

4.1 Directives

4.1.1 Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability

(codified version)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

(1) Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of 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, 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, Third Council Directive 90/232/EEC of 14 May 1990 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 Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (Fourth motor insurance Directive) have been substantially amended several times. In the interests of clarity and rationality those four Directives should be codified, as well as Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles.

(2) Insurance against civil liability in respect of the use of motor vehicles (motor insurance) is of special importance for European citizens, whether they are policyholders or victims of an accident. It is also a major concern for insurance undertakings as it constitutes an important part of non-life insurance business in the Community. Motor insurance also has an impact on the free movement of persons and vehicles. It should therefore be a key objective of Community action in the field of financial services to reinforce and consolidate the internal market in motor insurance.

(3) Each Member State must 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. The extent of the liability

covered and the terms and conditions of the insurance cover are to be determined on the basis of those measures.

(4) In order to exclude any possible misinterpretation of this Directive and to make it easier to obtain insurance cover for vehicles bearing temporary plates, the definition of the territory in which the vehicle is normally based should refer to the territory of the State of which the vehicle bears a registration plate, irrespective of whether such a plate is permanent or temporary.

(5) While respecting the general criterion of the registration plate to determine the territory in which the vehicle is normally based, a special rule should be laid down for accidents caused by vehicles without a registration plate or bearing a registration plate which does not correspond or no longer corresponds to the vehicle. In this case and for the sole purpose of settling the claim, the territory in which the vehicle is normally based should be deemed to be the territory in which the accident took place.

(6) A prohibition of systematic checks on motor insurance should apply to vehicles normally based in the territory of another Member State as well as to vehicles normally based in the territory of a third country but entering from the territory of another Member State. Only non-systematic checks which are not discriminatory and are carried out as part of a control not aimed exclusively at insurance verification may be permitted.

(7) The abolition of checks on green cards for vehicles normally based in a Member State which enter the territory of another Member State can be effected by means of an agreement between the national insurers' bureaux, whereby each national bureau would guarantee compensation in accordance with the provisions of national law in respect of any loss or injury giving entitlement to compensation caused in its territory by one of those vehicles, whether or not insured.

(8) Such a guarantee agreement presupposes that all Community motor vehicles travelling in Community territory are covered by insurance. The national law of each Member State should, therefore, provide for the compulsory insurance of vehicles against civil liability, such insurance to be valid throughout Community territory.

(9) The system provided for in this Directive could be extended to vehicles normally based in the territory of any third country in respect of which the national bureaux of the Member States have concluded a similar agreement.

(10) Each Member State should be able to act in derogation from the general obligation to take out compulsory insurance in respect of vehicles belonging to certain natural or legal persons, public or private. For accidents caused by such vehicles, the Member State so derogating should designate an authority or body to compensate for the damage to victims of accidents caused in another Member State. Steps should be taken to ensure that due compensation is paid not only to the victims of accidents caused by these vehicles abroad but also the victims of accidents occurring in the Member State in which the vehicle is normally based, whether or not they are resident in its territory. Furthermore, Member States should ensure that the list of persons exempt from compulsory insurance and the authorities or bodies responsible for compensation of victims of accidents caused by such vehicles is communicated to the Commission for publication.

(11) Each Member State should be able to act in derogation from the general obligation to take out compulsory insurance in respect of certain types of vehicles or certain vehicles having a special plate. In

that case, the other Member States are allowed to require, at the entry into their territory, a valid green card or a frontier insurance contract, in order to ensure the provision of compensation to victims of any accident which may be caused by those vehicles in their territories. However, since the elimination of border controls within the Community means that it is not possible to ensure that vehicles crossing frontiers are covered by insurance, compensation for victims of accidents caused abroad cannot be guaranteed. Steps should also be taken to ensure that due compensation is awarded to the victims of accidents caused by those vehicles not only abroad but also in the Member State in which the vehicle is normally based. For this purpose, Member States should treat the victims of accidents caused by those vehicles in the same way as victims of accidents caused by uninsured vehicles. Indeed, compensation to victims of accidents caused by uninsured vehicles should be paid by the compensation body of the Member State in which the accident took place. Where payments are made to victims of accidents caused by vehicles subject to the derogation, the compensation body should have a claim against the body of the Member State in which the vehicle is normally based. After a certain period to allow for the implementation and application of this possibility of derogation, and taking into account the lessons drawn therefrom, the Commission should, when appropriate, submit proposals for its replacement or repeal.

(12) Member States' obligations to guarantee insurance cover at least in respect of certain minimum amounts constitute an important element in ensuring the protection of victims. The minimum amount of cover for personal injury should be calculated so as to compensate fully and fairly all victims who have suffered very serious injuries, while taking into account the low frequency of accidents involving several victims and the small number of accidents in which several victims suffer very serious injuries in the course of one and the same event. A minimum amount of cover per victim or per claim should be provided for. With a view to facilitating the introduction of these minimum amounts, a transitional period should be established. However, a period shorter than the transitional period should be provided for, in which Member States should increase these amounts to at least half the levels provided for.

(13) In order to ensure that the minimum amount of cover is not eroded over time, a periodic review clause should be provided using as a benchmark the European Index of Consumer Prices (EICP) published by Eurostat, as provided for in Council Regulation (EC) No 2494/95 of 23 October 1995 concerning harmonised indices of consumer prices. Procedural rules governing such a review should also be laid down.

(14) It is necessary to make provision for a body to guarantee that the victim will not remain without compensation where the vehicle which caused the accident is uninsured or unidentified. It is important to provide that the victim of such an accident should be able to apply directly to that body as a first point of contact. However, Member States should be given the possibility of applying certain limited exclusions as regards the payment of compensation by that body and of providing that compensation for damage to property caused by an unidentified vehicle may be limited or excluded in view of the danger of fraud.

(15) It is in the interest of victims that the effects of certain exclusion clauses be limited to the relationship between the insurer and the person responsible for the accident. However, in the case of vehicles stolen or obtained by violence, Member States may specify that compensation will be payable by the abovementioned body.

(16) In order to alleviate the financial burden on that body, Member States may make provision for the application of certain excesses where the body provides compensation for damage to property caused by uninsured vehicles or, as the case may be, vehicles stolen or obtained by violence.

(17) The option of limiting or excluding legitimate compensation for victims on the basis that the vehicle is unidentified should not apply where the body has paid compensation for significant personal injuries to any victim of the accident in which damage to property was caused. Member States may provide for an excess, up to the limit prescribed in this Directive, to be borne by the victim of the damage to property. The conditions in which personal injuries are to be considered significant should be determined by the national legislation or administrative provisions of the Member State where the accident takes place. In establishing those conditions, the Member State may take into account, inter alia, whether the injury has required hospital care.

(18) In the case of an accident caused by an uninsured vehicle, the body which compensates victims of accidents caused by uninsured or unidentified vehicles is better placed than the victim to bring an action against the party liable. Therefore, it should be provided that that body cannot require that victim, if he is to be compensated, to establish that the party liable is unable or refuses to pay.

(19) 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 any delay in the payment of compensation to the victim, should ensure that one of those parties is designated as being responsible in the first instance for paying compensation pending resolution of the dispute.

(20) Motor vehicle accident victims should be guaranteed comparable treatment irrespective of where in the Community accidents occur.

(21) The members of the family of the policyholder, driver or any other person liable should be afforded protection comparable to that of other third parties, in any event in respect of their personal injuries.

(22) Personal injuries and damage to property suffered by pedestrians, cyclists and other non-motorised road users, who are usually the weakest party in an accident, should be covered by the compulsory insurance of the vehicle involved in the accident where they are entitled to compensation under national civil law. This provision does not prejudice the issue of civil liability, or the level of awards of damages in respect of a given accident, under national legislation.

(23) The inclusion within the insurance cover of any passenger in the vehicle is a major achievement of the existing legislation. This objective would be placed in jeopardy if national legislation or any contractual clause contained in an insurance policy excluded passengers from insurance cover because they knew or should have known that the driver of the vehicle was under the influence of alcohol or of any other intoxicating agent at the time of the accident. The passenger is not usually in a position to assess properly the level of intoxication of the driver. The objective of discouraging persons from driving while under the influence of intoxicating agents is not achieved by reducing the insurance cover for passengers who are victims of motor vehicle accidents. Cover of such passengers under the vehicle's compulsory motor insurance does not prejudice any liability they might incur pursuant to the applicable national legislation, nor the level of any award of damages in a specific accident.

(24) All compulsory motor insurance policies should cover the entire territory of the Community.

(25) Some insurance undertakings insert into insurance policies clauses to the effect that the contract will be cancelled if the vehicle remains outside the Member State of registration for longer than a specified period. This practice is in conflict with the principle set out in this Directive, according to which compulsory motor insurance should cover, on the basis of a single premium, the entire territory of the Community. It should therefore be specified that the insurance cover is to remain valid during

the whole term of the contract, irrespective of whether the vehicle remains in another Member State for a particular period, without prejudice to the obligations under Member States' national legislation with respect to the registration of vehicles.

(26) In the interests of the party insured, every insurance policy should guarantee for a single premium, in each Member State, the cover required by its law or the cover required by the law of the Member State where the vehicle is normally based, when that cover is higher.

(27) Steps should be taken to make it easier to obtain insurance cover for vehicles imported from one Member State into another, even though the vehicle is not yet registered in the Member State of destination. A temporary derogation from the general rule determining the Member State where the risk is situated should be made available. For a period of 30 days from the date when the vehicle is delivered, made available or dispatched to the purchaser, the Member State of destination should be considered to be the Member State where the risk is situated.

(28) Any person wishing to take out a new motor insurance contract with another insurer should be in a position to justify his accident and claims record under the old contract. The policyholder should have the right to request at any time a statement concerning the claims, or the absence of claims, involving the vehicle or vehicles covered by the insurance contract at least during the preceding five years of the contractual relationship. The insurance undertaking, or any body which may have been appointed by a Member State to provide compulsory insurance or to supply such statements, should provide this statement to the policyholder within 15 days of the request.

(29) In order to ensure due protection for victims of motor vehicle accidents, Member States should not permit insurance undertakings to rely on excesses against an injured party.

(30) The right to invoke the insurance contract and to claim against the insurance undertaking directly is of great importance for the protection of victims of motor vehicle accidents. In order to facilitate an efficient and speedy settlement of claims and to avoid as far as possible costly legal proceedings, a right of direct action against the insurance undertaking covering the person responsible against civil liability should be provided for victims of any motor vehicle accident.

(31) In order to obtain an adequate level of protection for victims of motor vehicle accidents, a 'reasoned offer' procedure should be extended to any kind of motor vehicle accident. This same procedure should also apply *mutatis mutandis* where the accident is settled by the system of national insurers' bureaux.

(32) Under Article 11(2) read in conjunction with Article 9(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, injured parties may bring legal proceedings against the civil liability insurance provider in the Member State in which they are domiciled.

(33) The green card bureau system ensures the ready settlement of claims in the injured party's country of residence even where the other party comes from a different European country.

(34) Parties injured as a result of a motor vehicle accident falling within the scope of this Directive and occurring in a State other than that of their residence should be entitled to claim in their Member State of residence against a claims representative appointed there by the insurance undertaking of the responsible party. This solution would enable damage suffered by injured parties outside their Member State of residence to be dealt with under procedures which are familiar to them.