Proposal for a third Council Directive on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles

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(Submitted by the Commission on 23 December 1988)

(89/C 16/04)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

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

Whereas, by Directive 72/166/EEC (1), as last amended by Directive 84/5/EEC (2), the Council adopted provisions 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 to the enforcement of the obligation to insure against such liability;

Whereas Article 3 of Directive 72/166/EEC required each Member State to 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; whereas the extent of the liability covered and the terms and conditions of the insurance cover were to be determined on the basis of those measures;

Whereas Directive 84/5/EEC reduced considerably the disparities between the level and content of compulsory civil liability insurance in the Member States;

Whereas, however, significant disparities still exist in the coverage of such insurance;

Whereas the elimination of such disparities, by ensuring that motor vehicle accident victims receive comparable treatment irrespective of where in the Community an accident occurs, will further facilitate the establishment and the operation of the internal market;

Whereas, in particular, there are gaps in the compulsory insurance coverage of vehicle passengers in certain Member States; whereas, to protect this particularly vulnerable category of potential victims, such gaps should be filled;

Whereas it is necessary to remove uncertainty concerning the application of the first indent of Article 3 (2) of Directive 72/166/EEC; whereas all compulsory motor insurance policies must cover the entire territory of the Community and provide under a single premium at least the cover required by law in all the Member States;

Whereas Article 1 (4) of Directive 84/5/EEC requires each Member State to set up or authorize a body to compensate the victims of accidents caused by uninsured or unidentified vehicles; whereas, however, the said provision is without prejudice to the right of the Member States to regard compensation by the body as subsidiary or non-subsidiary;

Whereas, however, in the case of an accident caused by an uninsured vehicle the victim is required in certain Member States to establish that the party responsible is unable or unwilling to pay compensation before he can claim on the body; whereas the body is better placed than the victim to take action against the party responsible; whereas, therefore, the body should not be able to invoke its subsidiarily in this case but should compensate the victim in the first instance;

Whereas, 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 delay in the payment of compensation to the victim, should designate either the body or the insurer as responsible for paying compensation in the first instance pending resolution of the dispute,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Without prejudice to the second subparagraph of Article 2 (1) of Directive 84/5/EEC, the insurance referred to in Article 3 (1) of Directive 72/166/EEC and in Article 1 (1) of Directive 84/5/EEC shall cover liability for personal injuries to all passengers, other than the driver, arising out of the use of a vehicle.

For the purposes of this Directive the meaning of the term 'vehicle' is as defined in Article 1 of Directive 72/166/EEC.

(1) OJ No L 103, 2. 5. 1972, p. 2.
(2) OJ No L 8, 11. 1. 1984, p. 17.

Article 2

Member States shall take the necessary steps to ensure that all policies of compulsory insurance covering civil liability in respect of the use of vehicles:

— cover, on the basis of a single premium, the entire territory of the Community; and

— provide, on the basis of the same single premium, in addition to the cover required by law in the Member State in which the vehicle is normally based, at least the cover required by law in each of the other Member States.

Article 3

The following sentence shall be added to the first subparagraph of Article 1 (4) of Council Directive 84/5/EEC:

'However, Member States may not allow the body to make the payment of compensation conditional on the victim's establishing in any way that the person responsible is unable or unwilling to pay'.

Article 4

For the case where there is a dispute between the body referred to in Article 1 (4) of Directive 84/5/EEC and the civil liability insurer as to which must compensate the victim, Member States shall designate one of these parties as responsible for compensating the victim without delay in the first instance. If it is ultimately decided that the other party should have paid all or part of the compensation it shall reimburse accordingly the party which has paid.

Article 5

Member States shall adopt the provisions necessary to comply with this Directive not later than 31 December 1992. They shall forthwith inform the Commission thereof.

Article 6

This Directive is addressed to the Member States.