

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

1997/0264(COD) - 21/05/1999 - Council position

The Council's Common Position corresponds substantially to the Commission's amended proposal and takes account of most of the amendments requested by the European Parliament. The Council accepts the amendment referring to the Green Card Bureau and the Green Card Bureau system which does not solve all the problems of an injured party having to claim in another country against a party resident there and an insurer authorised there (a foreign legal system, a foreign language, unfamiliar settlement procedures and often unreasonable delayed settlement). The Council has also accepted the amendments which aim to :

- underline the necessity to complete the existing legislation in order to better protect the visiting motorists when they are the injured party in an accident;
- recognise that the appointment of a claims representative would enable the injured party to deal with his claim by procedures familiar to him;
- foresee that the appointment of a claims representative does not affect either the substantive law to apply or the matter of jurisdiction;
- foresee that the injured party must have a direct right of action against the other's party insurer;
- specify which information the information centres should make available to the injured parties;
- cover the cases where the insurer has failed to appoint a claim representative or where this claim representative cannot be identified.

The Council accepts in principle the amendments relating to :

- the claims representative's ability to represent the insurer and to settle the accident claims;
- the provision stating that a claim representative shall be appointed in each Member State other than that in which the insurer has received its official authorization. It is foreseen that the claims representative shall be instructed and authorized to settle claims, in a slightly modified form. Furthermore, the claims representative shall possess linguistic ability to represent the insurer. The Council has also accepted the amendments aiming to provide:

- that the activities of a claim representative shall not establish jurisdiction in the injured party's Member State;
- that the information centres shall keep a register of vehicles normally based in the Member State concerned, and a list of vehicles which would benefit from the derogation of the requirement of civil liability insurance cover;
- that the procedures laid down in the Directive do not preclude the right of the injured party or his insurer to start proceeding directly against the person responsible for the accident or his insurer. Finally, the common position partly accepts the amendments concerning :

- the obligation on the claim representative to make a reasoned offer or make a reasoned reply within a certain period. The Council has shortened the period in which the claim representative shall react to three months;
- the payment of interest (without always making reference to a precise interest rate);
- the notification by the insurer to the information centres in all Member States of the name and address of its claim representative ;
- the possibility, for an injured party who has a legitimate interest to obtain the name and address of the owner or usual driver. It is worth noting that the Council does not accept the extension of the field of application of the Directive to the third countries.