



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07.06.2002  
COM(2002) 244 final

2002/0124 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

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

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1. GENERAL COMMENTS

#### 1.1. The existing Motor Insurance Directives

The Directives on insurance against civil liability in respect of the use of motor vehicles (Motor Insurance Directives)<sup>1</sup> date back to 1972 and the First Motor Insurance Directive. The most recent development in this field was in 2000, with the adoption of the Fourth Motor Insurance Directive.

With the first three Directives, the Community took fundamental steps towards establishing a single market in the field of motor insurance:

- they introduced an obligation for all motor vehicles in the Community to be covered by insurance against third-party liability (compulsory motor insurance) and fixed minimum amounts for such insurance cover;
- they ensured the free movement of motor vehicles by making the insurance certificate generally valid throughout Community territory, thereby obviating the need for insurance checks at borders. This was a major step towards ensuring the free movement of individuals and goods across borders;
- they ensured that victims of accidents caused by unidentified or uninsured vehicles would be compensated through the establishment of compensation bodies (guarantee funds) in all Member States;
- they ensured that all passengers in the vehicle (including the family of the driver) fall within the definition of victims covered by compulsory insurance.

These first three Directives built on the system of “green cards”, which had been introduced to facilitate the settlement of claims in accidents caused by a motorist in a Member State other than that in which the vehicle is normally based. This system ensures the payment of compensation to victims of accidents caused by visiting vehicles through a private-sector network of Green Card Bureaux set up by the insurers and established in all the Member States.

However, an important gap still remained: because the original aim was to eliminate border controls on insurance, the “green card” system covered victims only when they were in their home country. It did not cover the settlement of claims when the accident took place outside the victim's Member State of residence (visiting victims). This gap was filled by the Fourth Motor Directive,<sup>2</sup> which also provides for an efficient mechanism for settling claims in respect of such accidents.

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<sup>1</sup> Directive 72/166/EEC, OJ L 103, 2.5.1972, p. 1 (First Motor Directive); Directive 84/5/EEC, OJ L 8, 11.1.1984, p. 17 (Second Council Directive); Directive 90/232/EEC, OJ L 129, 19.5.1990, p. 33 (Third Motor Directive); Directive 2000/26/EC, OJ L 181, 20.7.2000, p. 65 (Fourth Motor Directive).

<sup>2</sup> Directive 2000/26/EC, OJ L 181, 20.7.2000, p. 65 (Fourth Motor Directive).

## **1.2 The need for a Fifth Motor Directive**

Further work is needed. There is increasing growth in cross-border traffic and the Commission continues to receive a large number of questions, complaints and petitions from individuals and members of the European Parliament on the operation of the Motor Insurance Directives.

It is not only that some aspects of the Directives adopted in the 1970s or 1980s need to be updated (in particular, review of the minimum amount of cover). There is also a need to fill gaps or provide solutions to problems that arise very frequently. This is the case, in particular, for:

- the large number of people (e.g. students, workers residing temporarily abroad and individuals with secondary residences) who complain about the difficulties of finding insurance for a temporary stay in another Member State;
- individuals wishing to purchase a new or second-hand car in another Member State who encounter difficulties in finding short-term insurance cover before the vehicle is registered in the country of importation;
- the growing demand for motor insurance cover for pedestrians and cyclists;
- motorists wishing to obtain from their existing insurer a statement relating to their claims record in order to negotiate a contract with another insurance undertaking.

Finally, the Fourth Motor Directive applies only to the settlement of claims in respect of accidents which occurred outside the victim's Member State of residence. The settlement mechanism has a two-fold objective: to ensure that “visiting victims” are compensated quickly, and to set up an efficient system of compensation that keeps legal costs to a minimum.

It is now proposed to extend this settlement mechanism to all accidents, regardless of the victim's Member State of residence.

The need to revise and modernise the Motor Insurance Directives has been confirmed by a wide-ranging consultation exercise initiated by the Commission in 1999 and involving national authorities, industry representatives and groups representing users and victims. The European Parliament, aware of the impact that motor insurance has on the day-to-day life of individuals, adopted in July 2001 a Resolution recommending the adoption of a fifth motor insurance directive. The present proposal for a Directive is the Commission's response.

## **1.3. The objectives of the proposal**

The proposal aims to revise the Motor Insurance Directives in order to achieve the following main objectives:

- (1) to update and improve the protection of victims of motor vehicle accidents by compulsory insurance;

- (2) to fill gaps and clarify certain provisions of the Directives, thereby ensuring increased convergence as regards their interpretation and application by the Member States;
- (3) to provide solutions to problems which arise frequently in order to create a more efficient single market in motor insurance.

#### **1.4. The content of the proposal: issues addressed**

The different reasons for revising and modernising the Motor Insurance Directives are described in detail below. The proposed solutions are explained in the “Description of articles” in paragraph 2 of this Explanatory Memorandum.

##### *(a) Temporary registration plates [Article 1(1)(a)]*

The definition of “*the territory in which the vehicle is normally based*” in Article 1(4) of Directive 72/166/EEC refers to the territory of the State of which the vehicle bears a registration plate but it does not specify whether the registration plate should be temporary or permanent. There have been difficulties in the case of some vehicles bearing temporary plates in finding insurance cover in the Member State in which they are registered.

In order to avoid any misinterpretation of this provision, the definition should be amended by including an explicit reference to temporary registration plates.

##### *(b) Vehicles without a registration plate or bearing a non-corresponding plate [Article 1(1)(b)]*

When an accident is caused by a vehicle without a registration plate or bearing a plate not corresponding to the vehicle, the determination of the “*territory in which the vehicle is normally based*” poses a problem which cannot be easily resolved.

Interpreting the Directives, the European Court of Justice has stated that “*a vehicle which, on crossing the frontier, bears a registration plate that was duly issued by the authorities of a Member State but is false by reason of the fact that it is in reality the registration plate allocated to another vehicle, is to be regarded as normally based in the territory of the State which issued the plate in question*”<sup>3</sup> and that systematic checking would be required to ascertain whether the plate was valid<sup>4</sup>.

As a result of the Court rulings, national bureaux are often obliged to deal with the economic consequences of accidents which do not have any connection with the Member State in which they are established. However, the ECJ rulings do not prevent the Community legislator from envisaging a different solution for the future. The Council of Bureaux has suggested that, in the case of vehicles without a registration plate or bearing a non-corresponding registration plate, the territory in which the vehicle is normally based should, for settlement purposes, be the territory of the Member State in which the accident took place.

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<sup>3</sup> Fournier ruling.

<sup>4</sup> Gambetta ruling.

(c) *Checks on insurance [Article 1(2)]*

With a view to facilitating the free movement of vehicles and persons within the European Community, Article 2 of Directive 72/166/EEC abolished the checks on green cards for vehicles normally based in a Member State entering the territory of another Member State.

There has been some confusion concerning the scope of the “*random checks*” referred to in Article 2(1). The first problem of interpretation concerns whether the last sentence of the second subparagraph should also apply to the first subparagraph. In other words, to what extent are “*random checks*” permitted in the case of vehicles normally based in a Member State entering the territory of another Member State? The second problem relates to the interpretation of the term “*random checks*” itself, the meaning of which is not evident, especially in view of the difficulty of finding an appropriate translation in the other Community languages.

The Commission wishes to clarify this matter and proposes that insurance controls concerning intra-Community traffic may be justified, under certain conditions, for reasons of public order (e.g. following an accident or mishap). These conditions should be that the controls are non-systematic and non-discriminatory and are not aimed at insurance verification.

(d) *Derogation from the obligation to insure certain vehicles [Article 1(3)]*

Article 4 of Directive 72/166/EEC provides that Member States may exclude from compulsory insurance certain types of vehicles having special registration plates, provided that such exclusions are communicated by the Member State concerned to the other Member States and to the Commission.

Paragraph (a) refers to vehicles owned by certain natural or legal persons for which the Member States applying such derogation should ensure that compensation is paid in the case of accidents taking place in other Member States. Application of this paragraph does not pose any particular problems as the payment of compensation is ensured by the Member State.

Paragraph (b) permits a Member State to exclude from compulsory insurance “*certain types of vehicle or certain vehicles having a special plate*” (e.g. some low-speed vehicles and certain motor machines). There is no obligation for the Member State to ensure compensation of the victims of accidents caused by these vehicles in another Member State. The paragraph allows the other Member States to carry out border controls with regard to these vehicles in order to check that the driver is in possession of a green card or has concluded a frontier insurance contract.

But such border checks carried out under the Directive with respect to the vehicles concerned by Article 4(b) are no longer permitted at the internal borders of the Member States following the Schengen Agreement. Therefore, the conditions for implementing this derogation no longer apply.

(e) *Review of the minimum amounts of cover [Article 2]*

According to Article 6(2) of Directive 84/5/EEC, the Commission should “*where appropriate, submit proposals in particular as regards adjustment of the amounts laid down in Article 1(2) and (4)*”. Nevertheless, the existing minimum amounts of cover have not been revised since the Directive was adopted.

Meanwhile, the Member States’ national legislation has evolved substantially in this respect: eight Member States have introduced unlimited cover for personal injuries and many of them have introduced amounts of cover far higher than the minimum laid down in the Directive for the compensation of damage to property.

If we take account of the impact of inflation on the current amounts<sup>5</sup> since the Directive was adopted in 1984, the figures would be as follows: personal injuries: EUR 605 500 in the case of a single victim and EUR 865 000 per claim in the case of more than one victim; damage to property: EUR 173 000 per claim; personal injuries and damage to property: EUR 1 038 000 per claim.

It should be noted that the European Parliament draft Resolution on a Fifth Motor Directive provides for single minimum cover of EUR 2 000 000, but no explanation regarding the basis for the calculation of this figure has been provided.

(f) *Elimination of the Member States’ option to limit compensation to damage to property in the case of accidents caused by unidentified vehicles [Article 2]*

Article 1(4) of Directive 84/5/EEC provides that Member States are to set up or authorise a body with the task of providing compensation, at least up to the limits of the insurance obligation, for damage to property or personal injuries caused by an unidentified vehicle or a non-insured vehicle.

However, the fourth subparagraph of this provision contains an exception which may seriously limit the scope of the compensation provided. It states that “*Member States may limit or exclude the payment of compensation by the body in the event of damage to property by an unidentified vehicle.*” This exception is justified in the last sentence of the sixth recital to the Directive “in view of the danger of fraud”.

According to a number of complaints received by the Commission from accident victims, it seems that certain Member States exclude the payment of compensation by their national bodies for damage to property even where the specific circumstances involved eliminate any risk of fraud, e.g. when the victim has suffered personal injuries as well as damage to property in the same accident.

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The current minimum amounts for compulsory insurance are:  
Personal injuries: EUR 350 000 in the case of one victim and EUR 500 000 per claim in the case of more than one victim;  
Damage to property: EUR 100 000 per claim;  
Personal injuries and damage to property: EUR 600 000 per claim.

(g) *Regime for service representatives [Article 3]*

The first sentence of the second subparagraph of Article 12a(4) of Directive 88/357/EEC (Second Non-Life), as amended by Directive 90/618/EEC (Freedom to provide services - Motor), states that "*the Member State of provision of services (i.e. where the risk is situated) shall require the undertaking to appoint a representative resident or established in its territory who shall collect all necessary information in relation to claims*". The last sentence of the fourth subparagraph states that "*The appointee shall not take up the business of direct insurance on behalf of the said undertaking.*"

This latter provision prevents branches of the insurance undertaking from becoming claim representatives for the freedom to provide services, although subsidiaries (which are independent legal persons) are not affected by this prohibition. This may entail extra costs.

The reason for such a provision – not specified in the recitals to the Directive – was probably to prevent the simultaneous exercise of the freedom to provide services and the right of establishment. However, the Third Directives subsequently abolished all restrictions on the simultaneous exercise of these functions. The consequence of this legislative development is that, according to the current insurance Directives, branches of insurance undertakings are allowed to act as service representatives for all insurance operations except motor insurance.

(h) *Cover for passengers who knew or should have known that the driver was under the influence of alcohol or any other intoxicating agent [Article 4(1)]*

The intention of the Motor Insurance Directives to ensure that compulsory insurance covers all passengers in the vehicle is not disputed. Nevertheless, some interpretations have maintained that passengers might be excluded from cover where they knew or should have known that the driver of the vehicle was under the influence of alcohol or other intoxicating agent at the time of the accident. Such an interpretation has even been included in some Member States' national legislation.

The passenger is not usually in a position to assess properly the intoxication level of the driver. In any case, the emphasis should be on protecting the victim. To discourage persons under the influence of intoxicating agents from driving is a very worthy objective but it is not legitimate to try to achieve this result by reducing the insurance cover for passengers who are victims in motor accidents.

It is therefore important to clarify this point of the Directives along the lines of the doctrine established by the Court of Justice.<sup>6</sup>

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<sup>6</sup> Case C-129/94 *Ruiz Bernáldez*.

(i) *Pedestrians and cyclists [Article 4(2)]*

While pedestrians and cyclists may be the cause of some accidents, motor vehicles cause most accidents. Whoever is responsible for the accident, pedestrians and cyclists usually suffer more in accidents involving motor vehicles.

In case of an accident not caused by the driver, the situation of pedestrians and cyclists differs a good deal from one Member State to another. In some Member States no insurance cover is provided and the courts often try to establish driver liability in such a way as to permit inclusion of the victim within the motor insurance cover. In other Member States the legislation provides that pedestrians and cyclists are covered by the insurance for the vehicle involved in the accident, irrespective of whether the driver is at fault, although the particular circumstances in which the civil liability of the pedestrian or cyclist is involved varies according to the national legislation.

As far as the Commission is aware, such inclusion of pedestrians and cyclists in some Member States' legislation does not seem to have had a significant impact on the cost of the insurance.

(j) *Cover over the entire territory of the Community during the whole term of the contract (temporary stays in other Member States) [Article 4(3)]*

The Commission receives a large number of letters from individuals complaining about the difficulties of finding insurance cover for a temporary stay abroad that stem from the practice followed by certain insurance undertakings. Some insurers stipulate in their policies that the contract is to expire after the insured vehicle has remained for a certain period of time in another Member State. Other contracts state that the policyholder has to notify the insurance undertaking if the vehicle remains abroad beyond a certain period so that the premium can be revised. The lack of such notification may result in early termination of the contract.

Both kinds of clause have similar effects: they hinder the free movement of persons as well as the functioning of the single market. They are in contradiction to Article 2, first indent, of Directive 90/232/EEC, which obliges Member States to ensure that compulsory insurance policies against motor vehicle liability cover the entire Community territory on the basis of a single premium.

It may be appropriate to clarify the Directives in this respect in order to ensure the effective application of this principle so that an insured person who moves to another Member State on a temporary basis, whether for professional or private reasons, may not be deprived of insurance cover. This should, however, not affect the obligations under the Member States' national legislation with respect to the registration of vehicles.



(k) *Insurance cover for imported vehicles [Article 4(4)]*

Every year thousands of individuals apply to register in their Member State of residence an imported vehicle previously registered in another Member State.<sup>7</sup> It may be a second-hand vehicle purchased in another Member State by the applicant himself or by a dealer or a vehicle bought new in another Member State. There are significant price differences within the Community and it is only normal that individuals should wish to take advantage of the single market.

For the journey to the Member State of destination the vehicle has to be covered by an insurance policy issued by a company authorised to operate in the Member State of origin. Such short-term insurance is normally much more expensive *pro rata* than insurance for a normal full term or it is more often than not difficult to find any insurer ready to provide such short-term cover.

When the vehicle reaches the Member State of destination, it needs to be covered by insurance until its new registration is completed. In the exporting Member State the vehicle insurance does not often provide cover for this period and it is difficult to find alternative insurance in the Member State of destination.

The Directives should provide for a solution to make it easier to obtain insurance cover for these vehicles.

(l) *Accident statement provided by the insurer [Article 4(4)]*

When, upon termination of an insurance contract, a policyholder decides to take out a new contract with an insurance undertaking established in another Member State (because he has changed his residence or wishes to obtain cross-border insurance), he may have difficulties in obtaining from the former insurer a statement concerning his accident record. The fact that he is unable to show proof of his accident record under the old contract often means that the policyholder cannot negotiate the best premium with the new insurer.

The Directives should therefore establish the insurer's obligation to provide the aforementioned accident statement upon termination of the contractual relationship. This obligation should not affect the freedom of the parties to fix the premium for the insurance contract.

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<sup>7</sup> The deadline for re-registration of vehicles is not harmonised. It differs widely within the EEA: one day in Ireland; three days in Austria; fourteen days in Denmark; one month in Finland, Portugal and Sweden; three months in France and the United Kingdom; six months in Greece, Luxembourg and Spain; and one year in Germany, Italy, the Netherlands and Norway.

*(m) Excesses [Article 4(4)]*

Excesses are part of any damage for claims which the insured person and not the insurer must pay.

The effective protection of the victim requires that the excesses provided for in national legislation or agreed upon in the contract should not be enforced against the accident victim as far as compulsory insurance is concerned.

These excesses should be allowed only within the framework of the relationship between the insured and the insurer.

*(n) Extension to all accidents of the mechanism of the Fourth Motor Directive<sup>8</sup> for a quick and efficient settlement of claims [Article 4(4)]*

The mechanism provided for in the Fourth Motor Directive to settle accident claims has a two-fold objective: to ensure that victims are compensated quickly, and to set up an efficient system of compensation that keeps legal costs to a minimum. The Directive applies to the settlement of claims in respect of accidents which occurred outside the victim's Member State of residence.

In connection with the modernisation of the Motor Insurance Directives, it has been considered appropriate to extend the provisions introduced by the Fourth Directive to the settlement of claims in respect of all kinds of accident, regardless of the victim's Member State of residence. Such an extension should be compatible with the existing system of bureaux provided for in Article 2(2) of Directive 72/166/EEC for the settlement of claims in respect of accidents caused by vehicles normally based in the territory of another Member State.

The mechanism which is proposed is composed of the following elements:

- Right of direct action for the victims of any motor accident

Article 3 of the Fourth Motor Directive provides that victims of accidents occurring either in a Member State other than the injured party's Member State of residence or in a third country belonging to the green card system has a right of direct action against the insurance undertaking covering the person responsible. The right of direct action is a necessary condition for the appropriate application of the reasoned offer procedure (see below).

It should be noted that the victim's right of direct action against the insurance undertaking is not a procedural or civil law matter alien to insurance. The introduction of an improved system of compulsory insurance in the Community with an appropriate level of protection for victims requires that the right of direct action be extended to all victims of motor accidents.

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<sup>8</sup> Directive 2000/26/EC, OJ L 181, 20.7.2000, p. 65 (Fourth Motor Directive).

- Appointment by the insurance undertaking of a claims representative

Article 4(1) of the Fourth Motor Directive requires each insurance undertaking to appoint a representative in all Member States to handle claims. The functions of this representative are currently limited to the accidents covered by the Directive (accidents occurring outside the victim's Member State of residence).

- Reasoned offer procedure

Article 4(6) of the Fourth Motor Directive provides that Member States should require the insurance undertaking of the person responsible for the accident to make within three months of the date of the claim a reasoned offer of compensation in cases where liability is not contested and where the damages have been quantified or to provide a reasoned reply in case of denial. This duty should be backed up by appropriate, effective and systematic financial or equivalent administrative penalties.

- Setting up of information centres

Article 5 of Directive 2000/26/EC obliges each Member State to set up an information centre responsible for keeping a register containing specified information in order to facilitate the settlement of claims.

The extension of the compensation body provided for in Article 6 of the Fourth Motor Directive to all accidents would, however, not be appropriate since the functioning of this body would interfere with the existing system of “green card” bureaux for the settlement of claims in respect of accidents caused by vehicles normally based in the territory of another Member State.

## 2. DESCRIPTION OF ARTICLES

### *Article 1(1) – Temporary registration plates – Vehicles without a registration plate or bearing a non-corresponding plate*

Paragraph 1 of this Article amends the first indent of Article 1(4) of Directive 72/166/EEC, which contains the definition of the territory in which the vehicle is normally based. The objective is to rule out any misinterpretation. The text makes it clear that the definition applies to both temporary and permanent registration.

Paragraph 2 inserts a sentence in the aforementioned definition of the territory in which the vehicle is normally based. This amendment clarifies the application of this definition in the case of vehicles without a registration plate or bearing a plate which does not correspond to the vehicle. It states that, in the event of an accident, the territory in which those vehicles should be considered to be normally based is the territory in which the accident took place. Although other alternative criteria (such as the territory of the latest plate legally allocated to the vehicle) have been considered, the proposal follows the Council of Bureaux's recommendation in this respect as this will facilitate the settlement of claims involving such vehicles.

In order to cover all possible illegal situations concerning registration plates (false and forged plates, absence of plates and non-valid plates), the provision refers to vehicles "*not bearing any registration plate or bearing a registration plate which does not correspond or does not correspond any more to the vehicle*".

### *Article 1(2) – Checks on insurance*

There has been some confusion concerning the scope of the term "*random checks*" used in Article 2(1) of Directive 72/166/EEC as well as its interpretation.

The proposal clarifies the application of this provision in two important respects: first, it limits the scope of the prohibition on carrying out insurance checks to vehicles normally based in the territory of another Member States and to vehicles normally based in the territory of a third country entering from the territory of another Member State; second, it avoids the term "*random checks*" and defines the checks that are permitted by reference to three negative conditions: non-systematic, non-discriminatory and not aimed at insurance verification.

### *Article 1(3) – Derogation from the obligation to insure certain vehicles*

The proposal repeals Article 4(b) of Directive 72/166/EEC.

Article 4 of the First Motor Directive allows Member States to derogate in some cases from the general obligation to provide compulsory insurance for motor vehicles. Article 4(a) provides for certain cases of derogation (vehicles owned by specific legal persons) in which Member States must ensure that compensation is paid in respect of any loss or injury resulting from accidents occurring in the territory of another Member State. Since, in these cases, the protection of the victims of non-insured vehicles is guaranteed, the derogation can be maintained.

Paragraph (b) of the aforementioned Article provides for other cases of derogation (vehicles with special features) in which the Directive allows Member States to require presentation of a valid green card or a frontier insurance contract at the border as a means of ensuring payment of compensation to the victims of accidents caused by vehicles coming from another Member State. However, after the abolition of border controls within the Community following the Schengen Agreement, the payment of compensation to the victims of accidents caused outside the territory of their registration by vehicles subject to this derogation can no longer be guaranteed. The derogation should therefore be abrogated.

#### *Article 2 – Minimum amounts of cover*

In revising the minimum amounts of cover agreed many years ago, the Commission has rejected the option of introducing unlimited cover such as exists in some Member States. It has also rejected single minimum cover for personal injuries and damage to property. It considers that personal injuries are more significant for the victim than damage to property and require stronger protection.

The proposal amends Article 1(2) of Directive 84/5/EEC and provides for a minimum amount of cover EUR 1 000 000 per victim for personal injuries and EUR 500 000 per claim for damage to property. The overall minimum amount per claim for personal injuries where there is more than one victim and the overall amount for personal injury and damage to property are abolished. The Commission takes the view that the proposed amounts should be an appropriate minimum, in order not only to take account of inflation and financial reality in all the Member States but also to improve the protection of victims.

Abolition of these amounts, in addition to the increase in the minimum amount of cover, is a key element in improving protection. It should be stressed that the Commission's intention is not only to maintain the economic value of the existing thresholds by adjusting them for inflation but also to improve substantially the protection afforded to victims.

A new paragraph 3 replaces the old paragraph 3 in the amended Article. The latter contained a conversion value clause which is no longer applicable in view of the introduction of the euro. The former provides for a periodic review clause ensuring that the minimum amounts are updated without it being necessary to amend the Directive. The most clear and objective index is probably the European index of consumer prices published by Eurostat.

To facilitate the application of the review clause, the Commission should inform the Council and Parliament of the review and the adapted amounts and ensure publication of those amounts in the *Official Journal of the European Communities*.

Finally, in order to improve the protection afforded to victims in the case of damage caused by unidentified vehicles, an amendment is proposed to Article 1(4) of Directive 84/5/EEC. This amendment is aimed at restricting the discretion granted to Member States to limit or exclude payments by the compensation body in order to prevent fraud. It excludes the application of such discretion where damage to property and significant personal injuries have resulted from the same accident and where the risk of fraud is therefore negligible. Owing to the difficulty of establishing a harmonised definition of significant personal damages, definition of this concept is left to national legislation.

### *Article 3 – Service representatives*

Article 12a(4) of Directive 88/357/EEC is amended in order to permit branches of insurance undertakings to become representatives in respect of the freedom to provide services, as already happens with respect to any insurance activity other than motor insurance.

### *Article 4(1) – Passengers' knowledge of the driver's incapacity*

This provision is designed to correct any misinterpretation of the Directives and to ensure full cover for all passengers. According to some interpretations in a number of Member States, a passenger may be excluded from insurance cover on the basis that he knew or should have known that the driver of the vehicle was under the influence of alcohol or any other intoxicating agent. Depriving the passenger of cover in such cases would be in clear conflict with the spirit of the insurance Directives as well as with the case law of the Court of Justice.

Cover for such passengers under the compulsory motor insurance for the vehicle does not prejudice any hypothetical liability which they might have incurred pursuant to the applicable national legislation or the level of awards for damages in a specific accident, which should be determined by the national courts.

### *Article 4(2) – Pedestrians and cyclists*

A new provision is inserted in Directive 84/5/EEC in order to include in the cover provided by the vehicle insurance personal injuries suffered by pedestrians and cyclists in accidents involving a motor vehicle. This cover under the compulsory insurance of the vehicle should apply, irrespective of whether the driver is at fault.

To avoid any possible confusion between insurance matters (scope of the insurance Directives) and civil law (scope of national legislation), a recital states that the civil liability of pedestrians and cyclists must be governed by the applicable Member State legislation. In other words, the victim's injuries must, in principle, be covered by the vehicle insurance. This cover under the compulsory motor insurance of the vehicle does not determine the civil liability of the pedestrian or cyclist in a specific accident or the level of any award for damages. This should be governed by the applicable national legislation and the national courts.

### *Article 4(3) – Cover for the entire territory of the Community during the whole term of the contract*

Article 2, first indent, of Directive 90/232/EEC provides that compulsory insurance should cover the entire territory of the Community on the basis of a single premium.

Article 4(3) of the proposal aims to clarify this obligation and to prevent insurers from carrying out practices which limit this obligation. The objective is that an insured person who moves from one Member State to another on a temporary basis, whether for professional or private reasons, should not be deprived directly or indirectly of insurance cover.

### *Article 4(4) – Insurance cover for imported vehicles*

Individuals wishing to purchase new or second-hand cars in one Member State and import them into another Member State often complain about the difficulties they have in finding insurance cover.

By considering the importing Member State as the territory in which the vehicle is normally based for a period of thirty days after delivery, insurers in that Member State would be allowed to cover the risk during that period without being obliged to follow the procedures laid down in the insurance Directives in respect of the freedom to provide services. This would make it easier to obtain insurance cover for the first thirty days after delivery and allow the purchaser to import and register the car during that period.

If during those thirty days the imported vehicle is involved in an accident without being covered by insurance, the compensation body of the importing Member State should be liable. The competence of that compensation body in this case is a result of the provision that the importing Member State is considered to be the territory in which the vehicle is normally based during that period.

#### *Article 4(4) – Insurer’s statement relating to accidents*

This provision is designed to permit an insured person who wishes to take out a new insurance policy with another insurance undertaking to show proof of his record of claims/accidents under his old policy.

The Article sets out the insurer’s obligation to provide the policyholder, within fifteen days of the end of the contractual relationship, with a statement relating to claims involving his vehicle for the duration of that relationship, subject to a limit of five years.

However, the proposal does not intend to determine the way in which an accident record should be taken into account by the new insurer in order to assess the risks or determine the premium. The Directives should not interfere with the principle of freedom to set prices applied in the single market for financial services. This provision does not therefore affect the freedom of the parties to fix the premium of the insurance contract.

#### *Article 4(4) – Excesses*

In order to provide full protection for the victims of motor accidents, Member State should not allow excesses to be relied on against an injured party, except in the exceptional cases in which they are permitted by the Directives (e.g. Article 1(4) of Directive 84/5/EEC, as amended by Article 4 of this proposal, in order to prevent fraud).

#### *Article 4(4) – Right of direct action*

This provision extends the right of direct action provided for in Article 3 of the Fourth Motor Directive to parties having suffered damage to property or personal injuries in any motor vehicle accident.

The determination whether the victim of an accident has the right to invoke the insurance contract and to bring its claim directly against the insurance undertaking is a significant element of the insurance relationship which has great importance for the protection of the victim. It is not justified within the framework of a modernisation of the Motor Insurance Directives to confine this right to the victims of accidents occurring outside their Member State of residence as provided in the Fourth Motor Directive. The victims of other motor vehicle accidents deserve the same protection.

*Article 4(4) – Claims representatives and reasoned offer procedure*

As for the right of direct action, it does not seem justified within the context of a modernisation of the Motor Insurance Directives to confine the application of provisions which may have a significant impact on the protection of victims to the limited scope of the Fourth Motor Directive.

This provision extends the reasoned offer procedure provided for in Article 4(6) of the Fourth Motor Directive to any kind of motor vehicle accident.

Moreover, since the proper functioning of this procedure requires that each insurance undertaking should have a claims representative in all Member States and since the Fourth Motor Directive already obliges insurance undertakings to appoint such a representative, the proposal, building on the existing mechanism, expands the functions of the representative so that he may handle any accident caused by a vehicle covered by compulsory insurance.

Article 4(4) of the proposal is compatible with the system of bureaux provided for in Article 2(2) of Directive 72/166/EEC for the settlement of claims in respect of accidents caused by vehicles normally based in the territory of another Member State, whether or not such vehicles are insured.

*Article 4(4) – Information centres*

In order to help the injured party seek compensation, the information centres provided for in the Fourth Motor Insurance Directive should not be confined to the accidents referred to in that Directive but should also provide information in the case of any accident caused by a vehicle covered by compulsory insurance.

*Article 5 – Deletion of reference to repealed Article*

Article 5 of this proposal repeals Article 4(b) of Directive 72/166/EEC, which contains certain derogations from the obligation to insure motor vehicles. The reference to this provision in Article 5 of Directive 2000/26/EC should therefore be repealed.



Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

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

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the first and third sentences of Article 47(2), Article 55 and Article 95(1) thereof,

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

Having regard to the opinion of the Economic and Social Committee<sup>2</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>3</sup>,

Whereas:

- (1) Insurance against civil liability in respect of the use of motor vehicles (motor insurance) is of special importance for European citizens, whether they are policyholders or victims of an accident. It is also a major concern for insurance undertakings as it constitutes the bulk of non-life insurance business in the Community. Motor insurance also has an impact on the free movement of persons and vehicles. It should therefore be a key objective of Community action in the field of financial services to reinforce and consolidate the single insurance market in motor insurance.
- (2) Very significant advances in this direction have already been achieved by 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<sup>4</sup>, by 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<sup>5</sup>, by Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States

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<sup>1</sup> OJ C

<sup>2</sup> OJ C

<sup>3</sup> OJ C

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

<sup>5</sup> OJ L 8, 11.1.1984, p. 17, as last amended by Directive 90/232/EEC (OJ L 129, 19.5.1990, p. 33).

relating to insurance against civil liability in respect of the use of motor vehicles<sup>6</sup> and by Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (Fourth motor insurance Directive)<sup>7</sup>.

- (3) The Community system of motor insurance needs to be updated and improved. This need has been confirmed by the consultation conducted with the industry, consumers and victims' associations.
- (4) In order to exclude any possible misinterpretation of the current provisions of Directive 72/166/EEC and to make it easier to obtain insurance cover for vehicles bearing temporary plates, the definition of the territory in which the vehicle is normally based should refer to the territory of the State of which the vehicle bears a registration plate, irrespective of whether such a plate is permanent or temporary.
- (5) In accordance with Directive 72/166/EEC, vehicles bearing false or illegal plates are considered to be normally based in the territory of the Member State that issued the plates in question. This rule often means that national bureaux are obliged to deal with the economic consequences of accidents which do not have any connection with the Member State where they are established. Without altering the general criterion of the registration plate to determine the territory in which the vehicle is normally based, a special rule should be provided in the case of an accident caused by a vehicle without a registration plate or bearing a registration plate which does not correspond or no longer corresponds to the vehicle. In this case and for the sole purpose of settling the claim, the territory in which the vehicle is normally based should be the territory in which the accident took place.
- (6) In order to facilitate the interpretation and application of the term "random checks" in Directive 72/166/EEC, the relevant provision should be clarified. The prohibition of systematic checks on motor insurance should apply to vehicles normally based in the territory of another Member State as well as to vehicles normally based in the territory of a third country but entering from the territory of another Member State. Only non-systematic checks which are not discriminatory and are carried out as part of a police control not aimed exclusively at insurance verification may be permitted.
- (7) Directive 72/166/EEC permits Member States to derogate in certain cases from the general obligation to take out compulsory motor vehicle insurance. In some of these cases, Member States must ensure that compensation is paid in respect of any loss or injury caused in the territory of another Member State. Such a derogation, which does not jeopardise protection of the victims, should be maintained. In other cases the Member State applying the derogation is not obliged to pay compensation to the victim of an accident occurring abroad so long as other Member States are allowed to require, at the entry into their territory, a valid green card or a frontier insurance contract. However, since the elimination of border controls within the Community, compensation for victims of accidents caused abroad by such non-insured vehicles has ceased to be guaranteed. Derogation in those cases, as provided for in

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<sup>6</sup> OJ L 129, 19.5.1990, p. 33.

<sup>7</sup> OJ L 181, 20.7.2000, p. 65.

Directive 72/166/EEC, should therefore no longer be permitted. The corresponding provisions in Directive 2000/26/EC should also be deleted.

- (8) Member States' obligations to guarantee insurance cover beyond certain minimum amounts constitutes an important element in ensuring the protection of the victims. The minimum amounts provided for by Directive 84/5/EEC should not only be updated to take account of inflation but should be increased in real terms to improve the protection of victims. Moreover, the current overall minimum amount per claim for personal injuries in the case of more than one victim, as well as the combined amount for personal injuries and damage to property, which reduce the effective insurance cover of victims in certain accidents, should be abolished.
- (9) In order to ensure that the minimum amount of cover is not eroded over time, a periodic review clause should be introduced using as a benchmark the European Index of Consumer Prices (EICP) published by Eurostat, as provided for in Council Regulation (EC) No 2494/95 of 23 October 1995 concerning harmonized indices of consumer prices<sup>8</sup>. The procedural rules governing such a review need to be established.
- (10) The provision in Directive 84/5/EEC allowing Member States, in the interest of preventing fraud, to limit or exclude payments by the compensation body in the case of damage to property by an unidentified vehicle is liable to impede legitimate compensation of victims in some cases. The option to limit or exclude compensation should not apply where, in addition to damage to property, significant personal injuries have been caused by the same accident and therefore the risk of fraud is negligible. The meaning of significant personal injuries should be determined by each Member State's national legislation.
- (11) At present, an option contained in Directive 84/5/EEC allows Member States to authorise, up to a specified ceiling, excesses for which the victim would be responsible in the event of damage to property caused by uninsured vehicles. That option unjustly reduces the protection of victims and creates discrimination with respect to victims of other accidents. It should therefore no longer be permitted.
- (12) Second Council Directive 88/357/EEC of 22 June 1988 on the co-ordination 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<sup>9</sup>, should be amended in order to permit branches of insurance undertakings to become representatives with respect to motor insurance activities, as already happens with respect to insurance services other than motor insurance.

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<sup>8</sup> OJ L 257, 27.10.1995, p. 1.

<sup>9</sup> OJ L 172, 4.7.1988, p. 1, as last amended by Directive 2000/26/EC.

- (13) The inclusion within the insurance cover of any passenger in the vehicle is a major achievement of the existing legislation. This objective would be placed in jeopardy if national legislation excluded passengers from insurance cover because they knew or should have known that the driver of the vehicle was under the influence of alcohol or of any other intoxicating agent at the time of the accident. The passenger is not usually in a position to assess the intoxication level of the driver properly. The objective of discouraging persons from driving whilst under the influence of intoxicating agents is not achieved by reducing the insurance cover for passengers who are victims of motor vehicle accidents. Cover of these passengers under the vehicle's compulsory motor insurance does not prejudice any hypothetical liability they might have incurred pursuant to the applicable national legislation, nor the level of any award of damages in a specific accident.
- (14) Insurance cover for pedestrians and cyclists in the case of accidents involving a motor vehicle varies a great deal within the Community. In some Member States pedestrians and cyclists are not covered by the vehicle's insurance unless some form of driver liability can be established. In other Member States pedestrians and cyclists are covered by such insurance because they are usually the weakest party in any accident. In order to reduce such disparity, it should be ensured that pedestrians and cyclists are covered by the compulsory insurance of the vehicle involved in the accident, irrespective of whether the driver is at fault. This cover under the vehicle's compulsory motor insurance does not prejudice the civil liability of the pedestrian or cyclist or the level of awards for damages in a specific accident, under national legislation.
- (15) Some insurance undertakings insert into insurance policies clauses to the effect that the contract will be cancelled if the vehicle remains outside the Member State of registration for longer than a specified period. This practice is in conflict with the principle set out in Directive 90/232/EEC, according to which the compulsory motor insurance should cover on the basis of a single premium the entire territory of the Community. It should therefore be specified that the insurance cover should remain valid during the whole term of the contract, irrespective of whether the vehicle remains in another Member State for a particular period, without prejudice to the obligations under Member States' national legislation with respect to the registration of vehicles.
- (16) Steps should be taken to make it easier for consumers to obtain insurance cover for vehicles despatched from one Member State into another, for the period between acceptance of delivery by the purchaser and registration of the vehicle in the Member State of destination. A temporary derogation from the general rule determining the Member State where the risk is situated should be introduced. For a period of thirty days after acceptance of delivery by the purchaser, the Member State of destination, and not the Member State of registration, should be regarded as the Member State where the risk is situated.

- (17) The person wishing to take out a new motor insurance contract with another insurer should be able to justify his accident and claims record under the old contract. Upon termination of the contract, the insurance undertaking should provide the policyholder with a statement relating to claims or the absence of claims during the term of the contract within the preceding five years, without prejudice to the right of the parties to an insurance contract to establish the contract premium.
- (18) In order to ensure due protection for the victims of motor vehicle accidents, Member States should not permit excesses to be relied on against an injured party.
- (19) The right to invoke the insurance contract and to claim against the insurance undertaking directly is of great importance for the protection of the victim of any motor-vehicle accident. Directive 2000/26/EC already provides victims of accidents occurring in a Member State other than the Member State of residence of the injured party, which are caused by the use of vehicles insured and normally based in a Member State, with a right of direct action against the insurance undertaking covering the responsible person against civil liability. In order to facilitate an efficient and speedy settlement of claims and to avoid as far as possible costly legal proceedings, this right should be extended to victims of any motor vehicle accident.
- (20) To enhance the protection of any victim of a motor vehicle accidents, the “reasoned offer” procedure provided for in Directive 2000/26/EC should be extended to any kind of motor vehicle accident. With a view to ensuring the proper functioning of this mechanism without duplicating the structure required by that Directive, the representative appointed by the insurance undertaking for the specific purposes of that Directive should also be allowed to take responsibility for handling any motor vehicle accident. That procedure is compatible with the system of Green Card Bureaux laid down in Directive 72/166/EEC for the settlement of claims in respect of accidents caused by vehicles normally based in the territory of another Member State.
- (21) In order to make it easier for the injured party to seek compensation, the information centres set up in accordance with Directive 2000/26/EC should not be confined to providing information concerning the accidents covered by that Directive but should be able to provide the same kind of information for any motor vehicle accident.
- (22) Directives 72/166/EEC, 84/5/EEC, 88/357/EEC, 90/232/EEC and 2000/26/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

*Amendments to Directive 72/166/EEC*

Directive 72/166/EEC is amended as follows:

- (1) In Article 1, paragraph 4 is amended as follows:
  - (a) The first indent is replaced by the following:

“- the territory of the State of which the vehicle bears a registration plate, irrespective of whether the plate is permanent or temporary; or”;

(b) The following indent is added:

“- in cases where vehicles do not bear any registration plate or bear a registration plate which does not correspond or no longer corresponds to the vehicle and have been involved in an accident, the territory of the State in which the accident took place, for the purpose of settling the claim as provided for in the first indent of Article 2(2);”.

(2) In Article 2, paragraph 1 is replaced by the following:

“1. Member States shall refrain from making checks on insurance against civil liability in respect of vehicles normally based in the territory of another Member State and in respect of vehicles normally based in the territory of a third country entering their territory from the territory of another Member State.

However, they may carry out non-systematic checks on insurance provided that they are not discriminatory and are carried out as part of a police control which is not aimed exclusively at insurance verification.”

(3) In Article 4, point (b) is deleted.

## *Article 2*

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

Article 1 of Directive 84/5/EEC is replaced by the following:

#### *“Article 1*

1. The insurance referred to in Article 3(1) of Directive 72/166/EEC shall cover compulsorily both damage to property and personal injuries.
2. Without prejudice to any higher guarantees which Member States may lay down, each Member State shall require insurance to be compulsory at least in respect of the following amounts:
  - (a) in the case of personal injury, EUR 1 000 000 per victim;
  - (b) in the case of damage to property, EUR 500 000 per claim, whatever the number of victims.
3. The amounts referred to in paragraph 2 shall be reviewed every five years in order to take account of changes in the European Index of Consumer Prices (EICP), as set out in Council Regulation (EC) No 2494/95\*. The first review shall take place five years from the entry into force of Directive 2003/.../EC.

The amounts shall be adjusted automatically. Such amounts shall be increased by the percentage change indicated by the EICP for the relevant period, that is to say, the

five years immediately preceding the review, and rounded up to a multiple of EUR 10 000.

The Commission shall communicate the adjusted amounts to the European Parliament and the Council and shall ensure their publication in the *Official Journal of the European Communities*.

4. Each Member State shall set up or authorise a body with the task of providing compensation, at least up to the limits of the insurance obligation for damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which the insurance obligation provided for in paragraph 1 has not been satisfied.

The first subparagraph 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 responsible for the accident and other insurers or social security bodies required to compensate the victim in respect of the same accident. However, Member States may not allow the body to make the payment of the compensation conditional on the victim establishing in any way that the person liable is unable or refuses to pay.

5. The victim may in any case apply directly to the body which, on the basis of information provided at its request by the victim, shall be obliged to give him a reasoned reply regarding the payment of any compensation.

Member States may, however, exclude the payment of compensation by that body in respect of persons who voluntarily entered the vehicle which caused the damage or injury when the body can prove that they knew it was uninsured.

6. Member States may limit or exclude the payment of compensation by the body in the event of damage to property by an unidentified vehicle.

That option shall not apply where, as a result of the same accident, the victim has suffered significant personal injuries.

The conditions for the personal injuries to be considered significant shall be determined by each Member State's legislation.

7. Each Member State shall apply its laws, regulations and administrative provisions to the payment of compensation by this body, without prejudice to any other practice which is more favourable to the victim.

\* OJ L 257, 27.10.1995, p. 1.”

### *Article 3*

#### *Amendments to Directive 88/357/EEC*

The second sentence in the fourth subparagraph of Article 12a(4) of Directive 88/357/EEC is deleted.

### *Article 4*

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

Directive 90/232/EEC is amended as follows:

- (1) In Article 1, the following paragraph is inserted between the first and second paragraphs:

“A passenger shall not be excluded from insurance cover on the basis that he knew or should have known that the driver of the vehicle was under the influence of alcohol or of any other intoxicating agent at the time of an accident.”

- (2) The following Article 1a is inserted:

#### *“Article 1a*

The insurance referred to in Article 3(1) of Directive 72/166/EEC shall cover personal injuries suffered by pedestrians and cyclists as a consequence of an accident in which a motor vehicle is involved, irrespective whether the driver is at fault.”

- (3) In Article 2, the first indent is replaced by the following:

“- cover, on the basis of a single premium and during the whole term of the contract, the entire territory of the Community, including for any period when the vehicle remains in other Member States during the term of the contract; and”.

- (4) The following Articles 4a to 4f are inserted:

#### *“Article 4a*

1. By way of derogation from the second indent of Article 2(d) of Directive 88/357/EEC, where a vehicle is despatched from one Member State to another, the Member State where the risk is situated shall be considered to be the Member State of destination immediately upon acceptance of delivery by the purchaser for a period of thirty days, even though the vehicle has not formally been registered in the Member State of destination.
2. In the event that the vehicle is involved in an accident during the period mentioned in paragraph 1 while being uninsured, the body referred to in Article 1(4) of Directive 84/5/EEC in the Member State of destination shall be liable for the compensation provided for in that Article.



#### *Article 4b*

Member States shall ensure that, within fifteen days of the termination of an insurance contract concerning a vehicle covered by insurance as referred to in Article 3(1) of Directive 72/166/EEC, the policyholder shall be provided with a statement relating to the claims or the absence of claims involving the vehicle during the preceding five years of the contractual relationship.

#### *Article 4c*

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

#### *Article 4d*

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

#### *Article 4e*

1. Member States shall ensure that the representative appointed by an insurance undertaking in accordance with Article 4(1) to (5) of Directive 2000/26/EC of the European Parliament and of the Council\*, without prejudice to his obligations under that Directive, may also be responsible for handling and settling the claims arising from any accident caused in the Member State where he is appointed by a vehicle covered by compulsory insurance as referred in Article 3(1) of Directive 72/166/EEC and underwritten by the insurance undertaking he represents.
2. Member States shall establish the procedure provided for in Article 4(6) of Directive 2000/26/EC for the settlement of claims arising from any accident caused by a vehicle covered by insurance as referred in Article 3(1) of Directive 72/166/EEC.
3. Paragraphs 1 and 2 are without prejudice to the system of bureaux provided for in Article 2(2) of Directive 72/166/EEC for the settlement of claims in respect of accidents caused by vehicles normally based in the territory of another Member State, whether or not such vehicles are insured.

#### *Article 4f*

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

\* OJ L 181, 20.7.2000, p. 65.”

*Article 5*

*Amendments to Directive 2000/26/EC*

In Article 5(1) of Directive 2000/26/EC, point (a) is amended as follows:

- (1) point 2(ii) is deleted;
- (2) point 5(ii) is deleted.

*Article 6*

*Implementation*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2004 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. 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 7*

*Entry into force*

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

*Article 8*

*Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## IMPACT ASSESSMENT FORM

### THE IMPACT OF THE PROPOSAL ON BUSINESS, WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)

#### TITLE OF PROPOSAL

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

#### DOCUMENT REFERENCE NUMBER

COM(2002) 244 final

#### THE PROPOSAL

1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?

Community legislation is needed since this directive aims to clarify and improve the existing Community framework of compulsory motor insurance.

The most urgent change deals with the revision of the minimum coverage amounts provided for in the Directives. Article 6(2) of Directive 84/5/EEC stipulates that the Commission should “*where appropriate, submit proposals in particular as regards adjustment of the amounts laid down in Article 1(2) and (4)*”. This revision has not been carried out since the adoption of Directive 84/5/EEC.

Other changes aimed at clarifying and improving the legal framework for motor insurance are in response to a large number of questions, complaints and petitions received from individuals and members of the European Parliament on the application of the Directives. In the consultation exercise with industry, victims’ organisations and drivers’ associations, as well as with Member States’ experts, the Commission has thoroughly checked that these changes in Community legislation are needed.

Lastly, other changes are designed to extend certain mechanisms for settling claims already introduced into Community legislation by Directive 2000/26/EC (Fourth Motor Insurance Directive) to all kinds of motor accidents.

In the interests of subsidiarity, it should also be noted that the Resolution of the European Parliament adopted in July 2001 has recommended that the Commission adopt a proposal for a Fifth Motor Insurance Directive. The actions requested in this Resolution are covered by the present proposal.

The proposal is confined to the specific scope of the EU legislation on motor insurance. It is focused on compulsory motor insurance and carefully avoids regulating matters which go beyond this matter such as civil law or the rules for vehicle registration.

## THE IMPACT ON BUSINESS

2. Who will be affected by the proposal?
  - Which sectors of business? Those non-life insurance undertakings active in the field of motor insurance.
  - Which sizes of business? (What is the concentration of small and medium-sized firms?) Both small and medium-sized firms as well as large non-life insurance undertakings will be affected. The proposal and EU motor insurance legislation in general aim to ensure that compulsory insurance provides appropriate protection to victims of motor accidents, regardless of the size and features of the insurance undertaking providing the cover. Any discrimination in the legislation between insurance undertakings on the grounds of size would not be appropriate.
  - Are there particular geographical areas of the Community where these businesses are found? No.
3. What will business have to do to comply with the proposal?

Most provisions of the proposal clearly do not impose any additional burden on insurance undertakings.

Article 2, which revises the minimum amounts of insurance cover provided for in the Directives and establishes a revision clause, might be considered as having an impact on the amounts of compensation paid by insurance undertakings. However, the results of the consultation exercise carried out by the Commission with the different interested parties show that only in a very small percentage of accidents (usually less than 0.1%) does the compensation to be paid by insurance undertakings reach the minimum level of cover for compulsory insurance laid down in the present Directives or the other maximum levels set in some Member States. In a number of Member States the minimum amounts of cover do not exist at all (unlimited coverage system) or exist only for property damage. Most Member States with minimum amounts of cover have fixed them at a level higher than the minimum established in the existing Directives. As far as the Commission is aware, insurance undertakings in those Member States have not suffered as a result of the minimum levels of cover. Furthermore, the Resolution adopted by the European Parliament on July 2001 calls for a larger increase in the minimum amounts of cover than that provided for in the proposal.

Article 4(2), which includes pedestrians and cyclists within the scope of the compulsory insurance of the vehicle involved in the accident without affecting the rules on civil liability existing in each Member State, should not have a significant impact on premiums. A number of Member States have already taken this step and the insurance undertakings and their insurance markets have been able to assume this cover without encountering any special difficulties.

Article 4(4) establishing the insurer's obligation to provide the policyholder on termination of the insurance contract with a statement of accidents is established practice in the industry as well as an obligation in some Member States. The burden it imposes on insurance undertakings is negligible.

This Article also obliges insurance undertakings to have a representative in all Member States for settling claims. It does not entail any additional burden for the structure of insurance undertakings since the proposal builds on the existing appointed representatives as provided for in the Fourth Motor Insurance Directive. Furthermore, Article 3 of the proposal reduces the administrative burden on insurance undertakings since it removes the prohibition in the existing Directives on using a branch as an insurance undertaking's representative in another Member State.

4. What economic effects is the proposal likely to have?
  - On employment: broadly neutral.
  - On investment and the creation of new businesses: broadly neutral.
  - On the competitiveness of businesses: broadly neutral.
5. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements, etc.)?

The proposal does not affect the prudential financial requirements to be imposed on insurance undertakings, such as technical provisions or the solvency margin. It aims to improve the protection of the victims of motor accidents and to make it easier for the policyholder to find insurance cover. In these matters, no distinction based on size of undertaking is acceptable.

## CONSULTATION

6. List the organisations which have been consulted during the preparation of the proposal and outline their main views.

1. European Federation of Road Traffic Victims (FEVR)

This organisation of road traffic victims supports the measures proposed by the Commission. It would, however, prefer unlimited insurance cover for personal damages instead of a minimum amounts system as in the current Directives and in the proposal. With regard to the extension of the mechanisms for settling claims established by the Fourth Motor Insurance Directive to all kinds of accidents, although the FEVR agrees with the provision, it suggests introducing further guarantees and stricter deadlines over and above those established in the Fourth Directive. It also suggests some additional measures that go beyond the scope of insurance legislation such as harmonisation of moral tort and the provision of information to victims about the defence associations competent in the territory where the accident occurred

2. Comité Européen des Assurances (CEA)

The organisation representing European insurers has expressed its support for the Commission's initiative to modernise the insurance Directives and for the core provisions contained in the proposal. A number of its technical suggestions have been taken into account in the Proposal. However, with regard to the revision of the minimum amounts of cover, the CEA supports the updating of the amounts adopted in 1984 and a periodic revision clause, but it is not in favour of a substantial revision

of the minimum amounts of cover as envisaged in the proposal (and requested by the European Parliament) to improve the protection of victims. The CEA would like to see the proposal retain an overall amount per claim (for personal injuries in the case of more than one victim in the same accident and for personal injuries and damage to property) as exists under the current Directives. It also considers that some insurance markets may require transitional periods to adapt to the compensation amounts provided for in the proposal. Furthermore, the CEA is concerned about the inclusion of pedestrians and cyclists within the scope of the compulsory insurance of the driver, as it considers this to be a matter of civil liability which goes beyond the proper scope of an insurance directive.

### 3. Council of Bureaux<sup>1</sup>

The Council of Bureaux has expressed its support for the core provisions contained in the proposal and has given its cooperation to the Commission in order to resolve properly some difficult problems such as those relating to vehicles without a registration plate or bearing a non-corresponding plate or to insurance cover for imported vehicles.

### 4. Association of European Cooperative and Mutual Insurers (ACME)

This association is in favour of the Commission's initiative to modernise the insurance Directives as well as of the core provisions contained in the proposal. A number of suggestions have been taken into account in the proposal. ACME has, however, expressed its concern at the abolition of an overall compensation amount per claim (for personal injuries in the case of more than one victim in the same accident and for personal injuries and damage to property) as exists under the current Directives. It is also concerned at the abolition of the Member States' option to limit compensation to damage to property in the case of accidents caused by unidentified vehicles owing to the risk of fraud. It would prefer it if the insurer's obligation to provide statements relating to accidents were limited to cases in which the insurance contract had been cancelled or the insured person had requested such a statement.

### 5. European Consumers Organisation (BEUC)

BEUC has welcomed the Commission's initiative aimed at updating the insurance Directives and improving the Community legal framework in this field. It has expressed its general support for the core provisions contained in the proposal. A number of its suggestions have been taken up in the text. Beyond the specific comments on the proposed provisions, BEUC has stressed the need to move towards a more harmonised legal framework in the field of insurance contract law. It has also expressed its concern at the high cost of premiums in motor insurance contracts and recommended that premiums should be based more closely on statistics of claims costs for the different categories of risk.

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<sup>1</sup> The Council of Bureaux is the co-ordination body of the "green card system". This system ensures the payment of compensation to victims of accidents caused by visiting vehicles through a private-sector network of Green Card Bureaux set up by the insurers and established in all the Member States and in a large number of third countries.

6. European Bureau of the International Alliance of Tourism and International Automobile Federation

These two federations representing motorists have expressed their support for the Commission's initiative and for the core provisions contained in the proposal. They would, however, prefer to see unlimited insurance cover for personal damages instead of a minimum amounts system as in the current Directives and in the proposal. They have expressed their concern at the inclusion of pedestrians and cyclists within the scope of compulsory insurance of the driver as they understand that this is a matter for national liability legislation. They stressed the fact that problems such as temporary stays in other Member States, secondary residences and the importation of vehicles should be treated in a separate horizontal Directive dealing with these issues (insurance, registration of vehicles, taxation, etc.).

As indicated above, a large number of concerns and suggestions expressed by these organisations has been taken into account in the proposal. Some comments, however, have not been taken on board because of the need to strike a proper balance between the interests and rights of the different parties affected by the application of the motor insurance Directives. The justification for the approach adopted by the Commission on each issue has been provided in detail in the explanatory memorandum and in the recitals to the proposal.