

COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a
THIRD 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

(presented by the Commission)

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SUMMARY

This proposal seeks to resolve certain problems left over from the first two third party motor insurance directives of 1972 and 1983. These enabled green card insurance checks to be abolished and began the process of reducing the disparities between the levels and content of compulsory third party motor insurance in the Member States.

The proposal states in its Article 1 that all passengers, other than the driver and passengers who have knowingly and willingly entered a stolen vehicle, must be afforded the protection of the third party insurance cover.

Article 2 removes doubts as to the obligation on Member States to ensure that third party motor insurance policies provide at least the minimum cover required by law in all the Member States.

Article 3 stipulates that the guarantee fund, set up inter alia to compensate the victims of uninsured drivers, must not require such victims first to establish that the uninsured party responsible is unable or unwilling to pay compensation.

Lastly, Article 4 of the proposal lays down that, in the event of a dispute between a liability insurer and the guarantee fund as to which of them should compensate an accident victim, Member States must oblige one or the other to compensate the victim without delay.

In general, in conformity with Article 100A (3), the present proposal aims at guaranteeing a high level of protection for consumers in the field of motor insurance.

Finally, the Commission's services have considered the possible implications of Article 9c of the Single Act for the issues covered by the present proposal on motor insurance. Although the draft Directive aims at ironing out a number of administrative difficulties between Member States, no problems created by differences in economic development between Member States exist in this case.

EXPLANATORY MEMORANDUM

I. Introduction

This proposal seeks to resolve certain problems left over from the first two third party motor insurance directives of 1972 and 1983¹.

It is one of the proposals listed in the Annex to the Commission's White Paper on completing the internal market. It also fulfils an undertaking given by the Commission to the Council when the second motor insurance directive was adopted at the end of 1983 to present a new proposal in this field within four years.

The objectives of this new proposal are thus fully in line with those pursued in the two earlier directives, namely to facilitate the free movement of vehicles, goods and persons and to safeguard the interests of motor accident victims throughout the Community and irrespective of where in the Community the accident occurs. Accordingly, this new proposal contributes to the creation of the necessary conditions for the functioning of the internal market and is therefore based on Article 100 a of the EEC Treaty.

In particular, this Directive aims, in conformity with Article 100 A (3) of the Treaty, at ensuring a high level of protection for consumers in the field of motor insurance.

II. Background to and comments on the individual articles

Article 1

The first motor insurance directive had as its main objective the abolition of green card insurance checks in order to facilitate the free movement of goods and persons.

¹ Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ No L 103, 2.5.1972, p. 1).

Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ No L 8, 11.1.1984, p. 17).

As a precondition for the removal of such checks the Directive laid down in its Article 3(1) that each Member State was to ensure that "civil liability in respect of the use of vehicles normally based in its territory" was covered by insurance. The same provision added that "The extent of the liability covered and the terms and conditions of the cover shall be determined on the basis of these measures". The first Directive thus left Member States largely free to decide the extent and coverage of compulsory third party motor insurance.

The second motor insurance Directive, in contrast, set out to achieve a certain harmonization in this area, or at least to reduce the disparities in the treatment of accident victims. To that end it made the coverage of property damage compulsory (in addition of course to personal injury cover), set minimum levels of compulsory cover, stipulated that certain exclusion clauses may not be invoked by the insurer against third party victims and laid down (Article 3) that the members of the family of the insured, driver or other person liable in the event of an accident should not be excluded from the coverage of the liability insurance in respect of their personal injuries simply by virtue of that family relationship. The main aim of this latter provision was to protect these family members who, particularly as passengers, constitute a very vulnerable category of potential victims.

However, the Commission services are aware of gaps that still exist in passenger coverage in various Member States. Greece still has no compulsory passenger coverage at all (but is planning to introduce it), Ireland and Luxembourg do not at present require insurance cover for liability towards motor cycle pillion passengers,

while several Member States exclude the policyholder or owner of the vehicle even when not driving the vehicle but carried as a passenger.

These gaps can affect Community citizens visiting another Member State in two ways. As passengers in a locally registered vehicle they have no say and often no knowledge of the insurance cover held for the use of that vehicle and may face unpleasant surprises in the event of an accident. Secondly, as passengers in a vehicle registered in another Member State, Community citizens will in many cases, indeed will normally, be subject to the compulsory motor insurance cover of the country visited. The basic principle of the green card system is that a visiting vehicle is deemed to have the basic cover required by law in the country visited and nothing more. Where the home country cover is particularly good, some insurers do in fact extend that cover so as to apply in other countries (where statutory cover is less) but they are not obliged to do so.

The present situation is unsatisfactory. Community citizens travelling in the Member States should be assured comparable protection throughout the Community when carried as passengers. Article 1 therefore requires that all passengers, other than the driver or passengers who have knowingly and willingly entered a stolen vehicle, should be covered by the compulsory liability insurance.

Article 2

As a second precondition for the removal of green card checks the first motor insurance directive laid down in its Article 3(2) that: "Each Member State shall take all appropriate measures to ensure that the contract of insurance also covers :

- according to the law in force in other Member States, any loss or injury which is caused in the territory of those States ;".

Three Member States (Italy, the Netherlands and the United Kingdom) have interpreted this provision as permitting third party motor insurance contracts to be issued the geographical scope of which is limited to the country of issue provided that arrangements are always made to ensure that the victims of accidents caused abroad by the vehicles with such cover are properly compensated. The basic aim here is presumably to keep the corresponding premium levels down. In the Netherlands and the United Kingdom such contracts appear to be restricted to commercial vehicles which will probably never leave their country of registration. In Italy the practice would seem to be much more widespread.

Whenever such cover is issued the policyholder is obliged to notify his insurer, and pay an additional premium, should he subsequently wish nevertheless to take his vehicle to another Member State. Should he in fact travel abroad without giving proper notice to the insurer and there cause an accident the insurer will meet the claim and compensate the third party and then have a right of recourse against the policyholder. The objective of the protection of accident victims in other Member States is indeed fulfilled.

The situation is unsatisfactory, however. The policyholder may not properly understand the consequences of his restricted cover and may be unpleasantly surprised if taken to court by his insurer. The insurer, for his part, may find in many cases that his right of recourse against the policyholder is illusory, particularly if large amounts are at stake. Such cover should therefore be discontinued, every policy of third party motor insurance providing cover throughout the Community on the basis of a single premium. The consequences in terms of premium increases should not be great.

In a fourth Member State, Greece, the situation is somewhat different. The compulsory Greek levels of cover (which are still rather low) extend to the use of the vehicle throughout the Community. In order to bring the level of this cover up to that required in the other Member States the Greek motorist planning to travel abroad must pay an additional premium to obtain a green card; this is then checked as the vehicle leaves Greek territory.

This too is an unsatisfactory arrangement which should be discontinued.

Article 3

The second motor insurance directive requires Member States to have a guarantee fund to compensate the victims of uninsured or hit-and-run vehicles. The Commission had originally proposed that the guarantee fund would simply replace the absent liability insurer, compensating the victim as soon as liability was established. However, the majority of the Member States insisted that the guarantee fund should be "subsidiary" and should compensate the victim only if no other source of compensation was available. The disagreement over the role of the guarantee fund led to an entry in the Council minutes when the second directive was adopted at the end of 1983 in which the Commission undertook to examine the subsidiarity problems in greater detail and to present a new proposal within four years, i.e. by the end of 1987.

The Commission had a study made of these problems by an outside expert and in July 1987 convened a meeting of Member States' experts to examine the points raised.

The study and subsequent discussions with the Member States' experts brought to light only one major problem resulting from the subsidiary intervention of the guarantee fund. The problem in question concerns the fact that in certain Member States the victim of an accident caused by an uninsured driver has to show he or she is unable to obtain compensation from the uninsured driver before he or she can claim on the guarantee fund. The victims will then have to correspond with or even take legal action against the party responsible. When the victim is resident in a Member State other than that in which the accident occurred the inconvenience will be particularly great.



The Commission believes that in such cases the guarantee fund should pay compensation to the victim as soon as the liability of the uninsured driver is established. The fund should then be subrogated in the rights of the victim and attempt to recover its disbursement from the party responsible if it considers such a course of action to be worthwhile. In any event the guarantee fund is better placed than the victim, particularly a visiting victim, to defend its interests.

Article 4

The study referred to in the section dealing with Article 3 also revealed another problem, not though one of subsidiarity, that can arise involving the guarantee fund.

Article 2 of the second motor insurance directive lays down that three types of exclusion clause may not be invoked by the insurer in respect of claims by third party victims.

However, there are other circumstances (e.g. non payment of the premium) which can result in the use of a vehicle no longer being covered by insurance.

It can happen that the insurer considers himself no longer bound by the insurance contract (in which case the matter becomes one for the attention of the guarantee fund) while the fund considers that the insurer was still on risk at the moment of the accident. It is assumed here that the liability question has been resolved, the only doubt being whether it should be the insurer or the guarantee fund that compensates the victim.

To protect the interests of the victim either the insurer or the fund should be designated as the payer of first instance pending the ultimate resolution of the dispute.

Articles 5 and 6

These articles need no comment.

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Proposal for a
THIRD 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 COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission¹,

In cooperation with the European Parliament²,

Having regard to the opinion of the Economic and Social Committee³,

Whereas, by Directive 72/166/EEC⁴, as last amended by Directive 84/5/EEC⁵, the Council adopted provisions on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and to the enforcement of the obligation to insure against such liability ;

Whereas Article 3 of Directive 72/166/EEC required 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 insurance cover were to be determined on the basis of those measures ;

¹ OJ No

² OJ No

³ OJ No

⁴ OJ No L 103, 2.5.1972, p. 2

⁵ OJ No L 8, 11.1.1984, p. 17

Whereas Directive 84/5/EEC reduced considerably the disparities between the level and content of compulsory civil liability insurance in the Member States ;

Whereas, however, significant disparities still exist in the coverage of such insurance ;

Whereas the elimination of such disparities, by ensuring that motor vehicle accident victims receive comparable treatment irrespective of where in the Community an accident occurs, will further facilitate the establishment and the operation of the internal market ;

Whereas, in particular, there are gaps in the compulsory insurance coverage of vehicle passengers in certain Member States ; whereas, to protect this particularly vulnerable category of potential victims, such gaps should be filled ;

Whereas it is necessary to remove uncertainty concerning the application of the first indent of Article 3(2) of Directive 72/166/EEC; whereas all compulsory motor insurance policies must cover the entire territory of the Community and provide under a single premium at least the cover required by law in all the Member States ;

Whereas Article 1(4) of Directive 84/5/EEC requires each Member State to set up or authorize a body to compensate the victims of accidents caused by uninsured or unidentified vehicles ; whereas, however, the said provision is without prejudice to the right of the Member States to regard compensation by the body as subsidiary or non-subsidiary ;

Whereas, however, in the case of an accident caused by an uninsured vehicle the victim is required in certain Member States to establish that the party responsible is unable or unwilling to pay compensation before he can claim on the body ; whereas the body is better placed than the victim to take action against the party responsible ; whereas, therefore, the body should not be able to invoke its subsidiarity in this case but should compensate the victim in the first instance ;

Whereas, in the event of a dispute between the body referred to above and a civil liability insurer as to which of them should compensate the victim of an accident, Member States, to avoid delay in the payment of compensation to the victim, should designate either the body or the insurer as responsible for paying compensation in the first instance pending resolution of the dispute,

HAS ADOPTED THIS DIRECTIVE :

Article 1

Without prejudice to the second subparagraph of Article 2(1) of Directive 84/5/EEC, the insurance referred to in Article 3(1) of Directive 72/166/EEC and in Article 1(1) of Directive 84/5/EEC shall cover liability for personal injuries to all passengers, other than the driver, arising out of the use of a vehicle.

For the purposes of this Directive the meaning of the term "vehicle" is as defined in Article 1 of Directive 72/166/EEC.

Article 2

Member States shall take the necessary steps to ensure that all policies of compulsory insurance covering civil liability in respect of the use of vehicles :

- cover, on the basis of a single premium, the entire territory of the Community ; and
- provide, on the basis of the same single premium, in addition to the cover required by law in the Member State in which the vehicle is normally based, at least the cover required by law in each of the other Member States.

Article 3

The following sentence shall be added to the first subparagraph of Article 1(4) of Council Directive 84/5/EEC :

"However, Member States may not allow the body to make the payment of compensation conditional on the victim's establishing in any way that the person responsible is unable or unwilling to pay".

Article 4

For the case where there is a dispute between the body referred to in Article 1(4) of Directive 84/5/EEC and the civil liability insurer as to which must compensate the victim, Member States shall designate one of these parties as responsible for compensating the victim without delay in the first instance. If it is ultimately decided that the other party should have paid all or part of the compensation it shall reimburse accordingly the party which has paid.

Article 5

Member States shall adopt the provisions necessary to comply with this Directive not later than 31 December 1992. They shall forthwith inform the Commission thereof.

Article 6

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

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FINANCIAL STATEMENT

Adoption of the proposal for a Directive will not entail any costs to the Community budget.

The proposed Directive should not have any consequences specific to SME and is unlikely to have any effect on employment.

This proposal is intended to improve the insurance protection of the victims of road accidents and as such will unavoidably have consequences as regards the level of motor insurance premiums in certain Member States. This result, on a much larger scale, was accepted by the Member States when the second motor insurance Directive (84/5/EEC) was adopted. This new proposal would have the most pronounced effects in Ireland and in Greece. Just as special transitional periods were requested and allowed for the application of the second Directive it is quite possible that similar arrangements could be envisaged for this proposal for a third directive.