

European Economic and Social Committee

INT/152

Civil liability/vehicles

Brussels, 26 February 2003

OPINION

of the European Economic and Social Committee

on the

Proposal for a Directive of the European Parliament and of the Council amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC, 90/232/EEC and Directive 2000/26/EC on insurance against civil liability in respect of the use of motor vehicles

COM(2002) 244 final - 2002/0124 (COD)

--

CESE 287/2003 FR/WGR/ss

On 16 September 2002 the Council decided to consult the European Economic and Social Committee, under Article 95 (1) of the Treaty establishing the European Community, on the

Proposal for a Directive of the European Parliament and of the Council amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC, 90/232/EEC and Directive 2000/26/EC on insurance against civil liability in respect of the use of motor vehicles
COM(2002) 244 final “ 2002/0124 (COD).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 19 December 2002. The rapporteur was Mr Levaux.

At its 397th plenary session on 26 and 27 February 2003 (meeting of 26 February) the Committee adopted the following opinion by 81 votes to 5 with 6 abstentions.

Introduction

Insurance against civil liability in respect of the use of motor vehicles was covered by an initial directive adopted in 1972, which was followed by four other directives adopted in 1984, 1988, 1990 and 2000 [footnote1: 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 (OJ L 103 of 2.5.1972); 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 L 8 of 11.1.1984); 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 (OJ L 129 of 19.5.1990); 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 and amending Council Directives 73/239/EEC and 88/357/EEC (Fourth motor insurance Directive)(OJ L 181 of 20.7.2000)].

However, intra-Community traffic is constantly increasing, and certain provisions of the texts adopted earlier (particularly those relating to minimum insurance cover amounts) need to be updated.

In addition, there is a perceived need to fill certain gaps or to find solutions to recurring problems, such as:

- the difficulty in finding insurance to cover a temporary stay in another Member State;
- the difficulty in finding short-term insurance for the purchase of a vehicle in another Member State;
- the demand for improved compensation for pedestrians and cyclists within the scope of motor insurance;
- the need to obtain from one's insurer a statement relating to one's claims record in order to negotiate a new contract with another insurer.

As a result, in July 2001 the European Parliament adopted a resolution recommending the adoption of a fifth directive. The current proposal is the Commission's response to that resolution.

General comments

The Committee supports the approach of the Commission, whose draft directive is intended to amend the earlier directives in order to achieve "the following main objectives":

- to update and improve the protection of victims of motor vehicle accidents by compulsory insurance;
- to fill gaps and clarify certain provisions of the directives, thereby ensuring increased convergence as regards their interpretation and application;
- to provide solutions to frequently occurring problems in order to create a more efficient single market in motor insurance.

The Committee notes that since 1972 – the year of the first directive – several amendments have been made to adapt the texts to the changing situation and to take account of the various difficulties in their application.

2.2.1 The Committee considers that this legislative approach runs counter to a number of Commission initiatives, including the White Paper on European governance, the Communication on European governance: better law-making and the Communication on simplifying and improving the regulatory environment. The Committee therefore regrets that through these successive changes, this approach jeopardises the consistency of, and access to, the body of regulatory provisions governing vehicle insurance.

Once again the Committee notes that certain provisions have not been updated since they were first introduced. For example, on minimum cover thresholds, the draft directive proposes an increase of the order of 75% of the amounts laid down by Directive 84/5/EEC, which have not been revised for 18 years.

The Committee takes the view that this method is inconsistent, since it leads to periodic revisions on too large a scale.

Moreover, over the years certain Member States have set their own minimum thresholds higher than the Community minimum thresholds. The gaps between Member States are widening, making it very difficult to harmonise rates and apply a balanced competition policy.

The Committee notes with satisfaction that the current draft directive provides, in its Article 2, for a revision of the new minimum thresholds every five years.

Specific comments

The Committee examined point by point the articles of the draft directive which seek to amend provisions in earlier directives. These changes, mostly technical, are endorsed by the Committee, except for the provisions on the guarantee minima for damage to property and personal injury. The Committee would also make the following specific comments and suggestions:

Article 1

The Committee approves the proposed changes.

Article 2

It is proposed to set guarantee minima at €1,000,000 per victim of personal injury and €500,000 per material damage claim, whatever the number of victims.

The Committee realises that, at a time when the reinsurance sector is in turmoil, it is not desirable to propose higher minima. However, experience shows that a considerable increase in guarantee minima automatically gives rise to an equally considerable increase in the levels of compensation awarded by the courts, in particular with regard to personal injury. The ensuing raising of premiums by insurers could be incompatible with the financial resources of clients, particularly those in the candidate countries.

The Committee takes the view that the compensation per victim of personal injury (for which the directive sets no ceiling) is equivalent in some cases to unlimited cover of the risks. Bearing in mind that there are special rules for public passenger transport, to which this directive does not apply, the Committee proposes that the ceiling be set at â,–10,000,000 per claim for personal injury whatever the number of victims. This ceiling would apply for a period of 10 years, at the end of which the Commission would need to reassess the situation.

The Committee endorses the proposed arrangements for automatic indexation.

The Committee proposes that the Commission insert the following new point into the amended Article 1 of Directive 84/5/EEC:

"(i) Member States must take steps to set up a system for settlement, within a maximum time-limit of four months, of provisional compensation of traffic accident victims for personal injury, pending the final establishment of the amount of compensation, where the final amount is to be decided by a court".

The Committee believes that the proposed Article 1(6) of Directive 84/5/EEC should be deleted. The Committee does not in any case accept the restriction contained in the second paragraph of point 6 to significant personal injuries: under no circumstances should its definition be left to the Member States, for the obvious reason that schemes for victims would differ between Member States in an area which should be harmonised.

Article 3

The Committee approves the proposed change.

Article 4

The Committee endorses the proposed changes, except for those in Article 4(2) and (4).

Article 4(2)

This contains a proposal to insert in Directive 90/232/EEC an Article "1a" which would guarantee insurance of personal injuries sustained by pedestrians and cyclists in a traffic accident, whether the driver of the vehicle concerned is at fault or not.

The Committee is aware of the fact that in the case of compensation for weaker road users the present state of affairs will inevitably have to change. Improving the situation of "weaker road users" should embrace not only cyclists and pedestrians but also other non-motorised road users such as inline skaters.

However, an insurance directive should not be used to bring about this improvement, since Member States' provisions with regard to liability law still apply in this area.

If the EU's competence for liability legislation to cover material damage is accepted, weaker road users should be protected by EU-wide liability provisions. Such legislation would also have to cover a number of basic points such as a causality requirement, the need to take account of force majeure and the exclusion of intention in causing damage.

The Committee therefore proposes that this provision be withdrawn from the present draft

directive (known as the "fifth directive") and be reserved for a liability directive which is designed to improve compensation and harmonise the rules for "weaker road users".

3.4.2.4 Reference could be made in the forthcoming motor vehicle insurance directive to the liability directive and a uniform standard of compensation provided for all victims of traffic accidents.

Article 4(4)

This includes a proposal to insert into Directive 90/232/EEC an Article "4b" on the production of insurance statements.

The Committee regards this provision as too limited, since it simply obliges the insurer to send a statement relating to previous claims within the fifteen days following the termination of the contract. In fact, policy holders need this statement before the contract terminates in order to find a new insurer: if they only receive it after termination, they will be without cover for a certain period. Moreover, the statement may be required by policy holders at any time, such as when acquiring another vehicle they also wish to insure. Consequently, the Committee would like the statement to be provided within fifteen days of a request by the policy holder. In addition, it would like the insurer to be obliged to reply by e-mail and/or by post to each request from the policy holder.

Article 5

The Committee endorses the proposed changes.

Article 6

The Committee endorses the provisions on transposition.

Conclusions

The Committee notes a proliferation of European texts on motor insurance.

Even before the adoption of the current proposal for a fifth directive, a future directive should be envisaged.

Other amending or complementary texts will no doubt be drawn up. Access to the rules in force is thus becoming particularly complex because of the accumulation of texts amended on a piecemeal basis, with a growing risk of confusion and inconsistency on the eve of enlargement.

The Committee therefore calls upon the Commission to propose that the 5th directive still under consideration should consolidate the earlier directives (72/166/EEC, 84/5/EEC, 88/357/EEC, 90/232/EEC, 2000/26/EC). At a later stage it could be transformed into a "European motor insurance code" by adding to it all the existing rules in this field.

Further amendments and developments would be made by reference to this single document, which would ensure that all the arrangements are consistent.

This "European motor insurance code" could be the forerunner of a more general document: a

"European insurance code".

Brussels, 26 February 2003.

The President
of the
European Economic and Social Committee

Roger Briesch
The Secretary-General
of the
European Economic and Social Committee

Patrick Venturini