibility to have this question settled by means of an international agreement and expressing the Commission's intentions to examine this solution. Regarding definition of the scope of Article 6, this Article effectively has a wider scope of application, but for the only reason to ensure coherence with Articles 6 and 7 of Directive 72/166/EEC<sup>7</sup>. According to these provisions, Member States shall check, at the point of entry into the Union, whether third country vehicles are provided either with a valid green card or with a frontier insurance certificate. Consequently both the first "motor" directive but also the present directive do not produce extra-territorial effects since the implication of the third country vehicles only refers to their provisional presence on the EC territory and on the effects of that presence (eventual accidents) on that territory.

### **Article 2**

The wording has been improved following Parliament Amendment No 16.

### **Article 3 paragraph 1**

Some improvements regarding the wording have been inserted to take into consideration part of the suggestions included in Parliament Amendment No 17. Also Amendments 18 and 19 have been taken into consideration as regards, on the one hand, the idea that the claims representative should be able to communicate with the victim in his own language and, on the other hand, the fact that the choice of the claims representative shall be at the discretion of the insurer. However, the rest of the suggestions in Amendment No 19 referring to natural or legal persons, institutions or other structures that might be suitable for executing this task have not been inserted in the draft directive. This enumeration might lead to misinterpretation and might create the impression that this list is exhaustive – which should not be the case.

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<sup>7</sup> Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of 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.

### **Article 3 paragraph 3**

The wording has been improved following the suggestion in Parliament Amendment No 20. Some additional clarification has been introduced regarding reference to the rules on compulsory insurance cover provided for in Directive 90/232/EEC<sup>8</sup> and how these rules are distinguished from the rules of private international law applicable to the accident. Finally, the list of persons against whom the injured party might have a claim and consequently wish to institute proceedings has been enlarged to take into consideration different legal possibilities according to the rules in force in the various Member states. The last sentence of this paragraph includes the suggestion provided for in Parliament Amendment No 25.

### **Article 3 paragraph 4**

The proposal has been modified in that respect following Parliament Amendment No 21. The insurer should be responsible for the choice of his representative and consider whether he is suitable for this task or not.

### **Article 3 paragraph 5**

Clarification has been introduced to make clear the extent of representation powers of the claims representative before courts and national administrations. The term national authorities is meant to cover both the administrative and judicial authorities. Regarding the latter, even if under the present formulation of the Brussels Convention it is not possible to start proceedings in the Member State of the injured party's residence, i.e. the Member State of the claims representative, future modifications or other international agreements might give this possibility to the injured party in the future. In fact, the formulation of the directive should not create a precedent which might turn out to have negative effects on injured parties in the future.

### **Article 3 paragraph 6**

The text has been modified in order to insert, at least in their spirit, Parliament Amendments 26 and 27 providing for reinforced penalties to guarantee that the victim will receive a reasoned offer within a short period of time. More specifically, the nature of penalties has been specified; they have to be systematic and effective. This means that there is an absolute obligation imposed upon national authorities to apply sanctions, without giving them the possibility to derogate from that principle. Certainly, they will retain some discretionary margin as far as the gravity of the sanction is concerned which will vary according to the circumstances. Regarding the content of those penalties a clear reference to both financial and equivalent administrative sanctions has been added; a list of a wide range of important administrative penalties has been included in recital 10 to make this "equivalent effect" more explicit.

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<sup>8</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.

Establishment of ad hoc penalties within a well determined context is necessary to differentiate from the general penalty clause provided for in Article 9 of the proposal.

Moreover, there is a difference between, on the one hand financial sanctions provided for in the first subparagraph of paragraph 6 of this Article; which can be according to legal tradition of each Member State administrative fines or, less often, specific civil law sanctions (like the French "loi Badinter") and, on the other hand, late payment interest rates, which are due in case of late payment and, in most Member States, form part of general civil law rules. Apart from defining the nature of those sanctions to make the provisions of the directive more effective, the text does not include any references to the modalities of application; these questions will be settled, in line with subsidiarity, by national administrative and civil law provisions. Also a clear reference to late payment interest has been added in the last subparagraph of Article 3(6).

Furthermore, in the first subparagraph first indent of Article 3(6), it is clearly stated that the offer made by the insurer has to be a "reasoned" one; similarly in the second indent the word "appropriate" has been replaced by the word "reasoned". This word reflects better the Commission's intention to establish an obligation for the insurer to give motivated answers regarding his intervention or his denial to compensate the damage suffered by the injured party. He has to explain how he has established the extent of damage or why he considers he has to meet only partly - and not in full - the injured party's claim. Certainly, in case that liability or the amount of compensation are contested by the victim following the insurer's motivated answer, the dispute has to be settled by the competent national courts according to national rules. In those cases, the national judge or legislator might provide, for example, that if the injured party does not reply to legitimate requests made by the insurer or his claims representative with a view to finalising the compensation file, the time limit of three months shall be suspended. Similarly, Member States may envisage that, where liability is not contested but the damages have not been fully quantified, provisional compensation may be awarded to the victim as an advance payment of the final amount of compensation.

### **Article 3 paragraph 7**

The text has been reformulated and completed in order to make clear that the existence of a claims representative does not constitute an establishment - principal or secondary - of the insurance company as far as either substantial law rules - reference to the third<sup>9</sup> and second<sup>10</sup> non-life directives - or rules governing attribution of jurisdiction are concerned - reference to the Brussels conventions.

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<sup>9</sup> Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive).

<sup>10</sup> 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 and amending Directive 73/239/EEC.

#### **Article 4 paragraph 1**

The presentation of the text has been improved; also reference to "vehicles registered in the territory of that State " has been replaced by indents (a) and (b). In fact, both elements, the registration number and the number of the insurance policy, are necessary for a vehicle in order to be allowed to circulate legally throughout the EC territory. Reference to the expiry of the period of validity of the insurance cover – which, in many cases, does not necessarily coincide with the expiry of the validity of the insurance policy itself - has also been inserted to take into consideration, at least in spirit, of the suggestion in Parliament Amendment No 29. The text has also been modified following Parliament Amendment No 28 in order to include a reference to vehicles not required to be insured, such as military and government vehicles; indents (d) and (e) have been introduced in order to include all variations and derogations from the duty to be covered against third party liability provided for in directive 72/166/EEC.

#### **Article 4 paragraph 2**

The presentation of the text has been improved. Also reference to the expiry of the period of validity has been inserted in order to take into consideration Parliament Amendment No 29. However, the obligation provided for in the amended draft proposal differs from the E.P. proposal with respect to the extent of the obligation imposed upon the insurer: whereas in Parliament Amendment No 29 the insurer has a continuous obligation to provide the information centre with information regarding the validity of new or already existing contracts, the Commission's proposal is in favour of a more simple solution. Assuming that any insurance contract is valid and is automatically renewed if no resiliation has taken place, according to the conditions and within the deadlines provided for in the contract, the insurer is not obliged to provide information to the information centre that the contract remains valid but simply has to inform it about the termination of the contract. In this context, the absence of new information regarding termination of the contract implies that the contract is still in force. This facilitates also the task for the insurer who will in practice only be obliged to communicate information regarding conclusion of new contracts (communication of the number of insurance policies ) and the termination of old ones (expiry date), but not their automatic renewal.

#### **Article 4 paragraphs 3 and 4 [new]**

The presentation of the text in paragraph 3 has been improved following some of the suggestions provided for in Parliament Amendment No 30. Parliament Amendment No 31 creating an obligation imposed upon Member States to ensure that information centres react immediately to the injured party's requests has been inserted in this paragraph. An additional paragraph 4 has been added to concentrate on the cases where providing to the injured party more information than that facilitating direct right of action or compensation via the claims representative is justified. The injured party must have a legitimate interest, i.e. brings evidence that compensation can only be achieved by suing the person responsible. The reason for making this part more explicit is to take into consideration, on the one hand, data protection requirements linked to the processing of personal data, such as the name and address of the responsible person and, on the other hand, to ensure that the injured party will be able



to achieve compensation. The concept of legitimate interest is a principle generally accepted in the laws of the various Member States in the context of both administrative and civil law.

#### **Article 4 paragraph 5 [new]**

Provision has been made, to correct an omission in the initial Proposal, that Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, has to be respected. This reference ensures the necessary coherence with provisions regarding data protection, since, in the case of an uninsured or non duly insured vehicle, the processing of personal data and, in particular, the name and address of the owner or usual driver of the vehicle have to be communicated to the injured party.

#### **Article 5 paragraphs 1, 2 and 3**

The presentation of the text has been improved. Parliament Amendment No 33 has been partially accepted as far as following points are concerned:

- Specific provision has been made in paragraph 1 that intervention of the compensation body should be excluded when discussions on the amount of indemnification have already started between the victim and the insured party or the dispute is before the courts. The Compensation Body does not have any judicial powers.

- The suggestion that the Compensation Bodies could choose to conclude an agreement on the modalities of reimbursement has also been accepted. This text should be an autonomous text not depending on any other international commitments existing among the same bodies in a different context (i.e. the Multilateral Guarantee Agreement of 1991). This also has the advantage of simplification which makes this article more comprehensive.

Moreover, the list of persons to be informed that the Compensation Body in the injured party's Member State of residence is about to intervene has become wider by including on the one hand the person responsible for the accident – this might raise pressure against the insurer – and, on the other hand the Compensation Body in the insurer's Member State of establishment, since this latter body will be involved in the action pursuing reimbursement against the insurer.

Furthermore, a clarification has been inserted regarding the Member State where reimbursement by the insurer takes place. For the purposes of reinforcing pressure on the insurer who has failed to comply with its duties, it is essential to claim reimbursement from the establishment which has effectively delivered the contract, which does not have necessarily to be the head office.

The subrogation mechanism provided for in Article 5 par. 2 has also been completed. An obligation is established for all Member States to recognise the subrogation of the compensation body in the Member State of residence of the injured party and, consequently, of the compensation body in the Member State of the insurer's establishment which has issued the contract to the injured party's rights. In fact, subrogation needs to be provided for under the law of the country establishing the

compensation body entitled to recourse to the amount of compensation (i.e. the Member State of the injured party's residence); however, there arises the problem of recognition in the country of the accident – assessment of the claim made is generally subject to the law of the country in which the accident occurred – as well as in the Member State where the insurer's establishment which issued the contract is situated, since that is ultimately where recourse is to be had against the insurer of the responsible party. The feasibility of the system of compensation bodies depends on the enforceability of a right of recourse to the amount of compensation and hence on mutual recognition of subrogation.

Finally, following the example of Article 2(2) of Directive 72/166/EEC, the Commission should adopt a decision to define the date of entry into force of the agreement to be signed among compensation bodies in the Member States. This legal act is necessary in order to make the effects of a private agreement enforceable on the EC territory.

#### **Article 6**

Regarding cases where the insurer cannot be identified, the Commission has followed an E.P. suggestion provided for in Amendment No 33 to give the injured party the possibility to use the mechanism of the compensation bodies provided that the existing system of insurance directives is respected: uninsured or unidentified vehicles are treated under Directive 84/5/EEC and fall within the competence of the guarantee funds. Certainly, in order to make it easier for the visiting victim and establish only one contact point, the intervention of the compensation body has been accepted, but then the final responsibility lies with the guarantee funds according to Article 1 (4) of Directive 84/5/EEC.

However, contrary to the suggestion in Amendment No 34, the concrete reference to the mechanism provided for in Article 1(4) of Directive 84/5/EC is maintained in the text to make clear that in case of unidentified or uninsured vehicles the responsibility for compensating the injured party lies with the guarantee fund and not with the compensation body established by the present directive. Nevertheless, the idea included in Amendment No 33, i.e. to give the injured party the possibility to present a claim even in cases where the insurer cannot be identified is acceptable provided that, afterwards, the mechanism of the compensation bodies does not intervene anymore but the final responsibility for reimbursing the compensation body in the Member State of the injured party's residence are the responsible guarantee funds (of the Member state of the accident or of the Member State of registration of the responsible vehicle).

Two further modifications have been inserted in the text of Article 6: Firstly, in order to accelerate procedures and avoid long periods of uncertainty, a unique deadline to be applied by all Member States has been fixed for establishing whether the insurer should be considered as non identified. Secondly, a correction has been inserted by stipulating that in the case of third country vehicles the responsibility for compensating damages caused by uninsured or not duly insured vehicles lies with the guarantee funds and not with the green card bureaux. In fact, the obligation to check, in conformity with Articles 6 and 7 of Directive 72/166/EEC, whether third country vehicles are provided with a valid green card or a frontier insurance certificate is imposed upon Member States, that is national authorities, and not on private

arrangements agreed among insurers (i.e. the green card system). Consequently, the guarantee fund which is supposed to remedy any deficiencies occurring in the context of the compensation guarantee scheme established by the EC insurance directives providing for obligatory third party liability cover should be also responsible for covering accidents caused by third country vehicles.

#### **Article 8a [new]**

Parliament Amendment No 4 has been partially taken into consideration in that respect. Though not extending the scope of application of the present directive to cover accidents occurring in a third country, the Commission agrees in Article 8(a) [new] that it should explore the possibility of extending the arrangements provided for in this Directive via an international agreement to cover also persons resident in a Member State who are injured parties in traffic accidents caused by a vehicle insured and normally based in a Member State other than their Member State of residence but occurring in a third country.

In fact, even if all factors ( Member State of the victim's residence, Member state of the accident, Member State of the insurer) governing the intervention of the mechanisms proposed in the directive (claims representative, information centre, compensation body) are situated within the EC territory, practical problems arise. Firstly, those are related to applicable law. In most cases the applicable law will be the law of the Member State of the accident. If the accident takes place outside the EC territory the claims representative will be asked to settle the claims according to some law with which he might not be familiar at all since it's going to be a third country law. Whereas in the proposal in its present form, it is sufficient for the claims representative to be familiar with the basic principles of motor insurance legislation in the 15 Member States, the result of introducing the proposed Parliament amendment would imply that additional research should be carried out on a case by case basis regarding the principles applicable in the laws of any third country every time such a case comes up; this implies additional infrastructure and, consequently, more important costs for the insurance industry and a rather slow settlement of the injured party's requests.

Secondly, the situation becomes complicated when the dispute cannot be solved via extra-judicial arrangements but needs to be settled before the courts. Problems might arise related to attribute of jurisdiction and competence of national courts to judge the dispute. The Brussels Convention will not apply in those cases; this implies that since there are no harmonised rules of private international law to be applied, jurisdiction is determined on the basis of rules of internal law, including also the law of the third Member State. In that respect there is no legal certainty regarding the competent judge, unless other international agreements apply. Consequently, the most appropriate solution in such circumstance is likely to be an international agreement between EC Member states and one, or more third States, to settle the matter of jurisdiction.

Amended 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 92/49/EEC**

**INITIAL PROPOSAL**

**AMENDED PROPOSAL**

THE EUROPEAN PARLIAMENT AND THE  
COUNCIL OF THE EUROPEAN UNION,

UNCHANGED

Having regard to the Treaty establishing the  
European Community, and in particular  
Articles 57(2) and 100a thereof,

Having regard to the proposal from the  
Commission,<sup>11</sup>

Having regard to the opinion of the Economic  
and Social Committee,<sup>12</sup>

Acting in accordance with the procedure  
referred to in Article 189b of the Treaty,

Whereas, differences currently exist between  
provisions laid down by law, regulation or  
administrative action in the Member States  
relating to insurance against civil liability in  
respect of the use of motor vehicles and these  
differences form an obstacle to the free  
movement of persons and of insurance  
services,

UNCHANGED

Whereas, it is therefore necessary to  
approximate those provisions in order to  
promote the functioning of the single market,

UNCHANGED

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<sup>11</sup> O J C  
<sup>12</sup> O J C

Whereas, by Directive 72/166/EEC,<sup>13</sup> as last amended by Directive 90/232/EEC,<sup>14</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;

UNCHANGED

Whereas, by Directive 88/357/EEC,<sup>15</sup> as last amended by Directive 92/49/EEC,<sup>16</sup> the Council adopted provisions 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;

UNCHANGED

Whereas the green card bureau system ensures the ready settlement of claims in the injured party's own country even where the other party comes from a different European country;

Whereas the green card bureau system does not solve all problems of an injured party having to claim in another country against a party resident there and an insurance undertaking authorised there (a foreign legal system, a foreign language, unfamiliar settlement procedures and often unreasonably delayed settlement);

Whereas, the European Parliament, by its Resolution of 26 October 1995 on the settlement of claims arising from traffic accidents occurring outside the claimant's country of origin,<sup>17</sup> took an initiative under the second paragraph of Article 138b of the EC Treaty calling on the Commission to submit a proposal for a European Parliament and Council Directive on this matter,

Whereas, the European Parliament, by its Resolution of 26 October 1995 on the settlement of claims arising from traffic accidents occurring outside the claimant's country of origin,<sup>18</sup> took an initiative under the second paragraph of Article 138b of the EC Treaty calling on the Commission to submit a proposal for a European Parliament and Council Directive to solve this problem,

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<sup>13</sup> OJ L 103, 2.5.1972, p. 1.  
<sup>14</sup> OJ L 129, 19.5.1990, p. 33.  
<sup>15</sup> OJ L 172, 4.7.1988, p. 1.  
<sup>16</sup> OJ L 228, 11.8.1992, p. 1.  
<sup>17</sup> OJ C 308, 20.11.1995, p. 108.  
<sup>18</sup> OJ C 308, 20.11.1995, p. 108.

Whereas, it is in fact appropriate to supplement the arrangements established by Directives 72/166/EEC, 84/5/EEC<sup>19</sup> and 90/232/EEC in order to guarantee motor vehicle accident victims comparable treatment irrespective of where in the Community accidents occur; whereas, for accidents occurring in a Member State other than that of the victim's residence, there are gaps with regard to the settlement of victims' claims;

Whereas, it is in fact appropriate to supplement the arrangements established by Directives 72/166/EEC, 84/5/EEC<sup>20</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 victims' claims;

Whereas supplementing these arrangements implies giving the injured party a direct right of action against the insurer of the responsible party;

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 insurer of the responsible party;

Whereas this solution would enable damage suffered by injured parties outside their Member State of residence to be dealt with by procedures familiar to them;

Whereas this system of having claims representatives in the injured party's country of residence affects neither the substantive law to apply in each individual case nor the matter of jurisdiction; whereas the activities of the claims representative are not sufficient in order to establish jurisdiction in the injured party's Member State of residence if rules of private international law on the determination of jurisdiction do not provide so;

Whereas the existence of a direct right of action against the insurer for the party who has suffered loss or injury is a logical supplement to the institution of such

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<sup>19</sup> OJ L 8, 11.1.1984, p. 17.

<sup>20</sup> OJ L 8, 11.1.1984, p. 17.

Whereas in order to fill such gaps at least in part, it should be provided that the Member State where the insurance undertaking is established require the undertaking to appoint representatives resident or established in the other Member States to collect all necessary information in relation to claims resulting from such accidents with sufficient powers to represent the undertaking in relation to persons suffering damage from such accidents, including the payment of compensation therefore, and to represent it or, where necessary, have it represented in relation to such claims before the courts, in so far as this is compatible with the rules of private international law on the determination of jurisdiction, and before the authorities of the other Member States;

Whereas the appointment of representatives responsible for settling claims is one of the conditions for access to and carrying on the activity of insurance listed in class 10 of title A of the Annex to Directive 73/239/EEC; whereas that condition is covered by the single official authorisation issued by the authorities of the Member State where the insurance undertaking establishes its head office, as specified in Title II of Directive 92/49/EEC; whereas this condition also applies to undertakings having their head office outside the Community which have secured an authorisation granting them access to a Member State of the Community; whereas Directives 73/239/EEC and 92/49/EEC should be amended and supplemented accordingly;

Whereas the existence of a direct right of action against the insurer for the party who has suffered loss or injury is a logical precondition for the institution of such representatives and moreover improves the legal position of victims of road accidents occurring outside that party's Member State of residence;

representatives and moreover improves the legal position of victims of road accidents occurring outside that party's Member State of residence;

Whereas in order to fill the mentioned gaps it should be provided that the Member State where the insurance undertaking is authorised 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 take appropriate action to settle the claim on behalf and for the account of the insurance undertaking, including the payment of compensation therefore; whereas claims representatives should have sufficient powers to represent the undertaking in relation to persons suffering damage from such accidents and also to represent the 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 determination of jurisdiction;

UNCHANGED

DELETED

Whereas, in addition to ensuring that there is an intermediary representing the insurance undertaking in the State where the victim resides, it is appropriate to guarantee the specific right of the victim to have the claim settled promptly; whereas it is therefore necessary to include in national law appropriate penalties to be imposed on the insurer if his representative fails to fulfil his obligation of making an offer of compensation within a reasonable time-limit; however, it is a condition that liability and the damage and injury sustained should not be in dispute, so that the insurer is able to make an appropriate offer within the prescribed time-limit;

Whereas, in addition to ensuring that there is an intermediary representing the insurance undertaking in the State where the injured party resides, it is appropriate to guarantee the specific right of the victim to have the claim settled promptly; whereas it is therefore necessary to include in national law appropriate effective and systematic financial or equivalent administrative penalties such as injunction combined with administrative fines, reporting to supervisory authorities on a regular basis, on the spot controls, publications in the national Official Journal as well in the press, suspension of the activities of the company (prohibition to conclude new contracts for a certain period of time), designation of a special representative of the supervisory authorities in charge of controlling that the business is run in line with insurance laws, withdrawal of the authorisation for this business line, sanctions to be imposed on directors and managing staff to be imposed on the insurer if himself or his representative fails to fulfil his obligation of making an offer of compensation within a reasonable time-limit; whereas this does not prejudice application of any other measure - especially according to supervisory law - which may be considered appropriate; however, it is a condition that liability and the damage and injury sustained should not be in dispute, so that the insurer is able to make an appropriate offer within the prescribed time-limit;

whereas, in addition to those sanctions, it is appropriate to make provision that interest shall be payable on the amount of compensation offered by the insurer or awarded by the judge to the insured party, when the offer has not been made within the same time limit; whereas if Member States have existing national rules which cover the requirement on interest this provision could be implemented by a reference to those rules; whereas, the offer made by the compensation body in response to the claims from the injured party removes the need to require that interest shall be payable on the amount of compensation;



Whereas victims of traffic accidents sometimes have difficulty in establishing the name of the undertaking providing insurance against civil liability in respect of motor vehicles involved in an accident; whereas in the interest of such victims, Member States should set up information centres to ensure that such information is made available promptly; whereas those information centres should also make available to victims information concerning claims representatives; it is necessary that such centres should cooperate with each other and respond rapidly to requests for information on claims representatives made by centres in other Member States;

Whereas injured parties suffering loss or injury as a result of traffic accidents sometimes have difficulty in establishing the name of the undertaking providing insurance against civil liability in respect of motor vehicles involved in an accident; whereas in the interest of such victims, Member States should set up information centres to ensure that such information is made available promptly; whereas those information centres should also make available to injured parties information concerning claims representatives; whereas it is necessary that such centres should cooperate with each other and respond rapidly to requests for information on claims representatives made by centres in other Member States; whereas, it seems appropriate to collect information about the actual termination of the insurance cover but not about the expiration of the original validity of the policy if the duration of the contract is extended due to non-cancellation ;

whereas specific provision should be made in the case of vehicles ( for example government or military vehicles) which fall under the exemptions from the obligation to be insured against third party liability;

Whereas the injured party may have a legitimate interest to be informed about the identity of the owner or usual driver or the registered keeper of the vehicle for example if he can obtain compensation only from these persons because the vehicle is not duly insured or the damage exceeds the sum insured this information shall also be provided accordingly;

Whereas certain information provided, such as the name and address of the owner or usual driver of the vehicle and the number of the insurance policy or the registration number of the vehicle, is personal data within the meaning of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and that the processing of such data which is required for the purposes of this Directive must therefore comply with the national measures taken pursuant to Directive 95/46/EC ;

Whereas it is necessary to make provision for a body to guarantee that the victim will not remain without compensation where the insurer has failed to appoint a representative or is manifestly dilatory in settling a claim and to provide that, in such cases, the victim should be able to apply directly to that body; whereas it is justified to confer on that body a right of subrogation in so far as it has compensated the victim; whereas, in order to facilitate enforcing that claim against the insurer, the body providing compensation in the victim's State should enjoy an automatic right of reimbursement with subrogation to the rights of the victim by the corresponding body in the State where the insurer is established; whereas the latter body is the best placed to institute proceedings for redress against the insurer;

Whereas it is necessary to make provision for a Compensation Body to guarantee that the injured party will not remain without compensation and to which the injured party may apply where the insurer has failed to appoint a representative or is manifestly dilatory in settling a claim; whereas, the intervention of the Compensation Body should be limited to rare individual cases when the insurer failed to comply with his duties in spite of the dissuasive effect of threatening penalties; whereas the role played by the Compensation Body is that of settling the claim in respect of any injury suffered by the visitor abroad only in cases which are objectively determinable and therefore this body must limit its activity to verifying that the claims representative has made an offer of compensation according to the time limits and procedures established without merit rating;

Whereas it is justified to confer on that body a right of subrogation in so far as it has compensated the victim; whereas, in order to facilitate enforcing that claim against the insurer, where he has failed to appoint a representative or is manifestly dilatory in settling a claim, the body providing compensation in the victim's State should enjoy an automatic right of reimbursement with subrogation to the rights of the victim by the corresponding body in the State where the insurer is established; whereas the latter body is the best placed to institute proceedings for redress against the insurer; 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 modalities of reimbursement

Whereas it is necessary to have a body to ensure that the victim will not remain without compensation if it is impossible to identify the insurer of the vehicle; whereas provision must be made so that the ultimate debtor in respect of the damages paid to the victim is a body situated in the Member State where the non-insured vehicle which has caused the accident is normally based,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

**Scope**

The objective of this Directive is to lay down special provisions applicable to victims of accidents

- (a) occurring in a Member State other than the State of residence of the victim, and
- (b) caused by a vehicle
  - insured by an undertaking established in a Member State other than the State of residence of the victim, and
  - registered in a Member State other than the State of residence of the victim.

Whereas where it is impossible to identify the insurer of the vehicle the Compensation Body in the Member State of residence of the injured party should also settle these claims; whereas provision must be made so that the ultimate debtor in respect of the damages paid to the victim is the Guarantee Fund provided for in Article 1(4) of Directive 84/5/EEC situated in the Member State where the non-insured vehicle which has caused the accident is normally based,

HAVE ADOPTED THIS DIRECTIVE:

*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 traffic accidents

- (a) occurring in a Member State other than the State of residence of the injured party, and
- (b) caused by a vehicle
  - insured by an undertaking established in a Member State other than the State of residence of the injured party, and
  - normally based in a Member State other than the State of residence of that person.

Article 6 shall also apply to accidents caused by third country vehicles covered by Article 6 and 7 of Directive 72/166/EEC.

### Article 2

Each Member State shall ensure that victims of accidents as defined in Article 1 of [this] Directive ... enjoy a direct right of action against the insurer covering other the party against civil liability.

### Article 3

1. Each Member State shall take all measures necessary to ensure that all insurance undertakings authorised in accordance with

- Article 6 of Directive 73/239/EEC, as amended by Article 4 of Directive 92/49/EEC, to cover the risks classified in class 10 of point A of the Annex to Directive 73/239/EEC, other than carrier's liability, or
- Article 23(2) of Directive 73/239/EEC,

freely appoint in each Member State other than that in which they are established a body (hereinafter referred to as "the claims representative"). The claims representative shall be responsible for handling and settling claims arising from accidents occurring in a Member State other than the State where the victim resides and caused by a vehicle insured by such undertakings and registered in a Member State other than the State where the victim resides. The claims representative shall be resident or established in the Member State where the victim resides.

### Article 2

Each Member State shall ensure that injured parties of accidents as defined in Article 1 of [this] Directive ... enjoy a direct right of action against the insurer providing the party or parties who caused the accident with cover against civil liability.

### Article 3

1. Each Member State shall take all measures necessary to ensure that all insurance undertakings authorised in accordance with

- Article 6 of Directive 73/239/EEC, as amended by Article 4 of Directive 92/49/EEC, to cover the risks classified in class 10 of point A of the Annex to Directive 73/239/EEC, other than carrier's liability, or
- Article 23(2) of Directive 73/239/EEC,

appoint in each Member State other than that in which they have received their official authorisation a claims representative. The choice of the claims representative shall be at the discretion of the insurer. The claims representative shall be responsible on behalf of and for the account of the insurance undertaking for handling and settling claims arising from traffic accidents as defined in Article 1 of this Directive. The claims representative shall be resident or established in the Member State where the injured party resides.

The claims representative may act for one or more insurers.

He must be able to examine the case in the official language(s) of the Member State of residence of the injured party.

UNCHANGED

2. Directive 73/239/EEC shall be amended as follows:

- (a) The following subparagraph shall be added to Article 8(1):

"(f) communicate the name and address of the claims representative they appoint in each of the Member States if the risks to be covered are classified in class 10 of title A of the Annex."

- (b) The following subparagraph shall be added to Article 23(2):

"(h) communicate the name and address of the claims representative they appoint in each of the Member States if the risks to be covered are classified in class 10 of title A of the Annex."

3. The claims representative shall, in relation to such claims, collect all information necessary in connection with compensation and shall take the measures necessary to negotiate a settlement of claims in accordance with the instructions of the insurer, the rules on compulsory insurance against civil liability as these rules are defined in the last indent of Article 2 of Directive 90/232/EEC and the rules on civil liability applicable to the accident. The requirement of appointing a claims representative shall not preclude the right of the victim or his insurer to institute proceedings directly against the person responsible for the accident or his insurer.

3. The claims representative shall, in relation to such claims, collect all information necessary in connection with compensation and shall take the measures necessary to negotiate and obtain a settlement of claims. He shall act in accordance with the instructions of the insurer, the rules on compulsory insurance cover against civil liability as these rules are defined in the last indent of Article 2 of Directive 90/232/EEC and the rules of private international law on civil liability applicable to the accident. The requirement of appointing a claims representative shall not preclude the right of the victim or his insurer to institute proceedings directly against the driver responsible for the accident, the owner or holder of the vehicle or the insurer providing cover against civil liability.

4. The claims representative shall be appropriately qualified. His facilities shall be such as to enable him to discharge the duties provided for in this Article.

DELETED

5. The claims representative shall possess sufficient powers to represent the undertaking in relation to persons suffering damage who pursue claims, including the payment in full of such claims, and to represent it or, where necessary, to have it represented, before the courts concerning such claims in so far as compatible with the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgements in civil and commercial matters<sup>21</sup> and with the other rules of private international law on the determination of jurisdiction, and before the authorities of the Member State where he represents the insurer.

5. The claims representative shall possess sufficient powers to represent the insurer in relation to injured parties in the cases referred to in Article 1, including the payment in full of their claims; he shall possess sufficient powers to represent the insurer before national authorities.

6. The Member States shall create a duty, backed by penalties, to the effect that, within a time-limit of three months from the date when the victim presented his claim for compensation either directly to the insurer or to the claims representative,

6. The Member States shall create a duty, backed by appropriate effective and systematic financial or equivalent administrative penalties, to the effect that, within a time-limit of three months from the date when the injured party presented his claim for compensation either directly to the insurer of the person causing the accident or to the claims representative

- the insurer of the person causing the accident or his claims representative is required to make an offer of compensation, in cases where liability is not contested and the damages have been quantified, and

- the insurer of the person causing the accident or his claims representative is required to make a reasoned offer of compensation, in cases where liability is not contested and the damages have been quantified, and

<sup>21</sup> OJ L 299, 31.12.1972.

- the insurer to whom the claim for compensation has been addressed or his claims representative is required to provide an appropriate reply to the points made in the claim, in cases where liability has not been clearly determined and the damages have not been fully quantified.

- the insurer to whom the claim for compensation has been addressed or his claims representative is required to provide a reasoned reply to the points made in the claim, in cases where liability has not been clearly determined and the damages have not been fully quantified.

Member States shall adopt provisions to ensure that where the offer is not made within the time limit of 3 months provided for in paragraph (6) of the present article, interest shall be payable on the amount of compensation offered by the insurer or awarded by the judge to the insured party.

7. The last subparagraph of Article 12a(4) of Directive 88/357/EEC shall apply.

7. The appointment of a claims representative shall not in itself constitute the opening of a branch within the meaning of Article 1(b) of Directive 92/49/EEC and the claims representative shall not be considered an establishment within the meaning of Article 2(c) of Directive 88/357/EEC nor an establishment within the meaning of the Brussels Convention 27 September 1968 on jurisdiction and the enforcement of judgement in civil and commercial matters.<sup>22</sup>

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OJ C 27, 26.2.98, p. 1 (consolidated version).



#### Article 4

##### *Information centres*

1. Each Member State shall establish or approve a body (hereinafter referred to as "the information centre") responsible for keeping a register of motor vehicles registered in the territory of that State, insurance undertakings providing civil liability cover for such vehicles and the claims representatives appointed by such undertakings in accordance with Article 3 whose name shall be notified to the information centre in accordance with paragraph 2 below, or for co-ordinating the compilation and dissemination of that information; the information centre shall also be responsible for assisting victims in identifying the name of motor insurance undertakings providing cover for vehicles registered in that Member State and of the claims representatives notified to it.

#### Article 4

##### *Information centres*

1. Each Member State shall establish or approve an information centre responsible, for the purposes of allowing the injured party to seek compensation:
  - for keeping a register containing the following information:
    - (a) the registration numbers of motor vehicles normally based in the territory of that State,
    - (b) the numbers of the insurance policies covering those vehicles for the risks classified in class 10 of title A of the Annex to Directive 73/239/EEC ; where the period of validity of a policy has expired also the termination of the insurance cover; the number of the green card or frontier insurance policy, if the vehicle is covered by one of those documents, in case the vehicle benefits from the derogation provided for in Article 4(b) of Directive 72/166/EEC
    - (c) insurance undertakings providing civil liability cover for such vehicles and the claims representatives appointed by such undertakings in accordance with Article 3 whose name shall be notified to the information centre in accordance with paragraph 2 of the present article
    - (d) the list of vehicles which, in each Member State, benefit from the derogation from the requirement of civil liability insurance cover in accordance with Article 4(a) and (b) of Directive 72/166/EEC.
    - (e) regarding the vehicles provided for in point (d) of the present paragraph:

(i) the name of the authority or body designated in accordance with the second subparagraph of Article 4(a) as responsible for compensating injured parties in cases where the procedure provided for in the first indent of Article 2(2) of Directive 72/166/EEC is not applicable, if the vehicle benefits from the derogation provided for in Article 4(a) of Directive 72/166/EEC

(ii), the name of the body covering the vehicle in its country of registration, if the vehicle benefits from the derogation provided for in Article 4(b) of Directive 72/166/EEC

- or for co-ordinating the compilation and dissemination of that information

- and for assisting those entitled to know to obtain the information mentioned in (a), (b), (c), (d) and (e) of this paragraph.

2. Insurance undertakings providing cover against civil liability in respect of the use of motor vehicles shall notify to the information centre in the Member State in whose territory they are established the registration numbers of the vehicles they insure which are registered in that State, the number of the insurance policy and the name and address of the insured. It shall notify to the information centres of the other Member States the name and address of the claims representative which they have appointed in accordance with Article 3 in each of the Member States and the corresponding information concerning vehicles registered in those countries which they insure by way of provision of services.

3. The Member States shall ensure that the victim of an accident occurring in a Member State other than the State where he

2. Insurance undertakings shall notify to the information centres in the Member States in whose territory they have concluded insurance contracts providing cover against civil liability in respect of the use of motor vehicles, either by way of establishment or by way of provision of services the registration numbers of the vehicles they insure which are normally based in those States, the numbers of the insurance policies and, when the period of validity of a policy expires also the termination of the insurance cover. They shall notify to the information centres of the Member States the name and address of the claims representative which they have appointed in accordance with Article 3 in each of the Member States.

3. The Member States shall ensure that the injured party of an accident occurring in a Member State other than the State

resides shall be entitled to obtain from the information centre of the State where he resides or of the State where the vehicle is registered the name and address of the insurer, the number of the insurance policy and the name of the insurer's claims representative in the State of residence of the victim. If the vehicle is not duly insured, the information centre shall provide the victim with the name and address of the owner or usual driver of the vehicle.

where he resides shall be entitled to obtain on application from the information centres of the Member States and, in particular from the information centre of the State where he resides:

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

The Member States shall ensure that the information centres disclose promptly the information required. In this respect, information centres shall cooperate with each other.

4. Member States shall ensure that the information centre shall obtain, in particular from the vehicle registration agency or the insurer , and provide the injured party with the name and address of the owner or usual driver or the registered keeper of the vehicle, if the injured party has a legitimate interest to obtain this information, especially if the vehicle is not duly insured, so that he may seek compensation from the driver responsible or the keeper liable. The information centre shall also obtain and provide the injured party with the address of the compensation body, provided for in Article 5, in the injured party's Member State of residence.

If the vehicle benefits from the derogation provided for in Article 4(a) of Directive 72/166/EEC the information center shall inform claimants of the name of the authority or body designated in accordance with the second subparagraph of Article 4(a) as responsible for compensating injured parties in cases where the procedure provided for in the first indent of Article 2(2) of Directive 72/166/EEC is not applicable.

If the vehicle benefits from the derogation provided for in Article 4(b) of Directive 72/166/EEC the information center shall inform claimants of the name of the body covering the vehicle in its country of registration.

5. The processing of personal data resulting from the previous paragraphs must be carried out in accordance with national measures taken pursuant to Directive 95/46/EC of the European Parliament and of the Council, on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

#### Article 5

##### *Compensation bodies*

1. Each Member State shall establish or approve a body (hereinafter referred to as "the compensation body") responsible for providing compensation where damage to property or personal injury is caused to a victim resident in a Member State by a vehicle registered and insured in a Member State other than the State of residence of the victim and the accident giving rise to such damage or injury occurs in a Member State other than the State of residence of the victim.

The compensation body in the State of residence of the victim shall take action if, within a period of 2 months from the date when the victim presents to the body a claim for compensation,

- the insurer of the vehicle causing the accident has failed to appoint a claims representative in accordance with Article 2, or
- the insurer or the claims representative has failed to make an offer of compensation, or has not provided a reply answering, with reasons, the points raised by the victim in his claim for

#### Article 5

##### *Compensation bodies*

1. Each Member State shall establish or approve a compensation body responsible for providing compensation to injured parties in the cases referred to in Article 1.

Such injured parties may present a claim to the compensation body in their Member State of residence:

- if the insurer of the vehicle causing the accident has failed to appoint a claims representative in the Member State of residence of the injured party in accordance with Article 3 paragraph 1; in this case, injured parties may not present a claim to the compensation body if they have presented a claim for compensation directly to the insurer of the vehicle the use of which caused the accident and if they have received a reasoned reply within three months of presenting the claim, or- if, within a time-limit of three months from the date when the injured party presented his claim for compensation, either directly to the insurer of the vehicle which caused the accident or to the

compensation or has refused the claim for compensation without specifying the reasons on which the refusal is based within a time-limit of three months from the date when the victim presented his claim for compensation, either directly to that insurer or to the claims representative, within the limits imposed by insurance obligations, as specified in the last indent of Article 2 of Directive 90/232/EEC, and in accordance with the national rules on civil liability applicable to the accident.

The compensation body in the State of residence of the victim shall inform the insurer of the person responsible for the accident or the claims representative that it has received a claim from the victim and that it will respond to that claim within a period of two months from the presentation of that claim.

claims representative, the insurer or the claims representative has failed to provide a reasoned reply to the points raised by the injured party in his claim for compensation in accordance with Article 3 paragraph 6 of the present directive.

- Injured parties may not however present a claim to the compensation body if:
  - the insurer declines all liability or
  - they do not accept the reasoned offer made by the insurer or the claims representative or
  - they have taken legal action directly against the insurer;
- 2. The compensation body of the Member State of residence of the injured party shall take action, within a period of 2 months from the date when the injured party presents a claim for compensation to it but shall terminate its action if the insurer has subsequently made a reasoned reply to the claim.

The compensation body in the State of residence of the victim shall inform immediately:

- the insurer of the person responsible for the accident or the claims representative
- the compensation body in the Member State of the insurer's establishment which has issued the contract,
- if known, the person causing the accident

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

2. The compensation body which has compensated the victim in his Member State of residence shall be entitled to claim the reimbursement from the compensation body in the State where the insurer is established of the sum paid as compensation within a period of two months of the date when the former body applied to the latter body for reimbursement. Consequently, the compensation body in the Member State where the insurer is established shall be subrogated to the victim in his rights against the person responsible for the accident or his insurer in so far as the compensation body in the Member State of residence of the victim has provided compensation for the loss or injury suffered. If the insurer's compensation for the victim is fixed by a court ruling, acknowledgement of the debt or mutual agreement, the insurer may only challenge the reimbursement if he adduces evidence that the body has failed to inform him of the complaint in accordance with paragraph 1 hereof or that it has mistakenly accepted unfounded claims for compensation or has overvalued the loss or injury. The compensation body in the State of residence of the victim and the compensation body in the State where the insurer is established may also claim reimbursement of expenses reasonably incurred.

3. Each Member State shall take the measures necessary to ensure that the compensation body in its territory provides reimbursement within the time-limit specified in paragraph 2 of this Article to a compensation body in another Member State which has reimbursed the victim of an accident caused by a vehicle covered by an insurance undertaking established in the first Member State in the cases provided for in the second subparagraph of paragraph 1 of this Article.

2. The compensation body which has compensated the injured party in his Member State of residence shall be entitled to claim the reimbursement of the sum paid as compensation from the compensation body in the Member State of the insurer's establishment which has issued the contract. The latter body shall then be subrogated to the injured party in his rights against the person responsible for the accident or his insurer in so far as the compensation body in the Member State of residence of the injured party has provided compensation for the loss or injury suffered. Each Member State is obliged to acknowledge this subrogation as provided by any other Member State.

3. The provisions of the present paragraph shall take effect

- After an arrangement has been concluded between the compensation bodies established or approved by the Member States relating to their functions and obligations and the modalities of reimbursement,
- from the date fixed by the Commission upon its having ascertained in close cooperation with the Member States that such an

arrangement has been concluded.

- and shall apply for the duration of that agreement.

The Commission shall report to the European Parliament and the Council on the implementation of Article 5 and on the effectiveness of this provision within ... years and shall submit proposals if necessary.

#### *Article 6*

##### *Cases where the insurer cannot be identified*

If it is impossible to identify the insurer, the vehicle shall be treated as uninsured. Compensation for damage to property or personal injury caused to the victim shall be provided by the body within the limits laid down in Article 1(4) of Directive 84/5/EEC. The victim shall be compensated by that body in the Member State where he resides. The body shall then have a claim, on the conditions laid down in Article 5(2) of this Directive, against the body in the Member State where the vehicle in question is normally based or, depending on the circumstances, against the green-card bureau in that Member State.

#### *Article 7*

##### *Implementation*

1. The Member States shall adopt and promulgate the provisions necessary to comply with this Directive within 18 months of its notification and shall forthwith inform the Commission thereof. They shall apply these provisions within 24 months of the date of the notification of this Directive.

#### *Article 6*

##### *Cases where the insurer cannot be identified*

If, within 2 months following the accident, it is impossible to identify the insurer the injured party may apply for compensation at the compensation body in the Member State where he resides. Compensation shall be provided by the body in accordance with the provision of Article 1 of Directive 84/5/EEC. The body shall then have a claim, on the conditions laid down in Article 5(2) of this Directive:

- against the guarantee fund provided for in Article 1(4) of Directive 84/5/EEC in the Member State where the vehicle in question is normally based;
- in the case of third country vehicles : against the guarantee fund of the Member State of the accident .

#### *Article 7*

##### *Implementation*

UNCHANGED

2. The Member States shall communicate to the Commission the texts of the necessary provisions of national law which they adopt in the fields covered by this Directive.

*Article 8*

*Entry into force*

This Directive shall enter into force on the ... day following that of its publication in the *Official Journal of the European Communities*.

*Article 9*

*Penalties*

The Member States shall fix penalties for breaches of the national provisions they adopt in implementation of this Directive and take the steps necessary to secure their application. The penalties shall be effective, proportional and dissuasive. The Member States shall notify these provisions, together with any amendments thereof, to the Commission not later than the date mentioned in Article 7.

*Article 8*

*Entry into force*

UNCHANGED

*Article 8 a*

*Accidents occurring in third countries*

Not later than .....the Commission shall present to the Council and the Parliament a report on the possibilities of extending the provisions of articles 2 to 6 of this Directive by means of an international agreement to cover also accidents occurring in third countries involving persons resident, and vehicles insured and registered in a Member State.

*Article 9*

*Penalties*

UNCHANGED



*Article 10*

*Addressees*

This Directive is addressed to the UNCHANGED  
Member States.

Done at Brussels,

*For the Council  
The President*

*Article 10*

*Addressees*

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