Motor Insurance: civil liability, fourth directive (amend. direct. 73/239/EEC, 88/357/EEC, 92/49 /EEC)

1997/0264(COD) - 25/06/2007

The Commission has presented a report on certain issues relating to motor insurance.

1) The first part of the Commission report deals with both the implementation and the effectiveness of national penalties as well as on their equivalence, as foreseen in Article 4(6) of the Directive, in the light of the comments made by Member States, the insurance industry and other interested parties.

The consultation first aimed to find out whether interested parties (European citizens, companies, etc.) confronted with an accident as a visiting victim were aware of the existence of the claims representative appointed by the insurer of the liable party in their home country, and whether they considered this to be an efficient tool for claims settlement.

As far as the public's views are concerned, no objective conclusion could be drawn owing to the small number of replies received in the public consultation.

As regards the views of Member States, the majority of them believe that their citizens are well aware of the possibility to settle cross border claims via the claims representative appointed in their home country. As far as the perception of the claims representative mechanism is concerned, a large majority of Member States as well as of representatives of the insurance industry rated the claims representative mechanism as succeeding in its aim of facilitating and speeding up the process of settlement of cross border claims. The most appreciated aspects therein are the proximity of the claims representative to the claimant as well as the possibility for the injured party to communicate in his/her mother tongue when settling the claim.

Furthermore, Member States must impose sanctions to accelerate compensation. Liable insurers or their claims representatives who take more than three months to make a reasoned reply (the so called "reasoned offer/reply procedure") to a compensation request may be fined, at a level determined by the Member State in which the insurer is registered, and interest shall be charged on the compensation that is due.

The nature of financial or equivalent administrative penalties that may be imposed on insurers or their claims representatives for non - compliance with the 3 month reasoned offer/reply procedure varies from Member State to Member State .

The obligation for insurers and their claims representatives to settle claims in accordance with the reasoned offer/reply procedure has been established in all Member States. Based on the outcome of the consultation carried out with Member States and the insurance industry, two groups of penalties introduced by Member States in order to back up this duty could be identified. These are either financial or disciplinary in nature. Whilst some Member States apply these sanctions cumulatively, the others apply merely the payment of interest on the amount of compensation.

It emerges clearly from the consultation that national penalties are not equivalent to each other and are handled differently by Member States. However, this seems not to have a significant negative impact on insurers and their claims representatives in terms of meeting the 3 month time scale prescribed for providing the claimant with a reasoned offer/reply. Since the reasoned offer/reply procedure, despite the fact that it has been in force for a relatively short time, has proven to be well established and is

functioning in all Member States, all the measures taken at the level of Member States obviously have the desired effect. Therefore, there is no reason for the Commission to take action or submit any proposals in this respect.

2) Part 2 of the report seeks to give an analysis of the coverage of legal costs of victims of road accidents in the light of the information available and the comments made by Member States, the insurance industry and interested parties.

During the 2nd reading of the Fifth Motor Insurance Directive 2005/14/EC, the European Parliament proposed to include all necessary and appropriate legal costs (legal expenses) borne by the victim during the settlement of the claim in the scope of cover of the MTPL insurance of the liable party (see COD/2002/0124).

In response to the question raised by the European Parliament, an EU action consisting in the obligatory inclusion of legal costs in the scope of cover of the MTPL insurance of the liable party would not seem to produce clear benefits.

As a result of different approaches taken by Member States in respect of the reimbursement of legal costs incurred by the victim and due to the fact that the law applicable to the claim is always the law of the country where the accident occurred, EU nationals may enjoy different treatment in different countries when settling cross border claims. However, an EU wide extension of the scope of cover of MTPL insurance to include legal costs, even if restricted to necessary or reasonable ones, would be very unlikely to provide an equivalent regime throughout the EU. Member States would retain the possibility of maintaining their national practice by interpreting the necessity of the legal costs recovery in accordance with their national specificities.

Voluntary legal expenses insurance has proved to be available in the large majority of Member States. Since this insurance product allows the victim to recover his/her legal expenses regardless of the law applicable to the accident and irrespective of the success in the claim, it seems to be the comprehensive and satisfactory solution for meeting the interests of victims of road accidents. In this manner, national rules on reimbursement of legal costs, which differ from Member State to Member State and often reflect national specificities of the motor claims settlement systems, would not be affected.

However, the Commission Services observe that a better promotion of voluntary legal expenses contracts is necessary in some Member States in order to ensure a more balanced level of protection of EU citizens.