



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.02.2000

COM(2000) 94 final

1997/0264 (COD)

OPINION OF THE COMMISSION

pursuant to Article 251(2)(c) of the EC Treaty on the European Parliament's amendments to the Council's common position regarding the

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the approximation of laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending directives 73/239/EEC and 88/357/EEC (fourth Motor Insurance Directive)

AMENDING THE PROPOSAL OF THE COMMISSION

pursuant to Article 250 (2) of the EC Treaty

EXPLANATORY MEMORANDUM

According to Art. 251(2) of the EC-Treaty the Commission shall deliver an opinion on the amendments proposed by the European Parliament in its 2nd reading.

Subsequently the Commission gives its opinion on the 19 amendments proposed by the Parliament. According to Art. 250(2) of the EC-Treaty the Commission also delivers a modified proposal that includes the four amendments of the Parliament that the Commission has accepted in full or in the spirit.

1. BACKGROUND

The Commission sent the above proposal for a Directive based on articles 95 (ex-article 100a) and 47 (2) (ex-article 57(2)) of the Treaty to the Parliament and to the Council on 14 October 1997 (COM(1997)510 final – 1997/0264(COD)). The proposal was drawn up after an initiative taken by the European Parliament in its resolution of 26 October 1995 under Article 192 (ex-article 138b) of the EC-Treaty

The Economic and Social Committee gave its opinion on 25 March 1998

The European Parliament adopted an opinion on first reading on 16 July 1998

The Commission adopted an amended proposal for a Directive on 31 March 1999, which accepted 26 amendments (either entirely or in their spirit or with adaptations), proposed by the Parliament in the first reading

The Council adopted its common position unanimously on 21 May 1999. The Commission fully supported the common position of the Council

On 15 December 1999, at its second reading the European Parliament adopted 19 amendments to the Council common position

This opinion sets out the Commission's position on the European Parliament's amendments in accordance with Article 251 (2)(c) of the EC Treaty

2. AIM OF COMMISSION PROPOSAL

The Commission's proposal intends to improve the present situation as regards making claims for damages of persons who have been temporarily in a Member State other than the one of their residence ("visitors") and who have suffered loss or injury in that Member State caused by a vehicle registered and insured in a Member State other than the Member State of residence of the injured party.

The Directive is therefore to introduce a quick and pragmatic solution to make the liable insurer pay and to protect the visiting motorists who are victims of accidents. The Directive does not cover contested cases, that means where the insurer challenges its liability or the amount of compensation. This has to be left to courts. This Directive must not change international private law and international conventions.

3. COMMISSION'S OPINION ON THE AMENDMENTS PROPOSED BY THE PARLIAMENT

3.1. Summary of the Commission's position

The Commission can accept three of the amendments in full and a further amendment in the spirit.

The Commission cannot accept 15 amendments adopted by the Parliament

3.2. Parliament amendments on second reading

3.2.1. Amendments accepted in full

3.2.1.1. Amendments 10 and 11 (Article 4(1a)(new) and Article 4(1b)(new) – “Choice of the claims representative”)

Although this principle is already underlying in the common position the amendments will contribute to clarify the common position by explicitly stating that:

- The choice of its claims representative shall be at the discretion of the insurer.
- Member States may not restrict the choice of the claims representative.
- The claims representative may work for one or more insurers.

3.2.1.2. Amendment 12 (Article 4 (3) – “Linguistic ability of the claims representative”)

The text of the common position is already rather flexible but clarity would be further improved by explicitly stating that the claims representative must possess sufficient linguistic capacities and to be able of examining cases in the official language(s) of the Member State of residence of the injured party.

3.2.2. Amendment accepted in the spirit

3.2.2.1. Amendment 13 (Article 5 (3) – “Delay for the delivering of information by the information centre”)

This amendment aims at strengthening consumer protection but the word “immediately” employed in the text should be clarified to avoid discrepancies when Member States implement this provision.

3.2.3. Amendments not accepted

3.2.3.1. Amendments 1, 2, 8 and 9 (Recitals 8 and 10, Articles 1 and 3 – “Scope of application of the Directive”)

The amendments are designed to extend the scope of application of the Directive to accidents between two EU parties, insured by EU insurance companies, which occur in third countries. These are only a small minority of cases. The Commission already rejected these amendments at the first reading stage for the following reasons:

The mechanism of compensation provided for in this Directive as in the other motor insurance Directives is built on the green card system. It cannot be extended to third countries, which do not belong to that system and which do not recognise the validity of the European insurance. Insurance undertakings would not accept to cover those risks or would ask for very high premiums. In any case, the third country authorities would request the EU visiting vehicles to contract insurance policies at the border with undertakings established in their territory.

The application of the Directive, in particular the provision granting direct right of action against insurance undertakings, may conflict with the third country rules on civil liability and private international law, specially when such legislation does not recognise the direct action.

These four amendments concerning accidents in third countries cannot be accepted at this stage *in their present form*. However, the Commission may be able to consider an extension of the scope of the Directive, which take account of the preceding considerations. Any compromise should clearly identify the third countries to which the Directive can be effectively extended. Furthermore, any solution would have to avoid conflicting with third country legislation.

3.2.3.2. Amendment 3 (Recital 14 – “Competence of claims representative”)

This amendment will detract from the legal certainty of the proposal and will work to the disadvantage of the injured parties. Reference to courts is necessary to impede the interpretation that the powers of the claims representative may be confined only to administrative bodies and not to courts. Reference to private international law is necessary to exclude any possible interference with national jurisdiction rules.

3.2.3.3. Amendment 4 (Recital 26 – “Claims to the compensation body”)

This amendment would eliminate a recital aimed at ensuring legal certainty, transparency and financial security of the reimbursement mechanism established. The philosophy/aim of the Directive is to ensure the compensation of the victim and not to reimburse 3rd parties. The Compensation body is only a mechanism to ensure compensation to the victims in some cases but it is not the ultimate insurer. If the insurer has reimbursed the victim the compensation body does not intervene.

3.2.3.4. Amendment 5 (Recital 27 – “Right of subrogation of compensation body”)

This amendment would eliminate a recital that is important for the sake of legal certainty, transparency and financial security of the reimbursement mechanism. Given that rules on subrogation are not uniform in Member States, the mechanism of subrogation provided for by the Directive should be clear and transparent.

3.2.3.5. Amendment 6 (Recital 28 – “Position of the injured party against the compensation body”)

This amendment would eliminate an important recital to protect the injured party and to facilitate a rapid compensation of the damage.

3.2.3.6. Amendments 7, 17 and 18 (Recital 29, Articles 6 (3) and 10 (3) – “Agreement between the compensation bodies”)

These amendments would eliminate a substantial element on which all the motor insurance directives are built: the reference to the agreement between national compensation bodies as the basis for the reimbursement mechanism. The Directive does not create a complete new structure for the compensation bodies but it builds on the existing bureaux system. The experience on the 1st motor Directive shows that the adoption of an agreement between the bureaux is a precondition for the mechanism provided for in the Directive. This building on the existing structure of bureaux is coherent with the principle of subsidiarity.

3.2.3.7. Amendment 14 (Article 6(1) 4th paragraph – “Termination of compensation body’s action”)

This amendment would eliminate a paragraph important for the sake of legal certainty, transparency and financial security of the reimbursement mechanism. In the philosophy of the Directive the compensation body does not replace the insurer and only intervenes to ensure the payment of the compensation in certain special conditions. The compensation body only reimburses the victim if the liable insurer has not appointed a claims representative or if the obligation imposed upon the insurer to present a reasoned reply (which should include either a reasoned offer or a reasoned rejection) within a certain time limit has not been fulfilled. If the insurer does not provide a reasoned reply within certain deadlines “appropriate effective and systematic financial or equivalent administrative penalties” must be imposed.

3.2.3.8. Amendment 15 (Article 6(1) 5th paragraph – “Delay of information by the compensation body”)

This amendment would eliminate a paragraph important for the sake of legal certainty and transparency of the reimbursement mechanism. This period of delay is necessary because the compensation body needs some time to consider and verify the information given by the victim. The deadline is also necessary in the interest of the victim for protection of the victim.

3.2.3.9. Amendment 16 (Article 6(1) 6th paragraph – “Reimbursement to the compensation body who made the payment to the victim”)

The way in which the compensation body who made the payment to the victim should be reimbursed falls under the Member States competence according to the principle of subsidiarity. The Common Position contains a provision in this regard for the sake of legal certainty. This provision clearly establishes that the payment by the compensation body to the victim shall not be conditioned to the reimbursement by the ultimate responsible.

3.2.3.10. Amendment 19 (Article 10 (4) – “Provisions more favourable to the injured party”)

This amendment would abolish a general provision introduced for reasons of consumer protection and subsidiarity. Member States shall have the possibility to be more protective.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the approximation of laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending directives 73/239/EEC and 88/357/EEC (fourth Motor Insurance Directive)

**AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Art. 250(2) of the EC-Treaty**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2) and 95 thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽³⁾,

Whereas :

- (1) At present, differences 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 those differences constitute an obstacle to the free movement of persons and of insurance services.
- (2) It is therefore necessary to approximate those provisions in order to promote the sound functioning of the single market.
- (3) By Directive 72/166/EEC⁽⁴⁾, 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.

(1) OJ C 343, 13.11.1997, p. 11.

(2) OJ C 157, 25.5.1998, p. 6.

(3) Opinion of the European Parliament of 16 July 1998 (OJ C 292, 21.9.1998, p. 123), Council Common Position of 21 May 1999 (OJ C 232, 13.8.1999, p. 8) and Decision of the European Parliament of (not yet published in the Official Journal).

(4) OJ L 103, 2.5.1972, p. 1. Directive as last amended by Directive 84/5/EEC (OJ L 8, 11.1.1984, p. 17).

- (4) By Directive 88/357/EEC⁽⁵⁾, 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.
- (5) 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.
- (6) 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 (foreign legal system, foreign language, unfamiliar settlement procedures and often unreasonably delayed settlement).
- (7) By its Resolution of 26 October 1995 on the settlement of claims arising from traffic accidents occurring outside the claimant's country of origin⁽⁶⁾, the European Parliament, acting under the second paragraph of Article 192 of the Treaty, called on the Commission to submit a proposal for a European Parliament and Council Directive to solve these problems.
- (8) It is in fact appropriate to supplement the arrangements established by Directives 72/166/EEC, 84/5/EEC⁽⁷⁾ and 90/232/EEC⁽⁸⁾ 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; for accidents occurring in a Member State other than that of the injured party's residence, there are gaps with regard to the settlement of injured parties' claims.
- (9) This entails giving the injured party a direct right of action against the insurance undertaking of the responsible party.
- (10) One satisfactory solution might be for injured parties suffering loss or injury as a result of a motor vehicle accident occurring in a Member State other than that of their residence to be entitled to claim in their Member State of residence against a claims representative appointed there by the insurance undertaking of the responsible party.
- (11) This solution would enable damage suffered by injured parties outside their Member State of residence to be dealt with by procedures familiar to them.

(5) OJ L 172, 4.7.1988, p. 1. Directive as last amended by Directive 92/49/EEC (OJ L 228, 11.8.1992, p. 1).

(6) OJ C 308, 20.11.1995, p. 108.

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

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

- (12) This system of having claims representatives in the injured party's Member State of residence affects neither the substantive law to be applied in each individual case nor the matter of jurisdiction.
- (13) The existence of a direct right of action against the insurance undertaking for the party who has suffered loss or injury is a logical supplement to the appointment of such representatives and moreover improves the legal position of injured parties of motor vehicle accidents occurring outside that party's Member State of residence.
- (14) In order to fill the gaps in question, it should be provided that the Member State where the insurance undertaking is authorised should require the undertaking to appoint claims representatives resident or established in the other Member States to collect all necessary information in relation to claims resulting from such accidents and to take appropriate action to settle the claims on behalf and for the account of the insurance undertaking, including the payment of compensation therefor; claims representatives should have sufficient powers to represent the insurance undertaking in relation to persons suffering damage from such accidents, and also to represent the insurance undertaking before national authorities including, where necessary, before the courts, in so far as this is compatible with the rules of private international law on the conferral of jurisdiction.
- (15) The activities of the claims representative are not sufficient in order to confer jurisdiction on the courts in the injured party's Member State of residence if the rules of private international law on the conferral of jurisdiction do not so provide.
- (16) The appointment of representatives responsible for settling claims should be one of the conditions for access to and carrying on the activity of insurance listed in class 10 of point A of the Annex to Directive 73/239/EEC⁽⁹⁾, except for carriers' liability; that condition should therefore be 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⁽¹⁰⁾; that condition should also apply to insurance undertakings having their head office outside the Community which have secured an authorisation granting them access to the activity of insurance in a Member State of the Community; Directive 73/239/EEC should be amended and supplemented accordingly.
- (17) In addition to ensuring that the insurance undertaking has a representative in the State where the injured party resides, it is appropriate to guarantee the

(9) First Council Directive (73/239/EEC) of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJ L 228, 16.8.1973, p. 3). Directive as last amended by Directive 95/26/EC (OJ L 168, 18.7.1995, p. 7).

(10) 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) (OJ L 228, 11.8.1992, p. 1). Directive as amended by Directive 95/26/EC (OJ L 168, 18.7.1995, p. 7).

specific right of the injured party to have the claim settled promptly; it is therefore necessary to include in national law appropriate effective and systematic financial or equivalent administrative penalties – such as injunctions combined with administrative fines, reporting to supervisory authorities on a regular basis, on-the-spot checks, publications in the national official journal and in the press, suspension of the activities of the company (prohibition on the conclusion of new contracts for a certain period), designation of a special representative of the supervisory authorities responsible for monitoring 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 management staff – in the event that the insurance undertaking or its representative fails to fulfil its obligation to make an offer of compensation within a reasonable time-limit; this should not prejudice the application of any other measure – especially under 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 insurance undertaking is able to make a reasoned offer within the prescribed time-limit; the reasoned offer of compensation should be in writing and contain the grounds on the basis of which liability and damages have been assessed.

- (18) In addition to those sanctions, it is appropriate to provide that interest should be payable on the amount of compensation offered by the insurance undertaking or awarded by the court to the injured party when the offer has not been made within the said prescribed time-limit; if Member States have existing national rules which cover the requirement for late-payment interest this provision could be implemented by a reference to those rules.
- (19) Injured parties suffering loss or injury as a result of motor vehicle accidents sometimes have difficulty in establishing the name of the insurance undertaking providing insurance against civil liability in respect of the use of motor vehicles involved in an accident.
- (20) In the interest of such injured parties, Member States should set up information centres to ensure that such information is made available promptly; those information centres should also make available to injured parties information concerning claims representatives; it is necessary that such centres should cooperate with each other and respond rapidly to requests for information about claims representatives made by centres in other Member States; it seems appropriate that such centres should collect information about the actual termination date of the insurance cover but not about the expiration of the original validity of the policy if the duration of the contract is extended owing to non-cancellation.
- (21) Specific provision should be made with respect to vehicles (for example, government or military vehicles) which fall under the exemptions from the obligation to be insured against civil liability.
- (22) The injured party may have a legitimate interest in being 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 should also be provided accordingly.

- (23) 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, constitutes 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⁽¹¹⁾, 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; the name and address of the usual driver should be communicated only if national legislation provides for such communication.
- (24) It is necessary to make provision for a compensation body to which the injured party may apply where the insurance undertaking has failed to appoint a representative or is manifestly dilatory in settling a claim or where the insurance undertaking cannot be identified to guarantee that the injured party will not remain without the compensation to which he is entitled; the intervention of the compensation body should be limited to rare individual cases where the insurance undertaking has failed to comply with its duties in spite of the dissuasive effect of the potential imposition of penalties.
- (25) The role played by the compensation body is that of settling the claim in respect of any loss or injury suffered by the injured party only in cases which are capable of objective determination and therefore the compensation body must limit its activity to verifying that an offer of compensation has been made in accordance with the time-limits and procedures laid down, without any assessment of the merits.
- (26) Legal persons who are subrogated by law to the injured party in his claims against the person responsible for the accident or the latter's insurance undertaking (such as, for example, other insurance undertakings or social security bodies) should not be entitled to present the corresponding claim to the compensation body.
- (27) The compensation body should have a right of subrogation in so far as it has compensated the injured party; in order to facilitate enforcing the compensation body's claim against the insurance undertaking where it has failed to appoint a claims representative or is manifestly dilatory in settling a claim, the body providing compensation in the injured party's State should enjoy an automatic right of reimbursement with subrogation to the rights of the injured party on the part of the corresponding body in the State where the insurance undertaking is established; the latter body is the best placed to institute proceedings for recourse against the insurance undertaking.
- (28) Even though Member States may provide that the claim against the compensation body may be subsidiary, the injured person may not be obliged

(11) OJ L 281, 23.11.1995, p. 31.

to present his claim to the person responsible for the accident before presenting it to the compensation body; in this case the injured party should be in at least the same position as in the case of a claim against the guarantee fund under Article 1(4) of Directive 84/5/EEC.

- (29) The functioning of this system can be effected by means of an agreement between the compensation bodies established or approved by the Member States relating to their functions and obligations and the procedures for reimbursement.
- (30) Where it is impossible to identify the insurer of the vehicle, provision should be made so that the ultimate debtor in respect of the damages to be paid to the injured party 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, the use of which has caused the accident, is normally based; where it is impossible to identify the vehicle, provision must be made so that the ultimate debtor is the guarantee fund provided for in Article 1(4) of Directive 84/5/EEC situated in the Member State in which the accident occurred,

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 accidents occurring in a Member State other than the State of residence of the injured party which are caused by the use of vehicles insured and normally based in a Member State.

Articles 4 and 6 shall apply only in the case of accidents caused by the use of a vehicle

- (a) insured through an establishment in a Member State other than the State of residence of the injured party, and
- (b) normally based in a Member State other than the State of residence of the injured party.

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

Article 2

Definitions

For the purpose of this Directive:

- (a) "insurance undertaking" means an undertaking which has received its official authorisation in accordance with Article 6 or Article 23(2) of Directive 73/239/EEC;
- (b) "establishment" means the head office, agency or branch of an insurance undertaking as defined in Article 2(c) of Directive 88/357/EEC;
- (c) "vehicle" means a vehicle as defined in Article 1(1) of Directive 72/166/EEC;
- (d) "injured party" means an injured party as defined in Article 1(2) of Directive 72/166/EEC;
- (e) "the Member State in which the vehicle is normally based" means the territory in which the vehicle is normally based as defined in Article 1(4) of Directive 72/166/EEC.

Article 3

Direct right of action

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

Article 4

Claims representatives

1. Each Member State shall take all measures necessary to ensure that all insurance undertakings covering the risks classified in class 10 of point A of the Annex to Directive 73/239/EEC, other than carrier's liability, appoint a claims representative in each Member State other than that in which they have received their official authorisation. The claims representative shall be responsible for handling and settling claims arising from an accident in the cases referred to in Article 1. The claims representative shall be resident or established in the Member State where he is appointed.
 - (a) The choice of its claims representative shall be at the discretion of the insurer. The Member States may not restrict this choice.
 - (b) The claims representative may work for one or more insurers.
2. The claims representative shall, in relation to such claims, collect all information necessary in connection with the settlement of the claims and shall take the measures necessary to negotiate a settlement of claims. The requirement of appointing a claims representative shall not preclude the right of the injured party or his insurance undertaking to institute proceedings

directly against the person who caused the accident or his insurance undertaking.

3. Claims representatives must possess sufficient powers and linguistic ability to represent the insurance undertaking in relation to injured parties in the cases referred to in Article 1 and to meet their claims in full. They must be capable of examining cases in the official language(s) of the Member State of residence of the injured party.
4. The Member States shall create a duty, backed by appropriate, effective and systematic financial or equivalent administrative penalties, to the effect that, within three months of the date when the injured party presented his claim for compensation either directly to the insurance undertaking of the person who caused the accident or to its claims representative,
 - (a) the insurance undertaking of the person who caused 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, or
 - (b) the insurance undertaking 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 is denied or has not been clearly determined or the damages have not been fully quantified.

Member States shall adopt provisions to ensure that where the offer is not made within the three-month time-limit, interest shall be payable on the amount of compensation offered by the insurance undertaking or awarded by the court to the injured party.

5. The Commission shall report to the European Parliament and Council on the implementation of paragraph 4, first subparagraph, and on the effectiveness of that provision as well as on the equivalence of national penalty provisions before^(*) and shall submit proposals if necessary.
6. 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 or an establishment within the meaning of the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgements in civil and commercial matters⁽¹²⁾.

(*) Five and a half years from the date of the entry into force of this Directive.
(12) OJ C 27, 26.1.1998, p. 1 (consolidated version).

Article 5

Article Information centres

1. For the purposes of allowing the injured party to seek compensation, each Member State shall establish or approve an information centre responsible:
 - (a) for keeping a register containing the following information:
 - (1) the registration numbers of motor vehicles normally based in the territory of the State in question;
 - (2)
 - (i) the numbers of the insurance policies covering the use of those vehicles for the risks classified in class 10 of title A of the Annex to Directive 73/239/EEC, other than carrier's liability, and where the period of validity of the policy has expired, also the date of termination of the insurance cover;
 - (ii) 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;
 - (3) insurance undertakings covering the use of vehicles for the risks classified in class 10 of title A of the Annex to Directive 73/239/EEC, other than carrier's liability, and claims representatives appointed by such insurance undertakings in accordance with Article 4 whose names shall be notified to the information centre in accordance with paragraph 2 of this Article;
 - (4) the list of vehicles which, in each Member State, benefit from the derogation from the requirement for civil liability insurance cover in accordance with Article 4(a) and (b) of Directive 72/166/EEC;
 - (5) regarding the vehicles provided for in point (4):
 - (i) the name of the authority or the body designated in accordance with the second subparagraph of Article 4(a) of Directive 72/166/EEC as responsible for compensating injured parties in the 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 the Member State where it is normally based if the vehicle benefits from the derogation provided for in Article 4(b) of Directive 72/166/EEC;

- (b) or for coordinating the compilation and dissemination of that information;
- (c) and for assisting entitled persons to be apprised of the information mentioned in points (a)(1), (2), (3), (4) and (5)

The information under points (a)(1), (2) and (3) must be preserved for a period of seven years after the termination of the registration of the vehicle or the termination of the insurance contract.

2. Insurance undertakings referred to in paragraph 1(a)(3) shall notify to the information centres of all Member States the name and address of the claims representative which they have appointed in accordance with Article 4 in each of the Member States.
3. The Member States shall ensure that the injured party is entitled for a period of seven years after the accident to obtain without any unnecessary delay¹³ from the information centre of the Member State where he resides or of the Member State where the vehicle is normally based or where the accident occurred the following information:
 - (a) the name and address of the insurance undertaking;
 - (b) the number of the insurance policy; and
 - (c) the name and address of the insurance undertaking's claims representative in the State of residence of the injured party

Information centres shall cooperate with each other.

4. The information centre shall 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 in obtaining this information. For the purposes of this provision, the information centre shall address itself in particular:
 - (a) to the insurance undertaking, or
 - (b) to the vehicle registration agency

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

(13) The term “immediately” was suggested by the European Parliament but needs to be more specified to avoid discrepancies when Member States implement this provision.

If the vehicle benefits from the derogation provided for in Article 4(b) of Directive 72/166/EEC, the information centre shall inform the injured party of the name of the body covering the vehicle in the country where it is normally based.

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.

Article 6

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:

- (a) if, within three months of the date when the injured party presented his claim for compensation to the insurance undertaking of the vehicle the use of which caused the accident or to its claims representative, the insurance undertaking or its claims representative has not provided a reasoned reply to the points made in the claim; or
- (b) if the insurance undertaking has failed to appoint a claims representative in the State of residence of the injured party in accordance with Article 4(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 insurance undertaking 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.

Injured parties may not however present a claim to the compensation body if they have taken legal action directly against the insurance undertaking.

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

The compensation body shall immediately inform:

- (a) the insurance undertaking of the vehicle the use of which caused the accident or the claims representative;
- (b) the compensation body in the Member State of the insurance undertaking's establishment which issued the policy;
- (c) if known, the person who caused the accident,

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

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

2. The compensation body which has compensated the injured party in his Member State of residence shall be entitled to claim reimbursement of the sum paid by way of compensation from the compensation body in the Member State of the insurance undertaking's establishment which issued the policy.

The latter body shall then be subrogated to the injured party in his rights against the person who caused the accident or his insurance undertaking 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. This Article shall take effect:
 - (a) after an agreement has been concluded between the compensation bodies established or approved by the Member States relating to their functions and obligations and the procedures for reimbursement;
 - (b) from the date fixed by the Commission upon its having ascertained in close cooperation with the Member States that such an agreement has been concluded,

and shall apply for the whole duration of that agreement.

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

Article 7

If it is impossible to identify the vehicle or if, within two months following the accident, it is impossible to identify the insurance undertaking, the injured party may apply for compensation from the compensation body in the Member State where he resides. The compensation shall be provided in accordance with the provisions of

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

Article 1 of Directive 84/5/EEC. The compensation body shall then have a claim, on the conditions laid down in Article 6(2) of this Directive:

- (a) where the insurance undertaking cannot be identified: against the guarantee fund provided for in Article 1(4) of Directive 84/5/EEC in the Member State where the vehicle is normally based;
- (b) in the case of an unidentified vehicle: against the guarantee fund in the Member State in which the accident took place;
- (c) in the case of third-country vehicles: against the guarantee fund of the Member State in which the accident took place.

Article 8

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

- (a) In Article 8(1) the following point shall be added:

"(f) communicate the name and address of the claims representative appointed in each Member State other than the Member State in which the authorisation is sought if the risks to be covered are classified in class 10 of title A of the Annex, other than carrier's liability.";
- (b) In Article 23(2) the following point shall be added:

"(h) communicate the name and address of the claims representative appointed in each Member State other than the Member State in which the authorisation is sought if the risks to be covered are classified in class 10 of title A of the Annex, other than carrier's liability."

Article 9

Directive 88/357/EEC shall be amended as follows:

In Article 12a(4) the following subparagraph shall be added:

"If the insurance undertaking has failed to appoint a representative, Member States may give their approval to the claims representative appointed in accordance with Article 4 of Directive 99/.../EC(*) assuming the function of the representative appointed according to this paragraph."

(*) Directive 99/.../EC of the European Parliament and of the Council of on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Directives 73/239/EEC and 88/357/EEC (OJ L

Article 10

Implementation

1. Member States shall adopt and publish before^(*) the laws, regulations and administrative provisions necessary to comply with this Directive . They shall forthwith inform the Commission thereof.

They shall apply these provisions before^(**).
2. When these measures are adopted by the Member States, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.
3. Without prejudice to paragraph 1 the Member States shall establish or approve the compensation body in accordance with Article 6(1) before ...^(*). If the compensation bodies have not concluded an agreement in accordance with Article 6(3) before ...^(**), the Commission shall propose measures designed to ensure that the provisions of Articles 6 and 7 take effect before ...^(***).
4. Member States may, in accordance with the Treaty, maintain or bring into force provisions which are more favourable to the injured party than the provisions necessary to comply with this Directive.
5. Member States shall communicate to the Commission the text of the main provisions of domestic law which they adopt in the field governed by this Directive.

Article 11

Entry into force

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

Article 12

Penalties

The Member States shall fix penalties for breaches of the national provisions which 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

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

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

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

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

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

Member States shall notify these provisions to the Commission not later than^(*)
and any subsequent amendments thereof as soon as possible.

Article 13

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

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