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EUROPEAN PARLIAMENT

# Working Documents

1981-1982

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31 August 1981

DOCUMENT 1-427/81

## Report

drawn up on behalf of the Legal Affairs Committee

**on the proposal from the Commission of the European Communities to the Council (Doc. 1-466/80) for a Second 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.**

**Rapporteur: Mr O. ZECCHINO**

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By letter of 2 October 1980 the Council of the European Communities requested the European Parliament, pursuant to Article 100 of the EEC Treaty to deliver an opinion on the ~~proposal~~ from the Commission of the European Communities to the Council for a Second 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.

By letter of 10 October 1980, the President of the European Parliament referred this proposal to the Legal Affairs Committee as the committee responsible and to the Committee on Economic and Monetary Affairs and the Committee on the Environment, Public Health and Consumer Protection for their opinions.

On 25 November 1980 the Legal Affairs Committee appointed Mr Adonnino rapporteur. On 29 January 1981 at the request of Mr Adonnino and Mr Zecchino, the Committee appointed Mr Zecchino rapporteur.

It considered the motion for a resolution at its meetings of 20 and 21 May 1981 and 14 and 15 July 1981; at the latter meeting it adopted the motion for a resolution, explanatory statement and amendments by 17 with 2 abstentions.

Present: Mr Ferri, chairman; Mr Zecchino (deputizing for Mr Modiano), rapporteur; Mrs Boot (deputizing for Mr Goppel), Mr Cluskey (deputizing for Mr Vetter), Mr D'Angelosante, Mr De Gucht, Mr Donnez, Mr Estgen (deputizing for Mr Luster), Mr Fischbach, Mr Geurtsen, Mr Gonella, Miss Hooper (deputizing for Mr Turner), Mr Janssen van Raay, Mrs Macciocchi, Mr Malangre, Mr Plaskovitis, Mr Sieglerschmidt, Mrs Vayssade and Mr Vié.

The opinions of the Committee on Economic and Monetary Affairs and the Committee on the Environment, Public Health and Consumer Protection are attached.

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The Legal Affairs Committee hereby submits to the European Parliament the following amendments and motion for a resolution together with explanatory statement:

AMENDMENT No. 1

Proposal for a second directive (Doc. 1-466/80) - Civil liability insurance-motor vehicles.

Article 1(1) and (3)

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

2. Unchanged.

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. In respect of damage to property each Member State may establish a franchise.

AMENDMENT No. 2

Proposal for a second directive (Doc. 1-466/80) - Civil liability insurance - motor vehicles.

Article 2

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

- persons who do not have explicit or implicit authorization, or
- persons who are not in possession of a valid driving licence for the type of vehicle concerned, or
- persons who are in breach of legal regulations of a technical nature in respect of the mechanical condition or safety of the vehicle concerned,

shall be considered as invalid, with regard to the provisions of Article 3(1) of Council Directive 72/166/EEC, in respect of claims for damages by third parties.'

AMENDMENT No. 3

Proposal for a second directive (Doc. 1-466/80) - Civil liability insurance - motor vehicles.

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 against personal injuries by virtue of that relationship.

AMENDMENT No. 4

Proposal for a second directive (Doc. 1-466/80) - Civil liability insurance - motor vehicles.

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 properly issued registration plate.



AMENDMENT No. 5

Proposal for a second directive (Doc. 1-466/80) - Civil liability insurance - motor vehicles.

Article 5 (new)

'Member States shall not introduce or continue to enforce laws which prevent an insurer from using his discretion in reaching agreement with the insured on the appropriate premium and bonuses.'

AMENDMENT No. 6

Proposal for a second directive (Doc. 1-466/80) - Civil liability insurance - motor vehicles.

Article 6 (former Article 5)

Member States shall bring into force the measures necessary to comply with this Directive within two years of its notification. They shall forthwith inform the Commission thereof.

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council 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.

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council<sup>1</sup>,
  - having been consulted by the Council pursuant to Article 100 of the EEC Treaty, (Doc. 1-466/80),
  - having regard to the report of the Legal Affairs Committee and the opinions of the Committee on Economic and Monetary Affairs and the Committee on the Environment, Public Health and Consumer Protection (Doc. 1-427/81 ),
1. Welcomes the Commission's proposal, which is aimed at bringing about a further approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles;
  2. Hopes that the approximation of the national legislation on this matter will continue with special reference to the rules on civil liability;
  3. Approves as a whole the proposal for a second directive, subject to the amendments set out above;
  4. Requests the Commission to incorporate these amendments in its proposal, pursuant to the second paragraph of Article 149, of the EEC Treaty.

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<sup>1</sup> OJ No. C 214, 21.8.80, p. 9

EXPLANATORY STATEMENTI. INTRODUCTION

1. The proposal for a Second 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>1</sup> is intended to continue the harmonization of national legislation begun with Council Directive 72/166/EEC of 24 April 1972<sup>2</sup>.

2. In order to make the scope of this second directive clearer, it would be useful to describe the situation currently in force. Following the entry into force of the Council Directive of 24 April 1972, each Member State is required to take all the necessary measures to ensure that civil liability insurance contracts also cover damages caused in the territory of other Member States, in accordance with the law in force in those States. The task of providing compensation for such damages is entrusted in each Member State to a national insurers' bureau, that is a body which existed prior to the entry into force of the directive. In fact, the need to harmonize the different insurance systems operating in European countries had been affirmed by the Road Transport Sub-Committee of the United Nations Economic Commission for Europe. At its meeting of 25 January 1949 in Geneva the Sub-Committee had issued a recommendation calling on the Member States of the United Nations in which motor vehicle insurance against civil liability was compulsory to request insurers in this field to draw up uniform agreements which would enable motorists travelling in other countries to satisfy the requirements of the law in force in those countries.

3. Following this recommendation and on the initiative of a group of British insurers, a European Congress of insurers in the field of civil liability motor vehicle insurance met in London in 1952. It was at this Congress that the so-called 'Interbureaux Convention' or 'London Convention' was drawn up. The text of the Convention and the model for a uniform international insurance certificate were approved by the OEEC (Organization for European Economic Cooperation) and the system - known as the 'green card' because of the colour of the certificate - came into operation in 1953.

4. The 'green card' system, recognized and finalized by the first Council Directive of 24 April 1972, enables motorists of the Member States to travel in another Member State in possession of this certificate, which is underwritten by the national bureau (issuing bureau) and which certifies that its

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<sup>1</sup> OJ No. C 214, 21.8.80, p. 9

<sup>2</sup> OJ No. L 103, 2.5.72, p. 1

holder has the compulsory insurance cover. A motorist can therefore travel in another Member State without having to take out a new insurance policy and without his insurer needing to have a branch in that State. In the event of an accident, the motorist cannot have his vehicle impounded nor be deprived of his personal liberty as a guarantee against payment of compensation for damages caused. In fact, the injured party has to address his claim in accordance with the law in force in the State, to the national bureau, known in this case as the 'bureau responsible'. Disputes are thus settled, on the basis of the existing bilateral agreement, between the bureau responsible in the State in which the accident occurred and the issuing bureau in the motorist's country of origin.

5. This system is therefore based on a network of bilateral agreements between insurance companies and on the application of the law of the State in which the accident occurred. This law specifies that the national insurers' bureau is responsible for the compensation of damages caused by foreign motorists in possession of the green card. This system also complies with the Strasbourg Convention of 20 April 1959 on compulsory insurance against civil liability in respect of motor vehicles, which was signed by fifteen countries and is intended to guarantee compensation for damages caused by vehicles registered abroad.

6. Based on these existing structures, the Council Directive of 24 April 1972 aimed to facilitate still further the free movement of motor vehicles in the Community and provided for the abolition of frontier checks on vehicles normally based in the territory of one Member State which were entering the territory of another. The same directive also provided for the conclusion of an agreement between the national insurers' bureaux guaranteeing the settlement of claims in respect of damages caused by a motor vehicle from another Member State, whether or not the vehicle was insured. Furthermore, because the abolition of frontier checks could not of course be achieved if insurance against civil liability in respect of motor vehicles was non-compulsory in one or more of the Member States, the Directive of 24 April 1972 stipulated that such insurance should be compulsory throughout the Community.

7. Finally, mention should be made of the recent Commission recommendation of 8 January 1981 on accelerated settlement of claims under insurance against civil liability in respect of the use of motor vehicles<sup>1</sup>, in which the Commission calls on the Member States to take all the measures necessary to facilitate the communication to those concerned of police reports and other documents necessary for the payment of compensation by insurers covering against civil liability in respect of the use of motor vehicles.

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<sup>1</sup> OJ No. L 57, 4.3.1981, p. 27

## II. ANALYSIS OF THE PROPOSAL FOR A DIRECTIVE

8. Article 1(1) of the proposal for a directive stipulates that the insurance contract referred to in the Directive of 24 April 1972 'shall cover both damage to property and personal injuries'. This provision is intended to ensure that in the United Kingdom civil liability in respect of motor vehicles should be extended to cover damage to property as well as personal injuries, as it is in the other Member States. The Legal Affairs Committee thought it appropriate to amend the opening sentence of this paragraph to make it comply with the text of Directive 72/166/EEC.

9. Article 1(2) stipulates that each Member State 'shall require an unlimited guarantee or shall specify amounts up to which such insurance shall be compulsory'. According to the provisions of this paragraph, these amounts may not be lower than 350,000 EUA per victim for damage to property and personal injuries or 500,000 EUA for all damages, including damage to property and personal injuries, arising out of a single claim where there is more than one victim.

The need to establish uniform minimum guarantee ceilings seems clear, given that the amounts in some Member States are totally inadequate at present. Nevertheless, it may prove difficult to adjust these amounts simultaneously in all the Member States without causing imbalances at the level of costs in those countries where the present ceilings are substantially lower than those proposed, which would have unfavourable repercussions for consumers.

With this reservation, the Legal Affairs Committee approves Article 1(2) as proposed by the Commission.

10. Article 1(3) provides for compensation within the limits authorized by paragraph 2 for damage to property or personal injuries caused by an unidentified or uninsured vehicle to be borne by the guarantee fund of the Member State in which the accident occurs.

As regards accidents caused by unidentified vehicles, the extension of compensation to cover damage to property would risk provoking an excessive number of disputed claims, as insurers will obviously have to protect themselves against abuses by clients. As for damages caused by uninsured vehicles, it seems advisable to extend compensation to include damage to property, provided that provision is made for a franchise, the level of which would be determined by national law.

In its opinion, the Committee on Economic and Monetary Affairs suggested that compensation for damage to property should be paid only for damage beyond a certain amount<sup>1</sup>.

Article 1(3) should therefore make provision for the Member States to establish a franchise in respect of damage to property. The Legal Affairs Committee proposes to add a provision to this effect to the text proposed by the Commission.

The Committee on Economic and Monetary Affairs also raised the question of whether the above should also cover injuries to live animals.

11. Article 2 of the proposal for a directive concerns cases in which, by virtue of national law, the insurer is not bound to pay compensation for damages and is able to demonstrate to the injured party that no obligation to pay exists. In such cases, Article 2 stipulates that the Member State in which the accident occurred should provide compensation for the damage in exactly the same way as for damage caused by an uninsured vehicle.

In order to reduce the disparities between national laws on this point and to guarantee conditions of parity, the Legal Affairs Committee proposes that Article 2 should be formulated as follows:

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

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<sup>1</sup> See p.22 below

- persons who do not have explicit or implicit authorization, or
- persons who are not in possession of a valid driving licence for the type of vehicle concerned, or
- persons who are in breach of legal regulations of a technical nature in respect of the mechanical condition or safety of the vehicle concerned,

shall be considered as invalid, with regard to the provisions of Article 3(1) of Council Directive 72/166/EEC, in respect of claims for damages by third parties.'

12. Article 3 of the proposal for a directive extends the insurance cover to the members of the driver's family or any other person who is liable under civil law in the event of an accident. Here again, however, a distinction should be made between injuries to these persons and any damage which might be caused to their property. The article should therefore be formulated as follows:

'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 against personal injuries by virtue of that relationship.'

13. Article 4 of the proposal for a directive amends the wording of the first directive regarding the definition of the territory in which the vehicle is normally based. The present criterion is the 'territory of the State in which the vehicle is registered', or, in cases where no registration is required, the territory of the State in which an insurance plate or distinguishing sign analogous to the registration plate is issued. A further criterion, in cases where no registration or distinguishing sign is required, is that of 'the State in which the person who has custody of the vehicle is permanently resident'. Article 4 of the proposal for a directive abandons these various alternative criteria and defines the territory in which the vehicle is normally based as that of 'the State of which the vehicle bears a registration plate'. This is an amendment which clearly takes into account the general system for registering motor vehicles used by all the Member States.

The Committee on Economic and Monetary Affairs suggested in its opinion that this article should be deleted, as it might reduce the vigilance of the Member States as regards the compulsory registration of imported vehicles.



On the contrary, however, the provision is a useful one, in view of the fact that the registration plate is the determining factor in deciding whether or not the bureau of the Member State in which an accident occurs should guarantee compensation for the damage. Nevertheless, the provision ought to specify that the registration plate, even if it has expired, must have been properly issued and not be false or unlawfully affixed to the vehicle. The final sentence of Article 4 should therefore be formulated as follows:

'the territory of the State of which the vehicle bears a properly issued registration plate'.

14. The Legal Affairs Committee would also like to ensure that consumers enjoy comparable conditions throughout the Community with regard to the drawing up of insurance policies against civil liability in respect of the use of motor vehicles. To this end, the Committee proposes to add a new Article 5, as follows:

'Member States shall not introduce or continue to enforce laws which prevent an insurer from using his discretion in reaching agreement with the insured on the appropriate premium or bonuses'.

15. The need to establish uniform guarantee ceilings will mean a considerable increase in the relevant amount for some Member States. Article 6 should therefore be formulated as follows:

'Member States shall bring into force the measures necessary to comply with this Directive within two years of its publication. They shall forthwith inform the Commission thereof'.

### III. CONCLUSION

16. The Legal Affairs Committee appreciates the Commission's desire to pursue its action on the harmonization of national legislation relating to insurance against civil liability in respect of the use of motor vehicles. The proposal for a second directive on this matter raises the various problems which have been discussed in this explanatory statement. Subject to the amendments proposed, the Legal Affairs Committee recommends that Parliament adopt the Commission's proposal.

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

Draftsman: Mr K. NYBORG

At its meeting of 21 October 1980 the Committee on Economic and Monetary Affairs appointed Mr Nyborg draftsman of the opinion for the Legal Affairs Committee.

It considered the proposal from the Commission at its meeting of 18 February 1981 and adopted the opinion by 10 votes to 2 with 3 abstentions.

Present: Mr Deleau, acting chairman; Mr Nyborg, draftsman; Mr Albers (deputizing for Mr Schinzel), Mr Beazley, Mr Beumer, Mr von Bismarck, Mr Bonaccini, Mr Delorozoy, Miss Forster, Mr Franz, Mr Herman, Mr Hopper, Mr Mihr, Mr Petronio and Mr von Wogau.

### The proposal from the Commission

1. The proposal from the Commission is aimed at amending and to a certain extent supplementing the provisions introduced in 1972, on the basis of which the Member States agreed to end the practice of checking that incoming drivers were in possession of an insurance document, the so-called 'green card'.

The substance of the provisions introduced in 1972 was to guarantee insurance cover for damage caused by vehicles registered in other countries, irrespective of whether such vehicles were covered by civil liability insurance.

2. The Commission is now proposing:

- to increase the insurance cover provided in those Member States where it appears to be inadequate;
- to amend certain wordings which give rise to uncertainty as to the insurance cover provided in cases where the parties involved are based in different Member States.

This proposal does not, however, concern the free exchange of insurance services.

3. The Community is thus still a long way from satisfying the wish expressed by the European Parliament in its opinion of 16 November 1976<sup>1</sup>:

- the approximation of legislation on third-party motor vehicle insurance is essential;
- the Commission should initiate without delay measures for the harmonization of the legislation of the various Member States on civil liability and transfrontier claim settlement.

### Fundamental observations

4. The harmonization of national legislation on civil liability insurance has a direct bearing on the prospects for achieving the free exchange of insurance services in respect of statutory third-party insurance within the Community; for this reason in particular, the Committee on Economic and Monetary Affairs considers it essential to press for genuine harmonization of national legislation on civil liability insurance, especially in respect of motor vehicles. The committee is convinced that greater competition in this field between companies in the various Member States would benefit the purchasers of insurance.

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<sup>1</sup> OJ No. C 293, 13.12.1976, p. 18

5. In the light of this, the Committee on Economic and Monetary Affairs supports the Commission's proposal, which in certain specific areas will reduce the disparities obtaining in the legislation of the Member States.

On the other hand, the Committee on Economic and Monetary Affairs considers that certain elements of the Commission's proposal, particularly because of the scope for abuse which they provide, would lead to a marked increase in the insurance companies' expenditure on the settlement of claims, and this would inevitably be passed on to consumers in the form of higher premiums; such elements would also make it extremely difficult to obtain agreement on a proposal in the Council.

6. Article 1(3) of the Commission's proposal, which states that compensation shall also be provided for damage to property caused by an unidentified or uninsured vehicle, is one of the provisions which is open to abuse.

The problems are connected mainly with damage caused by or claimed to have been caused by unidentified vehicles; there is less risk in accepting the provision as far as damage caused by uninsured vehicles is concerned, where the vehicle and in most cases its driver are identified, and where the course of events can also normally be verified.

One might in fact go so far as to question whether this provision should include damage to property caused by unidentified vehicles at all. After all, damage to real and movable property (apart from vehicles) is normally already covered by insurance (although such insurance is not compulsory), irrespective of whether the damage is caused by an identified or an unidentified vehicle.

If the Legal Affairs Committee nevertheless takes the view that this provision should include damage to property, the Committee on Economic and Monetary Affairs suggests that compensation should be paid only for damage beyond a certain amount (the 'own risk' factor).

It would therefore be advisable to introduce in the provisions a distinction between damage to property and personal injuries caused by unidentified vehicles.

7. However, it seems appropriate that Article 1(3) should also cover injuries to live animals.

8. In Article 4, the Commission proposes that the definition of where a vehicle is normally based should be changed

from: the state in which the vehicle is registered  
to: the state of which the vehicle bears a registration plate.

The reason behind this proposal appears to be that problems have been experienced in establishing who should provide compensation for damage caused in cases where the registration plates are false or stolen, or where a driver, on moving to another country, 'forgets' to register his vehicle in his new country of residence, while at the same time it has been removed from the records of the country in which the vehicle was originally registered.

However, this problem does not affect the injured party, but only the insurance companies' reciprocal arrangements, and from this point of view the Commission's proposal entails a risk that the Member States' interest in carrying out the checks necessary to ensure that imported vehicles are re-registered will be reduced.

#### Conclusions

9. The Committee on Economic and Monetary Affairs invites the Legal Affairs Committee:

- (a) to consider whether it is advisable for Article 1(3) to include damage to property caused by unidentified vehicles; if so, compensation should be paid only for damage beyond a certain amount;
- (b) to propose that the provisions of Article 1(3) should also apply to injuries caused to live animals;
- (c) to propose the deletion of Article 4;
- (d) to incorporate in its motion for a resolution the views expressed in point 4 above;
- (e) otherwise, to approve the Commission's proposal.

OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH

AND CONSUMER PROTECTION

Draftsman: Sir Peter VANNECK

The Committee on the Environment, Public Health and Consumer Protection appointed Sir Peter VANNECK draftsman of the opinion on 27 November 1980.

It considered the proposal for a directive at its meeting on 25 February 1981 and adopted the opinion at its meeting on 27 May 1981 by 12 votes with 5 abstentions.

Present: Mr Collins, chairman; Mr Weber, vice-chairman; Sir Peter Vanneck, draftsman of the opinion; Mr Bonaccini (deputizing for Mr Segré), Mr Forth (deputizing for Miss Hooper), Mr Ghergo, Mrs Krouwel-Vlam, Mrs Lentz-Cornette, Mrs Maij-Weggen, Mr Mertens, Mr Muntingh, Mrs Pruvot, Mrs Schleicher, Mr Sherlock, Mrs Squarcialupi, Mr Verroken and Mr Welsh (deputizing for Mr Johnson).

## I. Background to the proposal for a directive

1. This proposal constitutes an extension to the Council Directive of 24 April 1972 (known as the 'Green Card' Directive)<sup>1</sup>. This 1972 Directive was the Community's first step towards harmonising legislation on insurance against civil liability in respect of the use of motor vehicles.
2. The major achievements of this legislation were:
  - (a) motor vehicle insurance became compulsory in all countries;
  - (b) claims arising in the territory of the Community as a whole were covered by the provisions of the laws in force in the country where the accident occurred;
  - (c) checks on insurance **within the Community (Green Card) were abolished;**
  - (d) an agreement was signed on 12 December 1973 between the national insurers' bureaux whereby each bureau guaranteed the payment of compensation, and was amplified by the Luxembourg Protocol of 19 October 1977.
3. The 1972 Directive entered into force on 15 May 1974, i.e. more than 6 years ago. Its application has shown that there are still shortcomings in insurance cover where claims arise in another country and that the amount of compensation paid to the injured party varies widely from country to country. The following specific points are at issue:
  - (a) In all countries except the United Kingdom, insurance against personal injuries and damage to property is compulsory. In the United Kingdom, compulsory motor vehicle insurance is restricted to personal injuries.
  - (b) The amount of insurance cover **against civil liability varies from country to country. Whereas in Belgium, Luxembourg, Ireland and the United Kingdom (in respect of personal injuries only in the last two) insurance cover is unlimited, in other countries claims are limited (in Germany per accident, in France per victim).**
  - (c) There are also loopholes in respect of uninsured and unidentifiable vehicles and in those cases where a vehicle is insured but the insurer is able to **disclaim liability.**

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<sup>1</sup> OJ No. L 103, 2.5.1972, p. 1 et seq.



## II. Content of the proposal for a directive

4. The proposal provides for the following package of legislative amendments:
- (a) In future, contracts of insurance against civil liability in the Community must cover damage to property as well (Article 1(1));
  - (b) the available minimum amount insured in the Community is to be harmonized. The proposal specifies 350,000 EUA per victim for damage to property or personal injuries and 500,000 EUA in the case of a single claim where there is more than one victim (Article 1(2));
  - (c) each Member State is to make provision that compensation for damage to property or personal injuries caused by uninsured or unidentified vehicles is paid by national insurance bureaux (Article 1(3));
  - (d) in cases where an insurer can disclaim liability and refuse to make payment under national law the vehicle is to be treated as an uninsured vehicle (Article 2);
  - (e) exclusions in respect of claims on behalf of the members of the family of the driver and/or the insured person which are possible in some cases at present under national law will in future be invalid (Article 3);
  - (f) the attribution of a vehicle to a Member State will no longer be made according to where it is 'normally based' but on the basis of the 'registration plate' borne by the vehicle at the time of the accident (Article 4).

### III. General comments on the proposal

5. From the point of view of consumer policy, it would be desirable for motor vehicle insurance cover to be harmonised throughout the Community so that an injured party would receive equal and appropriate compensation irrespective of whether the accident occurred in his own country or in another Community country. But the Commission's proposal does not provide for such harmonisation. Indeed, on page 3 of the explanatory memorandum, the Commission states that the national rules of liability remain unchanged.
6. Consequently, the Commission's proposals do not comply with the wishes expressed by the European Parliament in its 1976 resolution<sup>1</sup>. The decision not to go ahead with harmonisation means, for example, that there will still be countries in the European Community which only recognize liability caused by negligence, whereas in other countries, there is also a presumption of liability (on the part of the owner or driver even where there is no negligence on account of the special risks associated with a motor vehicle).
7. Although the Commission's proposals do not therefore resolve all the difficulties affecting the victims of road accidents, the Committee, having heard the Commission, nevertheless believes that the proposals should be supported because they reduce, albeit in a limited way, the major differences between the Member States and in so doing introduce a minimum level of protection within the Community.
8. A minority of the committee, however, takes the view that the Commission's proposal does not go far enough. They regret that the principle of absolute liability is not extended to the whole Community. They consider, furthermore, that the Member States should be requested to accede to the Council of Europe's Convention on Civil Liability for Damage caused by Motor Vehicles of 14 May 1973 which places on the driver and owner of a motor vehicle the burden of proving that there was no negligence involved. This Convention has so far been signed but not ratified by Switzerland, Norway and Germany.

<sup>1</sup> OJ No. C 293, 13.12.1976, p. 18

#### IV. Specific comments on the proposal

##### ARTICLE 1(1) (obligation to insure against damage to property)

9. The extension of insurance cover to include damage to property is necessary and logical. Its implementation in the United Kingdom should not cause any major problems, since most drivers in the United Kingdom also take out cover against liability in respect of claims for damage to property in their contracts of insurance, albeit on a voluntary basis.
10. The aim of harmonizing the available minimum insured amounts (350,000 EUA or 500,000 EUA) is to provide appropriate compensation for accident victims. For some countries (Italy and Greece), harmonization involves a substantial increase of the existing amounts insured and thus greater insurance cover for accident victims. For those countries in which the insured amounts are higher or unlimited, the proposal does not represent an advance.
11. The committee has examined the question as to whether it would be worthwhile to introduce on a Community-wide basis an obligation, such as already exists in some countries, to provide unlimited cover. This would have the advantage of providing optimum protection in the event of an accident. It would moreover obviate the need to adapt the amounts insured to changing economic and monetary circumstances (see Article 1 (2) of the proposal for a directive). After hearing the Commission, the committee rejected this idea. The committee's view is that an obligation to provide unlimited cover could push up insurance premiums and also claims for damages by an unreasonable amount.
12. The Commission proposes a uniform insured amount for personal injuries and damage to property. This proposal represents a step backwards for those Member States in which at present the insured amounts applying to personal injury and damage to property are different. While the committee thought it necessary for social reasons to give priority to personal injuries over damage to property, it was conscious also of the need to avoid delaying or rendering impossible the settlement of claims for compensation in respect of damage to property. For this reason the committee preferred separate insured amounts for personal injuries and damage to property.

ARTICLE 1(3) (Guarantee Fund)

13. The European insurance industry has suggested that Article 1(3) of the proposal for a directive (guarantee fund in respect of unidentified or uninsured vehicles) should distinguish between personal injuries and damage to property caused by unidentified vehicles. This suggestion is that damage to property should not be compensated out of the guarantee fund because this would open the door to all sorts of abuse, such as claims in respect of bogus accidents. The committee has considered this point and indicated that it is in sympathy with an exclusion along these lines.

ARTICLES 2 and 3 (payment of compensation in the event of exclusions in respect of family members)

14. The committee supports the proposals contained in Articles 2 and 3 of the proposal for a directive (see above, paragraph 4 (d) and (e)) because they extend the scope of insurance cover within the European Community without imposing an excessive burden on the national insurance bureaux or guarantee funds.

ARTICLES 4 and 5 (Definition of 'normally based' and time-limit for implementation)

15. These provisions are quite acceptable.

Accelerated settlement of claims in cross-frontier cases

16. The committee notes that on 8 January 1981<sup>1</sup> the Commission issued a recommendation on the accelerated settlement of claims under insurance against civil liability in respect of the use of motor vehicles (81/76/EEC) calling upon the Member States to take all the measures necessary to facilitate the communication to those concerned of police reports and other documents in the case of accidents involving motor vehicles. The committee welcomes this recommendation and calls upon the Commission to be vigilant in ensuring that the Member States comply with it.

<sup>1</sup> OJ No. L 57, 4.3.1981, p. 27

## V. Conclusions

17. The Committee on the Environment, Public Health and Consumer Protection welcomes and supports the Commission's proposals in that they afford greater protection for the victims of road accidents in the Community.<sup>1</sup>
18. It requests the Legal Affairs Committee as committee responsible to call upon the Commission to amend its proposal for the harmonization of the available minimum insured amounts so that the proposed amounts of 350,000 or 500,000 EUA should be available only for personal injuries and that in addition, separate amounts of 70,000 and 100,000 EUA (1/5th of the amount for personal injuries) should be made available for damage to property.<sup>1</sup>
19. On the other hand, the committee recognizes that the considerable rise in the minimum amount of insurance cover which would be necessary in several countries would increase insurance premiums tremendously. It therefore seems to the committee appropriate that in the countries concerned the amounts of insurance cover should be progressively increased over a period of several years<sup>2</sup>.
20. As far as Article 4 of the Commission's proposal is concerned, the committee considers that the 1972 directive has been satisfactorily completed from the point of view of private law by the supplementary agreement to the London Convention of 12 December 1973 and by the Luxembourg Protocol of 19 October 1977. It requests the Legal Affairs Committee to ensure that Article 4 of the Commission's proposal complies with these private law agreements and does not unnecessarily thwart them.<sup>3</sup>

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<sup>1</sup> These paragraphs were adopted unanimously

<sup>2</sup> This paragraph was proposed as an oral amendment and adopted by 10 votes to 6

<sup>3</sup> This paragraph was proposed as an oral amendment and adopted by 9 votes to 6

