

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(82) 69 final

Brussels, 22 February 1982

Amendment of the 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 pursuant to the second  
paragraph of Article 149 of the EEC Treaty)

COM(82) 69 final

Explanatory Memorandum

In the light of the Opinions delivered by the European Parliament<sup>1</sup> and the Economic and Social Committee<sup>2</sup> on the 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<sup>3</sup>, the Commission hereby submits a revised version of its proposal.

The principal amendments to the original text are as follows :

1. A separate ceiling is fixed for damage to property (Article 1(1)).
2. The Member States may limit or exclude payment of compensation by the guarantee fund in respect of damage to property caused by an unidentified vehicle (Article 1(3)).
3. The insurer may not rely, for the purpose of refusing to make payment to an injured third party, upon certain circumstances which are the subject of exclusion clauses in the policy (Article 2).
4. The Member States may authorize the exclusion from cover of members of the family in respect of damage to property (Article 3).
5. Longer periods are allowed for implementation of the increases in compulsory insurance amounts (Article 5).

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1. Minutes of the Meeting of 14.10.1981 (doc. PE 74.857, p.11).  
2. Session of 25.2.1981 (OJ C 138 of 9.6.1981, p.15).  
3. OJ C 214 of 23.8.1980, p.9.

1. The Commission has incorporated the proposal made by the Economic and Social Committee and Parliament by fixing a separate limit, within the compulsory insurance amounts proposed for all damage, for damage to property. The effect of the last sentence in the first paragraph of Article 1(2) is to set aside such limits where damage in respect of personal injuries does not equal the difference between the amount available for all damage to property and personal injuries, and the limit fixed for damage to property alone, namely 280 000 ECU.

The second sub paragraph of Article 1(2) has been brought into line with Council Regulation (EEC) No 3180/78 of 18 December 1978<sup>1</sup> and Council Regulation (EEC, Euratom) No 3308/80 of 16 December 1980<sup>2</sup>.

2. The Commission does not consider it advisable to allow the Member States, as both Parliament and the Economic and Social Committee requested, to fix an excess below which the guarantee fund would not pay compensation in respect of damage to property caused by an uninsured vehicle.

Firstly, there is a risk that the amount concerned would vary considerably from one Member State to another, and nothing would prevent a State from laying down such a high excess that only exceptional cases would be taken into consideration.

Secondly, and more importantly, such a provision would result in victims in the same Member State continuing to be treated differently depending on whether the damage to property was caused by an uninsured vehicle registered in that State or by one registered in another Member State. This is because in the latter case, the national bureau in the country in which the accident occurred, in accordance with the liability it has undertaken and to which the first indent of Article 2(2) of the First Directive refers, would settle the claim as if the vehicle were insured, i.e. without deducting any excess..

However, the Commission has amended its proposal in line with the opinions expressed by Parliament and the Economic and Social Committee by accepting that Member States may, if they wish, exclude or limit payment of compensation by the guarantee fund in respect of damage to property caused by an unidentified vehicle.

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1. OJ L 379 of 30.12.1978, p.1.

2. OJ L 345 of 20.12.1980, p.1.

3. The Commission has accepted the amendment to Article 2 proposed by Parliament. The new version provides that a number of exceptions may not be relied upon as against third parties (unauthorized driving, driving without a licence, non-compliance with the vehicle safety rules). In other words, this provision prohibits the insurer from relying upon the existence of an exclusion clause relating to one of the above mentioned circumstances in order to refuse to pay compensation to the victim. The Commission nevertheless feels it is essential to retain the principle of treating as cases of non-insurance those residual cases in which the insurer can avoid payment of any compensation to the victim (claim invalidated by false declaration of risk, damage caused intentionally in France): this hypothesis relates to Article 1(3).

4. In deference to the views expressed by Parliament and the Economic and Social Committee, the Commission has amended Article 3 to enable Member States to continue to exclude members of the family but only in respect of damage to property.

5. The Commission has also acceded to Parliament's request that longer periods be allowed under Article 5 for the implementation of the increase in the compulsory insurance amounts laid down in Article 1(2).

The Commission did not, however, adopt the amendment to Article 4 proposed by Parliament and the Economic and Social Committee, which consisted of defining the territory in which the vehicle is normally based as the territory of the State of which the vehicle bears a properly issued registration plate. The Commission maintains that the registration plate is the only appropriate criterion for identifying vehicles which may no longer be subjected to insurance checks in other countries.

The addition of a qualification such as that of whether the registration plate had been properly issued would jeopardize a large proportion of the advantages afforded by the First Directive.

In general, the Commission does not feel that a definition of the territory in which the vehicle is normally based is an appropriate means of dealing with improper use of registration plates.

The Commission also did not adopte the text of Article 4(a) proposed by Parliament, prohibiting the Member States henceforth from imposing a rating or bonus malus system. This question falls entirely outside the scope of its proposal, the main purpose of which is to improve the position of victims by affording them greater protection and protection which is comparable regardless of the circumstances of the accident.

Amendment of the 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.

Original proposal

New proposal

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citations unchanged  
first five recitals unchanged  
sixth recital

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 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 uninsured or unidentified; whereas in the latter case, however, it is permissible that compensation should not be paid in respect of damage to property, or should be paid only within certain limits, for example by applying an excess;

new recital

WHEREAS it is in the interest of victims that the effects of exclusion clauses be limited to the relationship between the insurer and the insured person responsible for the accident; whereas it is necessary to provide that all other instances in which the insurer is entitled to disclaim liability must be treated as instances of non-insurance;

seventh recital

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;

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, in any event in respect of their personal injuries;

eighth recital unchanged

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.

Article 1

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

2. Without prejudice to any higher guarantees which Member States may require at the date of notification of this Directive, each Member State shall require a guarantee up to which such insurance shall be compulsory. Those amounts shall be not less than 350 000 ECU per victim for all damage to property and personal injuries, with a limit of 70 000 ECU for damage to property, and 500 000 ECU for all damage to property and personal injuries arising out of a single claim where there is more than one victim, with a limit of 100 000 ECU for all damage to property. The abovementioned limits in respect of damage to property shall apply only where damage in respect of personal injuries equals or exceeds 280 000 or 400 000 ECU respectively.

"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.

"ECU" means the unit of account as defined by Article 1 of Council Regulation (EEC) no 3180/78; 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 ECU 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 or 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.

3. Unchanged.

Each Member State may limit or exclude the payment of compensation by that body in respect of damage to property caused by an unidentified vehicle.

Article 2

Article 2

Each Member State shall take the necessary measures to ensure that any contractual provision contained in an insurance policy issued in accordance with Article 3(1) of Directive 72/166/EEC, which excludes from insurance the use or driving of vehicles by :

- persons who do not have express or implied authorization, or
- persons who do not hold a licence permitting them to drive the vehicle concerned; or
- persons who are in breach of the legal requirements of a technical nature concerning the condition and safety of the vehicle concerned;

shall, for the purposes of the application of Article 3(1) of Directive 72/166/EEC, be deemed to be void in respect of claims by third parties.



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.

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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 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 insurance in respect of their personal injuries 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 4

Unchanged

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 5

Member States shall bring into force the measures necessary to comply with this Directive by 31 December 1982.

However, for the purposes of Article 1(2), Member States may make provision for increasing guarantees to the levels required by the abovementioned Article by equal annual increases until 31 December 1986. Such increases shall be not less than one fifth of the difference between the guarantees in force at the date of notification of this Directive and the levels required by the said Article.

They shall forthwith inform the  
Commission thereof.

Article 6

This Directive is addressed to  
the Member States.

Article 6

Unchanged?

Draft Letter to the European Parliament

Sir,

On 14 October 1981, the European Parliament delivered an Opinion on the 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, submitted to the Council by the Commission on 7 August 1980 (OJ No C 214 of 21 August 1980, p. 9).

I have the honour to inform you that the Commission has submitted to the Council, in accordance with the second paragraph of Article 149 of the EEC Treaty, the enclosed amended proposal, which incorporates a number of the amendments proposed by Parliament.

(Complimentary close)