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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on certain issues relating to Motor Insurance

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1. PART 1: IMPLEMENTATION OF ARTICLE 4(6) OF THE 4TH MOTOR INSURANCE DIRECTIVE ON NATIONAL PENALTY PROVISIONS AND THEIR EFFECTIVENESS

1.1. Introduction

One of the aims of the 4th Motor Insurance Directive 2000/26/EC (hereinafter "the Directive") is to ensure a rapid settlement of motor insurance claims in cases where the accident occurs outside the victim's country of residence (the so called "visiting victim"). Via the claims representative¹ (a claims representative must be appointed by every MTPL insurer in every other MS), visiting victims should be able to settle claims in their own language and get compensation more rapidly and at less expense. The claims representative is responsible for handling and settling the claim by representing the foreign insurer of the party liable for the accident².

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 due³.

Article 4(7) of the Directive states that the Commission shall report to the European Parliament and the Council (before 20 January 2006⁴) on the implementation and the effectiveness of national penalties introduced in respect of the reasoned offer/reply procedure as well as on their equivalence and shall submit proposals if necessary (should these national penalties fail to produce their expected results).⁵

¹ According to Article 4(1) of the Directive, each Member State should ensure that all insurance undertakings appoint a claims representative in all Member States except the Member State in which they have been authorized to provide motor insurance (Home Member State).

² According to Article 4(4) and (5) of the Directive claims representative shall collect all information necessary in connection with the settlement of the claims and shall take the measures necessary to negotiate a settlement of claims. They shall also possess sufficient powers to represent the insurance undertaking in relation to injured parties and to meet their claims in full. They must be capable of examining cases in the official language(s) of the Member State of residence of the injured party.

³ According to Article 4(6) of the Directive Member States have to ensure through effective and systematic financial or equivalent administrative penalties that the victim receives a reasoned offer of compensation or a reasoned reply in case of refusal within three months of the date when the claim was presented either to the insurer of the liable party or to its claims representative.

⁴ The report on Article 4 (6) could not be presented by the date foreseen in the Directive because it was agreed in 2005 during the negotiations on the 5th Motor Insurance Directive that the Commission would use this report to cover also the issue of legal expenses (see part 2 of this report).

⁵ In this respect it should be noted that an error appeared in the wording of Article 4(7) since the reference in that provision should have been to paragraph 6, first subparagraph dealing with the issue of national penalty provisions, and not to paragraph 4, which describes the tasks of the claims representative when settling a claim.

In order to prepare the report, the Commission Services⁶ consulted Member States in March 2006⁷ and the insurance industry in April 2006⁸. A public online consultation was also held from 6 April 2006 to 5 June 2006 on the website of the Commission⁹ in order to consult all interested parties on their awareness of the claims representative mechanism and on its effectiveness¹⁰.

This 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.

1.2. Review of the implementation of the Directive in Member States

The Directive had to be transposed by Member States by 20 July 2002 and its provisions were to become applicable before 20 January 2003¹¹.

With regard to the implementation of the Directive, the Commission sent reasoned opinions on 6 January 2003 to France, Greece, Italy, Ireland, Luxembourg, the Netherlands, Portugal and the United Kingdom for non-implementation of its general provisions by the agreed date of 20 July 2002. All these infringement cases were closed in the course of 2003¹² as the national measures transposing the Directive were adopted and communicated to the Commission. Furthermore, the Commission sent letters of formal notice on 23 December 2004 to Latvia, Malta and Slovenia as these Member States had not communicated all the measures transposing the Directive. These infringement cases were closed in May 2005 following the notification of the implementing measures to the Commission.

1.3. Assessment of the implementation and effectiveness of Article 4 (6)

1.3.1. Public awareness and perception of the claims representative mechanism

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.

⁶ This report has been drafted by DG Internal Market and Services.

⁷ A questionnaire was sent in March 2006 to the 25 Permanent Representations and replies were received from all Member States apart from Italy in the course of May 2006.

⁸ The CEA (Comité Européen des Assurances – European Federation of National Insurance Associations) was consulted in March 2006.

⁹ See the website ‘Your Voice in Europe’ <http://europa.eu.int/yourvoice/consultations> for all public consultations of the Commission, where an Interactive Policy Making (IPM) tool is used to improve governance by web-based questionnaires for collecting and analysing reactions.

¹⁰ The results of this consultation are available on the following website:
http://ec.europa.eu/internal_market/insurance/motor_en.htm#consultation

¹¹ See Article 10 of the Directive.

¹² With the exception of France which communicated its national measures on 30 January 2004.

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 consultation¹³.

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. When responding to this question, Member States referred to several channels used for communicating information to citizens about the existence of a claims representative, such as public information campaigns, web sites of national motor insurance bureaux, insurance associations, and information centres set up in accordance with Art.5 of the Directive. 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.

1.3.2. The nature of penalties introduced in respect of the reasoned offer/reply procedure and their equivalence

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.

Financial penalties

Financial penalties have only been introduced in some Member States. They may be imposed either on the insurer (Greece, Lithuania, Cyprus, Portugal, Spain, Malta, Belgium, Luxembourg, Sweden and Czech Republic) or both on the insurer and on the person(s) authorized to represent and legally bind the insurer, hereinafter authorized persons (Slovenia, Hungary, and Poland).

Other penalties

As far as other kinds of penalties are concerned, some Member States apply disciplinary sanctions to authorised persons, such as suspension from office (Poland, Lithuania), whilst in other countries insurers may lose their licence to conduct the MTPL (motor third party liability) business (Hungary, The Netherlands, Germany, Luxembourg, Sweden and Lithuania).

No specific sanctions

Some Member States do not provide for any specific sanctions and rely solely upon the insurers' duty to pay statutory interest on the amount of compensation if the reasoned

¹³ 201 in total (161 responses were received from individuals and 40 responses were collected from organisations) out of which only 57 addressed the issue of awareness of the claims representative. The outcome of this public consultation is published on the following website:
http://ec.europa.eu/internal_market/insurance/motor_en.htm#20051222

offer/reply is not made within three months (UK, Ireland, Denmark, Slovakia, Austria, Estonia, Latvia, Finland, France, Belgium and Spain)¹⁴.

Comparative table

	Financial sanction/insurer	Financial sanction/authorized persons	Disciplinary sanction/authorized persons	Withdrawal/Suspension of the MTPL Licence	No specific sanction/Interests - rate per annum (if not specified otherwise)
Austria					Statutory interest
Belgium	250 EUR/day in case of a delayed reasoned reply				Statutory rate of 7% in case of a delayed reasoned offer
Cyprus	Up to 2000CYP = 3452 EUR				
Czech republic	Up to 1 000 EUR = 28 000 CZK				Discount rate of the Czech National Bank in effect on the first day of delay, increased by 4 %
Denmark					Statutory interest accruing 30 days after the claim was payable
Estonia					0.4 % on the amount/day
Finland					Statutory interest
France	The judge may impose a fine of 15% of the amount of compensation in the case of a clearly insufficient				Double statutory interest rate in case of no reply

¹⁴ In this respect it should be noted that this sanction is explicitly required by the Directive and should therefore be obligatorily applied in all Member States.

	offer payable to the national guarantee fund				
Germany			X	X	5% over the basic interest rate
Greece	3 000 EUR				
Hungary	From 100 000 up to HUF 20 000 000, - HUF (1 Euro = 260, - HUF).	From 40 000,- up to 1 000 000,- HUF		X	
Ireland				Unspecified administrative sanctions without specification – reference to Section 33BD of the Central Bank Act, 1942/2004	Statutory interest
Italy - no information provided					
Latvia					0.1% on the amount/day
Lithuania	Up to 100.000 EUR			X	0.04% on the amount/day.
Luxembourg	X		X	X	Statutory interest
Malta	Lm 5000 = €1 650				Statutory interest
Netherlands				X	
Poland	0.5% of the premium written	Three times salary	X		Statutory rate of 11.5%

Portugal	From 748,20 to 74.819,68 EUR				Double statutory interest rate
Slovakia					Discount rate (basic interest rate) of the National Bank in effect on the first day of delay
Slovenia	8 400 EUR	420 EUR			Statutory rate of 13.5%
Spain	Up to 150 000 EUR				Statutory interest
Sweden	X			X	
UK				Unspecified administrative penalties without specification – reference to Regulations 2002 (No.2706)	Statutory interest

1.3.3 The functioning of the reasoned offer/reply procedure in Member States

In order to assess the effectiveness of national penalties introduced in respect of the reasoned offer/reply procedure, the consultation aimed to find out whether insurers and their claims representatives are able to meet in practice the 3 month deadline available to them for the settlement of motor insurance claims.

The feedback received in the consultation has shown that both insurers and their claims representatives are generally able to handle claims within the 3 month timescale. Only in exceptional and isolated cases, linked to difficulties in receiving information from other parties involved in the settlement of claims, could the deadline not be met. These cases relate to situations such as where police reports or similar documents necessary for the establishment of liability are submitted belatedly¹⁵, or cases of bad communication between the claims representative and its insurer¹⁶.

¹⁵ Such cases reported by Greece, Hungary, Italy, Poland, Sweden and the UK.

¹⁶ Reported by Lithuania and Finland.

In this respect it should be recalled that the claims representative mechanism/reasoned offer (reply) procedure became operational only in 2003 for 15 Member States and after 1 May 2004 for the new Member States. Therefore, the experience gained so far in Member States on the functioning and effectiveness of Article 4(6) of the Directive has turned out to be still rather limited.

1.4. Conclusion

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: MOTOR INSURANCE AND LEGAL EXPENSES

2.1. Introduction

According to Article 1 of the 2nd Motor insurance Directive 84/5/EEC¹⁷, motor third party liability insurance has to compulsorily cover both damage to property and personal injuries. This provision has been introduced to remove national disparities concerning the extent of MTPL coverage and thus to ensure a minimum level of protection of victims of road accidents¹⁸.

During the 2nd reading of the Fifth Motor Insurance Directive 2005/14/EC¹⁹, 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. Concerned that an amendment might be adopted that failed to take into account the practical difficulties that might exist in Member States in this respect, the Commission suggested it should examine this issue and include its findings in the report on the 4th Motor Insurance Directive. In this context, the Commission agreed to examine the following questions:

- Firstly, the current availability of voluntary legal expenses insurance, which can be concluded by any potential victim of a road accident;
- Secondly, the impact on the costs of MTPL premiums if victims' legal expenses were to be covered by the MTPL insurance of the liable party.

To that end, the Commission Services consulted the 25 Member States, the insurance industry and the public through a set of questions. Replies were received from 24 Member States, 10 legal expenses insurers, 9 MTPL insurers and the CEA as a representative of the European insurance industry. The Commission Services also received certain statistics and recommendations from the legal expenses insurance industry in the form of a position paper formulated by RIAD – The Association of Legal Expenses Insurers.

Interested parties were also consulted in the online public consultation held from 6 April 2006 to 5 June 2006 on the website of the Commission²⁰. However, and as mentioned earlier in this report, no objective conclusion could be drawn from this public consultation, given the low number of replies received.

This part 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.

¹⁷ Directive 84/5/EEC, OJ L 8, 11.1.1984, p. 17–20

¹⁸ Before the adoption of the 2nd Motor Insurance Directive MTPL insurance covering damage to property was not mandatory in some Member States.

¹⁹ Directive 2005/14/EC of the European Parliament and 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, OJ L149, 11.6; 2005, p. 14.

²⁰ See footnotes 9 and 10 for the reference on the publication of the results of this public consultation.

2.2. EU legal framework for legal expenses insurance

Under the EU Non-Life Insurance Directives, legal expenses insurance is recognized as a separate class of insurance²¹. Therefore, it can be provided throughout the EU, either under the freedom of establishment or the freedom to provide services, by any insurer licensed to that end in one of the Member States. Conditions for conducting legal expenses insurance business in the EU are further set down in Directive 87/344/EEC on legal expenses insurance²². According to Article 2 of the Directive, the legal expenses insurer undertakes, against the payment of a premium, to bear the costs of legal proceedings and to provide other services directly linked to insurance cover, in particular with a view to:

- securing compensation for the loss, damage or injury suffered by the insured person, by settlement out of court or through civil or criminal proceedings,
- defending or representing the insured person in civil, criminal, administrative or other proceedings or in respect of any claim made against him.

For the purpose of this report, it should be stressed that legal expenses insurance concluded on a voluntary basis meets victim's legal costs, up to the limits set down in the policy, incurred in order to pursue claims and will, in addition, pay the other party's legal costs if the victim is unsuccessful in the claim.

2.3. Availability of voluntary legal expenses insurance contracts

In order to judge the availability of legal expenses insurance for potential victims of road accidents, the Commission Services tried to obtain data about the current spread in the EU of legal expenses contracts covering individuals when pursuing or facing motor insurance claims. Regrettably, neither the legal expenses insurance industry²³ nor Member States were able to provide data on the basis of which a clear conclusion could be drawn for every country in terms of how many individuals, i.e. what percentage of the population, are covered by legal expenses insurance relating to motor insurance claims.

However, the information received has produced some general findings:

- voluntary legal expenses insurance is provided in the vast majority of Member States²⁴. It is offered either by specialized insurers or by insurance undertakings conducting also other classes of insurance business,
- some insurance markets are less developed in this regard as the demand for legal expenses insurance is for various reasons relatively low there²⁵. On the contrary, countries such as

²¹ Annex I to Directive 73/239/EEC.

²² Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance, OJ L 185, 4.7.1987, p. 77–80

²³ RIAD (The Association of Legal Expenses Insurers) provided some more concrete data in this respect. However, due to differences between Member States regarding statistics, presentation and data collection this did not provide an accurate picture concerning the spread of voluntary legal expenses insurance within the EU.

²⁴ Only Estonia, Latvia, Malta and Cyprus have not provided relevant information in this respect, in the other Member States, voluntary legal expenses is available.

²⁵ This is the case especially in the 10 new Member States.

the UK, Germany, Belgium and Sweden²⁶ maintain that a relatively large proportion of their population hold legal expenses insurance concluded either as a stand-alone product or as an extension to other cover such as motor and household insurance.

2.4. Inclusion of legal expenses in the MTPL insurance of the liable party

As regards the possible impact of an EU wide inclusion of legal costs incurred by the victim in the scope of cover of the MTPL policy of the party liable for the accident, the following findings could be made based on the replies provided by Member States and the insurance industry.

2.4.1. Current situation in Member States

In 22 Member States²⁷ the legal costs of the victim may be, on different grounds and to a different degree, reimbursed by the MTPL insurer of the liable party.

Legal costs incurred by the victim are very often considered to constitute a part of the damage under national civil law and to be eventually reimbursed the victim must very often succeed in the claim (the so called winning-losing principle).

In countries where legal costs do not follow the event, they are allocated to the victim by a court decision on a "case by case" basis²⁸, and the winning-losing principle does not always apply.

If deemed to be part of the damage, the recovery of legal costs is very often limited to reasonable sums (only reasonable, necessary or inevitable costs may be recovered) or their recovery presupposes a mutual agreement between the insurer and the claimant²⁹. In some countries, certain legal expenses are excluded from reimbursement by the MTPL insurance, such as costs of legal advice in general³⁰ or costs of legal representation at extra-judicial bodies in the course of claims settlement procedures³¹.

2.4.2. Potential impact on MTPL premiums

Member States as well as the insurance industry differ as to their estimate of whether and how far the inclusion of victims' legal expenses in the MTPL cover of the liable party would affect rates of MTPL premiums in their markets. In principle, apart from a few estimates made by individual insurers, no concrete numbers were provided in the consultation. Nevertheless, a general conclusion could be drawn that insurance markets of countries, in which legal costs already to a great extent constitute part of the victim's claim against the MTPL insurer of the liable party, would be very unlikely to be affected by an increase in premiums. On the contrary, in countries where either limited or no recovery of legal expenses applies, MTPL premiums would very probably rise since claimants would be encouraged to pursue their claims in court assisted by legal advisers, in the expectation of obtaining a higher level of

²⁶ Sweden and Belgium provided an estimate of around 90% of households to hold legal expenses insurance. This is due to the fact that legal expenses insurance is automatically offered to policyholders with either a third party liability or a household insurance.

²⁷ Not in Portugal and Latvia, Greece provided no information in this respect. .

²⁸ Spain, France and Italy.

²⁹ Denmark.

³⁰ Luxembourg, Poland (acknowledges merely court fees).

³¹ Sweden (only in respect of personal injuries legal assistance can be sought), Finland, Ireland.

compensation. In this context the Irish experience is worth mentioning where legal costs escalated in the past (to as much as 46% on top of the amount of compensation) as proceedings were issued routinely in almost all personal injury claims. In order to address this problem a State agency has been established handling claims in cases where court hearings are not required³². In this way the number of in-court claims settlements, which go hand in hand with increased legal costs, has been significantly reduced. Similar alternative claims settlement mechanisms serve the purpose of minimizing legal costs in Sweden and Finland.

2.5. Conclusion

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.

To ensure an EU wide equal protection of victims of road accidents in respect of the recovery of their legal costs, specification as to which legal costs and under which circumstances they would be subject to coverage by the MTPL policy of the liable party would have to be introduced. In this context, the question arises as to whether the motor insurance directives would be the appropriate place in which to deal with these issues since it might influence the definition of damage covered traditionally under national civil law.

A simple reference to necessary or reasonable legal costs would not attain the intended goal. On the other hand, a more specific approach at EU level might interfere with national civil law and also affect rules on reimbursement of legal costs governed by civil procedural law. In addition, a specific approach might even lead in some cases to distortion of well established national systems of motor claims settlement. For instance, an EU wide obligatory inclusion only of in-court legal expenses in the MTPL insurance might encourage victims to take judicial action without having first explored the possibility of extra-judicial claims settlement. In this way, the mechanism of the claims representative introduced by the 4th Motor Insurance Directive might also be threatened since victims, in the expectation of receiving a higher amount of compensation, would try to involve legal advisers and courts in the settlement of their claims instead of applying to the claims representative appointed in their country of residence. Moreover, the inclusion of legal expenses in the MTPL insurance of the liable party might lead to an increase in premiums in countries where either no or limited reimbursement of legal costs has been the practice so far.

³² The PIAB Agency would currently dispose of 75% of claims for personal injuries.

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.