

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(80) 469 final

Brussels, 30 July 1980

Proposal for a Second Council Directive  
on the approximation of the laws of the Member States relating to  
insurance against civil liability in respect of the use of motor  
vehicles

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(submitted to the Council by the Commission)

COM(80) 469 final

Explanatory memorandum

The laws of the Member States relating to compulsory insurance against civil liability in respect of the use of motor vehicles, have already been approximated in a first directive of 24 April 1972<sup>1</sup>. In accordance with that document checks on such insurance, in a Member State, in respect of a vehicle normally based in the territory of another Member State, were abolished with effect from 15 May 1974 (from 1 July 1973 in the original Member States).

This measure necessitated the requirement, in all Member States, that civil liability in respect of the use of vehicles be covered by insurance throughout the territory of the Community in accordance with the conditions of each country visited. The second prior condition was the signing of an agreement between national insurers' bureaux whereby each bureau guaranteed the payment of compensation in the event of an accident caused in its territory by a vehicle normally based in another Member State, even where the obligation to take out insurance had not been observed.

This directive continues that work in two directions. Firstly, it aims to rectify certain shortcomings or inaccuracies which are such as may impede the smooth operation of the system referred to above. Secondly, and more fundamentally, it seeks to make the guarantees offered in the various Member States more favourable for victims, by preventing the injured third party from being treated differently according to the country in which the accident occurred, and at the same time ensuring that the cover enjoyed by the insured person does not vary significantly according to the country in which he is travelling.

Coordination remains partial, however. It did not appear feasible or expedient at this stage to establish a general system under which proceedings could be instituted directly, and in respect of which any exceptions or exclusions would be void, or to approximate the conditions governing the operation and intervention of guarantee funds. It should be noted, moreover, that the rules of liability remain unchanged and have not been coordinated. The Commission, in spite of its desire to satisfy the wishes expressed by Parliament in its Resolution of 16 November 1976<sup>2</sup>, has been very clearly opposed on these points by a number of Member States.

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<sup>1</sup> Council Directive 72/166/EEC of 24 April 1972 - OJ No 103 of 2.5.1972.

<sup>2</sup> OJ No C 293 of 13.12.1976, p. 18.

Comments on the articles

Article 1 - Extent of the obligation to insure

1. In the United Kingdom compulsory motor vehicle insurance cover is still restricted to personal injuries. Although the large majority of British drivers also insure against liability for damage merely to property, and in addition take out direct cover against damage they might themselves suffer, this situation can be shown to be prejudicial, especially where one of the vehicles involved in an accident in the United Kingdom is normally based in the territory of another Member State. If the non-British vehicle is liable for the damage, in principle it need not be insured against damage to property in the United Kingdom, and in any event, the United Kingdom bureau will not cover such damage. If, on the other hand, the vehicle is itself damaged, in most cases it will not be covered against such damage, and if the person liable has not taken out insurance, no guarantee fund will satisfy his liability.

Article 1(1) puts an end to that situation.

2. In Belgium and Luxembourg compulsory motor insurance against civil liability is unlimited as it is in Ireland and the United Kingdom for personal injuries. For social reasons connected with the amount of premiums it is impossible for the moment to apply this solution generally. Of those countries which apply fixed amounts up to which insurance is compulsory, only France has selected the formula of amounts per victim.

In Germany, Denmark, Italy, the Netherlands and Ireland there is an overall limit per claim irrespective of the number of victims (either for personal injuries and damage to property combined or a separate amount for each type of damage). The chief advantage of this formula is that it makes matters simpler for the insurer when making his estimates. Provided the amounts are properly calculated and regularly updated, victims will in most cases be fully compensated.

Where unlimited cover does not exist, the proposal for a directive requires compulsory insurance cover for amounts of not less than 350 000 EUA per victim or 500 000 EUA per claim, depending on the formula applied. In both cases these amounts apply to damage to property and personal injuries combined. In practice, in comparison with the situation obtaining on 1 January 1980, these figures represent an increase for Germany, the Netherlands and Italy only\*. The amounts could be revised in the future, but since Article 1(2) of the proposal is a minimum one it did not seem necessary to lay down a revision procedure at Community level.

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\* See table annexed to the explanatory memorandum.

3. Each national bureau guarantees the payment of compensation for personal injuries or damage to property caused by an uninsured vehicle normally based in another Member State. If, on the other hand, the uninsured vehicle responsible is registered in the Member State in which the accident occurred, at present the guarantee fund assumes liability for personal injuries only in Belgium, Ireland, Italy, Luxembourg and the United Kingdom, while in Germany, France and the Netherlands compensation for damage to property is payable subject to deduction of a franchise. The victims of accidents are thus treated differently depending on the place in which the accident occurred, and the most astonishing aspect is that frequently they are in a better position if the uninsured vehicle responsible is not registered in the country in which the accident occurs. In the case of unidentified vehicles, since the place in which they are normally based cannot, by definition, be determined, the guarantee fund of the country in which the accident occurred is always required to pay compensation, and generally does so under the same conditions as for an uninsured vehicle. The purpose of this provision is to amplify the system and remove this anomaly.

Article 2 - Exclusions - Uninsured vehicles

This provision basically concerns situations, whose frequency varies from one Member State to another, in which the insurer is sometimes permitted by law to repudiate liability towards both the insured person and the victim (exceptions valid against all parties or exclusions - e.g. theft). In those cases either the guarantee fund takes over from the insurer (Netherlands, France, Belgium, Luxembourg) or the insurer pays, but under an agreement with the fund and in place of it (Ireland, United Kingdom). In both cases compensation for damage to property is limited as is stated in the comment on Article 1(3).

In Denmark, Germany and Italy, finally, the insurer is prohibited by law from availing himself of these circumstances and must compensate the victim.

Where the vehicle responsible is registered in the country in which the accident occurs this discrepancy is unfortunate in that the treatment accorded to the injured party varies according to the country in which he was victim of an accident. Where the vehicle responsible for the accident is normally based in another Member State, a further troublesome consequence is that sometimes conflicts arise between the fund and the bureau concerning the interpretation of the law of the country in which the accident occurred on the question whether the permitted exclusion amounts to a case of non-insurance or one in which the vehicle need not be insured.

The proposed article will improve the position of victims in the same way as does Article 1(3) without affecting the insurer's obligation, where it exists, to compensate the victim in spite of those circumstances; in addition, it will put an end to the dispute referred to above. Where the vehicle in question is normally based in the territory of another Member State the bureau will act in all cases either as an insurer or as a guarantee fund.

### Article 3 - Members of the family

The exclusion of the above, which is based on the (theoretical) risk of collusion, is provided for in Article 4 of the Annex to the Strasbourg Convention of 20 April 1959 on compulsory insurance against civil liability in respect of motor vehicles, which has been signed by Belgium, Denmark, France, Germany, Italy and Luxembourg. It is now applied only in Belgium, Italy and the Netherlands. However, where members of the family are compensated by the third-party motor insurer this is not necessarily based on the same grounds or the same conditions as compensation for ordinary third parties. Cover is sometimes optional or restricted to personal injuries, or may be for a lower amount than is granted to ordinary third parties.

The members of the family form a category that is particularly vulnerable to the risk of road accidents, and their exclusion may prove disastrous in terms of the necessarily high costs incurred if they suffer an accident. For that reason this article goes a long way towards improving the position of road accident victims.

### Article 4 - Territory in which the vehicle is normally based - Place of registration

Article 1(4) of the Directive of 24 April 1972 defines the "territory in which the vehicle is normally based" as that "of the State in which the vehicle is registered". In some Member States the fact that a vehicle bears a registration plate does not necessarily imply that it is registered there. The majority of bureaux have concluded temporary bilateral agreements among themselves whereby, if the conditions relating to registration have not been satisfied within a certain period of time, the vehicle is no longer regarded as being based normally in the country whose registration plate it bears, the result being that, if the vehicle is uninsured, compensation must be borne definitively by the bureau of the country in which the accident occurred. The Commission has always felt, however, that while bureaux remained free to alter the rules governing reimbursement between bureaux as they wished, the fact remained that the registration plate alone was decisive for determining whether the bureau of the Member State in which the accident occurred should compensate the damage. The abolition of checks on insurance was conditional on this rule, which is confirmed here.

### Articles 5 and 6

These articles require no special comment.

## ANNEX

COUNTRY	PER VICTIM (DAMAGE TO PROPERTY AND PERSONAL DAMAGE)				PER CLAIM (DAMAGE TO PROPERTY AND PERSONAL INJURIES)			
	NATIONAL AMOUNTS		COMMISSION PROPOSAL		NATIONAL AMOUNTS		COMMISSION PROPOSAL	
	In national currency	in EUA (x)	In national currency	in EUA	In national currency	in EUA	In national currency	in EUA
Federal Republic of Germany	DM 500.000 + 100.000(xx) 600.000	238,543,9	880.341DM	350.000	750.000 + 100.000(xx) 850.000 DM	337.937,2	1.257.630DM	500.000
Denmark			2.755.728dkr	"	10.000.000dkr + 1.000.000(xx) 11.000.000	1.397.089,6	3.936.755dkr	"
France	2.000.000FF + 1.000.000(xx) 3.000.000 FF	513.167,8	2.046.114FF	"			2.923.020FF	
Italy	20.000.000Lit + 5.000.000(xx) 25.000.000	21.345,6	409.920.000Lit	"	50.000.000Lit	42.691	585.600.000Lit	"
Netherlands			965.167gld.	"	1.000.000gld.	362.631,5	1.378.810 gld	"
Ireland			237.073V	"	1.000V (xxx)	1.476,3	338.675 V	"

(x) Conversion at 24 March 1980

(xx) Separate amount for damage to property

(xxx) This figure relates only to damage to property since there is unlimited cover for personal injuries.

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

Having regard to the Opinion of the Economic and Social Committee;

Whereas, by Directive 72/166/EEC of 24 April 1972 (1), as amended by Directive 72/430/EEC of 19 December 1972 (2), the Council approximated the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and to the enforcement of the obligation to insure against such liability;

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

Whereas, however, the continued existence of major disparities between the laws of the different Member States concerning the extent of this obligation of cover is such as to impede the free movement of persons;

Whereas the obligation of cover should be extended to include liability incurred purely in respect of damage to property;

Whereas the amounts in respect of which insurance is compulsory must in any event guarantee victims adequate compensation irrespective of the Member State in which the accident occurred;

Whereas it is necessary to make provision for a body to bear secondary liability for the payment of compensation in cases where the vehicle responsible is unidentified or uninsured, or where the insurer is entitled to disclaim liability; whereas this latter case must be treated in the same way as a case of non-insurance;

Whereas the members of the family of the insured person, driver or person liable are deserving of consideration as potential injured parties and should be afforded protection comparable to that of other third parties;

<sup>1</sup> OJ No L 103 of 2.5.1972

<sup>2</sup> OJ No L 291 of 28.12.1972.

Whereas the abolition of checks on insurance is conditional on the granting by the national insurers' bureau of the host country of a guarantee of compensation for damage caused by vehicles normally based in another Member State; whereas the most convenient criterion for determining whether a vehicle is normally based in a given Member State is the bearing of a registration plate of that State; whereas the first indent of Article 1(4) of the Directive of 24 April 1972 should therefore be amended to that effect;

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. The contract of insurance referred to in Article 3(1) of Directive 72/166/EEC shall cover both damage to property and personal injuries.

2. Each Member State shall require an unlimited guarantee or shall specify amounts up to which such insurance shall be compulsory. Those amounts shall be not less than 350 000 EUA per victim for damage to property and personal injuries or 500 000 EUA for all damage, including damage to property and personal injuries, arising out of a single claim where there is more than one victim.

"Unit of account" means the European Unit of Account (EUA) as defined by Article 10 of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities; the conversion value in national currency to be adopted shall as from 31 December of each year be that of the last day of the preceding month of October for which the EUA conversion values are available in all the Community currencies.

3. Each Member State shall make provision that compensation within the limits authorized by paragraph 2 for damage to property or personal injuries caused by an unidentified vehicle in respect of which the insurance obligation provided for in paragraph 1 has not been satisfied shall be borne by a body set up or authorized by that State.

Article 2

For the purposes of Article 1(3) of this Directive and Article 3(2) of Directive 72/166/EEC, where an insurer refuses to make payment by virtue of the law or of a contractual provision authorized by law, the vehicle shall be treated as an uninsured vehicle.

Article 3

The members of the family of the insured person, driver, or any other person who is liable under civil law in the event of an accident, and whose liability is covered by civil liability motor vehicle insurance, shall not be excluded from such cover by virtue of that relationship.

Article 4

The first indent of Article 1(4) of Directive 72/166/EEC is amended as follows:

- territory in which the vehicle is normally based means:  
the territory of the State of which the vehicle bears a registration plate;

Article 5

Member States shall bring into force the measures necessary to comply with this directive by 31 December 1982 and shall forthwith inform the Commission thereof.

Article 6

This directive is addressed to the Member States.

Done at ...

For the Council  
The President