

Insurance against civil liability in respect of the use of motor vehicles

2002/0124(COD) - 26/04/2004 - Council position

The common position adopted by the Council by qualified majority retains indeed the essence of the Commission's Proposal. It contains indeed some improvements in certain aspects. First, it incorporates, fully or in their spirit, all the Parliament's amendments which were accepted by the Commission at the Plenary. Second, it meets in some important cases the concern expressed in other Parliament's amendments and contains solutions in the same direction, even if they do not fully coincide with such amendments. Finally, the common position also deals with some technical issues which were not raised by Parliament.

1) Changes in the common position responding to Parliament's amendments: the common position takes account, fully or in their spirit, of the amendments adopted by Parliament in its first reading and accepted by the Commission. These amendments are as follows:

- Claims representatives: The common position reflects the content of both Parliaments' amendments. They aim to avoid that the extension to all accidents of the insurance undertakings' obligation to appoint a claims representative in each Member State - as provided for in the Proposal - may overlap with the current Green Card Bureaux' system for the settlement of accidents and hinder its functioning.
- Consistency between the 4th Motor Insurance Directive and Council Regulation 44/2001/EC: The common position, which takes account of these amendments, modifies Article 5 of the Proposal and introduces a change in Article 4(8) of the Fourth Motor Insurance Directive. It adds in Article 4(8), together with the reference to the "Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters", a new mention to the Council Regulation 44/2001/EC of 22 December 2000.
- Personal injuries caused by unidentified vehicles: The common position modifies the Proposal and takes account of the spirit of this amendment. The common position provides that the conditions for the personal injuries to be considered significant shall be determined in accordance with the Member States legislation and specifies as recommended by Parliament that Member States may take into account in this regard whether the injury has required "hospital care".
- Claims statements: As pursued by this amendment Article 4 of the common position ensures that the claim statement should be provided by the insurance undertaking at any time on the policyholder's request.

The common position also contains other changes which meet the concern expressed in other Parliament's amendments and go therefore in their same direction, even if the solution retained by the Council does not fully coincide with such amendments:

- Minimum insurance amounts: The common position takes account to a large extent of the Parliament's requests concerning the increase of the minimum amounts of insurance cover. Indeed the minimum amount for personal injuries is raised to five millions euros per accident as requested by Parliament although the minimum amount for material damages has been fixed in one million euros per accident instead of 2 million euros requested. Furthermore the Common Position grants Member States the option to fix a minimum amount of 1 million euros per victim. The Parliament's request of a transitional period of 5 years has been retained in the Common Position.

- Derogation from the obligation of insurance in favour of certain special vehicles: The First Motor Insurance Directive permits Member States to apply derogation from the obligation of insurance in favour of certain special categories of vehicles. The Proposal intended to eliminate such derogation because, after Schengen, if one of these vehicles crosses the border it is not possible to guarantee the other Member States' right to require on entry the possession of a valid green card or a frontier insurance to compensate potential victims as provided for in the Directive. However, the common position has kept this derogation following a few of Parliament's amendments, but introducing a mechanism to ensure compensation to any victim of accidents caused by these vehicles either in the Member State in which they are based or in any other Member State. This derogation may be revised after 5 years time depending on the experience of application. Finally, in order to take account of this change, the common position deletes point 2(ii) of Article 5(1) of the Fourth Motor Insurance Directive, but keeps point 5(ii) of Article 5(1) of the same Directive. In short: the common position on this point follows the spirit of the Parliament's request and meets at the same time the Proposal's concern to provide full protection to any victim caused by these vehicles.

2) Other changes introduced by the Council in the common position: the common position has also introduced the following changes which were not requested by Parliament:

- Compensation to victims of accidents caused by vehicles exempted from the insurance obligation according to Article 4(a) of the First Motor Insurance Directive: The common position [Article 1(3)(a)] ensures that victims of accidents caused by vehicles exempted from the insurance obligation according to Article 4(a) of the First Motor Insurance Directive in the Member State in which they are normally based shall be duly compensated by the authorities or bodies designated by the Member State. The First Motor Directive only ensured compensation to victims caused abroad by such vehicles but not to victims of accidents in the Member State of registration. The common position provides furthermore that the Commission shall publish the categories of vehicles affected by this derogation as well as the authorities or bodies responsible for compensation. These changes reinforce the protection of victims.

- Territorial scope of the Motor Insurance Directives: the common position [Article 1(4)] deletes the references to "the non-European territory" of the Member States in Articles 6 and 7(1) of Directive 72/166/EEC.

- Pedestrians and cyclists: The common position does not fully follow the Proposal with regard to the protection of pedestrians and cyclists. However, the new wording of this provision stresses that the compulsory insurance of the motor vehicle involved must cover personal and property damages suffered by pedestrians, cyclists and other non-motorised users of the roads to the extent they are entitled to compensation according to national legislation on civil liability. This provision goes along the lines of a draft amendment that was considered at the EP Legal Affairs Committee, but was not finally retained.

The common position rejected the following Parliament amendments: Definition of trailers and introduction of special provisions applying to them; Inclusion of the costs of pursuing claims in legal proceedings; Limitation period for direct right of action; Creation of a central body for gathering information on accidents; Possibility of checks; Revision of amounts; Scope of insurance cover;

- Definition of the Member State where the risk is situated; Obligation to make a 'reasoned offer'.