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COMMISSION STAFF WORKING DOCUMENT

**addressed to the European Parliament and to the Council on certain issues relating to
Motor Insurance**

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1. PART 1: IMPLEMENTATION OF ARTICLE 6 OF THE 4TH MOTOR INSURANCE DIRECTIVE ON COMPENSATION BODIES AND THEIR EFFECTIVENESS

1.1. Introduction

One of the aims of the 4th Motor Insurance Directive (the Directive)¹ is to enable visiting victims (parties who have been injured or have suffered damage outside their Member State of residence) to get faster compensation in case of a road accident. In that context, the Directive allows victims to be compensated in accordance with the procedures of their State of residence. Article 6 of the Directive requires each Member State to set up a compensation body to which injured parties can apply² when the liable insurer has not replied to the claim within three months³ or when the insurer has failed to appoint a claims representative in the Member State of residence⁴ of the victims.

As foreseen by the Directive, Article 6⁵ took effect after the conclusion of an agreement between the compensation bodies established or approved by Member States and more precisely as from 20 January 2003, date fixed by the Commission, after having ascertained in its Decision of 27 December 2002 that the agreement had been concluded⁶.

Article 6 of the 4th Motor Insurance Directive mentions explicitly in its paragraph 3 that the Commission shall report to the European Parliament and the Council before 20 July 2005⁷ on the implementation and the effectiveness of this Article and shall submit proposals if necessary.

In view of the specificities of Article 6, it was agreed during the negotiations of the Directive in March 1999 that a report should be prepared on its implementation and its effectiveness⁸. In order to prepare the report, the Commission Services⁹ consulted the Member States in January 2005¹⁰ and the insurance industry in March 2005¹¹ through a questionnaire which covered various aspects related to legislation and consumer protection. A public online

¹ 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, OJ no L 181 of 20 July 2000, p.65.

² Unless the victims have taken legal action directly against the insurer.

³ Of the date when the injured party presented his claim for compensation to the insurance undertaking of the vehicle the use of which caused the accident or to its claims representative.

⁴ In this case, injured parties may not present a claim to the compensation body if they have presented a claim for compensation directly to the insurance undertaking of the vehicle the use of which caused the accident and if they have received a reasoned reply within three months after having presented the claim.

⁵ See article 6(3) of the Directive.

⁶ Decision 2003/20/EC of the European Commission of 27 December 2002 on the application of Article 6 of the Directive 2000/26/EC, OJ no L 8 of 14 January 2003, p.35: see also point 2 of this report.

⁷ The report on Article 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 trailer insurance (see part 2 of this report).

⁸ Amended proposal for a 4th Motor Insurance Directive of 31.03.1999, COM (1999) 147 Final.

⁹ This paper has been drafted by DG Internal Market and Services.

¹⁰ A Questionnaire was sent in January 2005 to the 25 Permanent Representations and replies were received from all Member States in the course of March 2005.

¹¹ The CEA (Comité Européen des Assurances – European Federation of National Insurance Associations) was consulted at the beginning of March 2005.

consultation was also held from 16 June 2005 to 15 July 2005 on the website of the Commission¹² in order to consult all interested parties on their awareness of the compensation body established in their home Member State and on its effectiveness¹³.

This Commission Staff Working Paper (Paper) seeks to give an objective assessment of both the implementation and the effectiveness of Article 6 in the light of the comments made by the 25 Member States and interested parties.

1.2. Review of the implementation of Article 6 in Member States

In general, the Directive was due to be transposed by Member States on 20 July 2002 and its provisions were to become applicable before 20 January 2003¹⁴. However, with regard to Article 6 of the Directive, Member States had to establish or approve their compensation body before 20 January 2002 and an agreement between the compensation bodies was to be concluded before 20 July 2002.

The agreement was signed on 29 April 2002 by the compensation bodies¹⁵ which were designated by Member States in compliance with Article 6(3) of the Directive and communicated to the Commission. This agreement contains provisions related to the functions and obligations of the compensation bodies, the reimbursement procedures in case of compensation and the arbitration of disputes or controversies.

On 27 December 2002, the Commission adopted its Decision 2003/20/EC, which was addressed to the Member States and which ascertained the agreement concluded between the compensation bodies. The Decision specified that Article 6 should be applicable as from 20 January 2003 and that Member States were to inform the Commission about their implementing measures¹⁶.

Following the latest enlargement, an addendum to the agreement between the compensation bodies was signed on 1 May 2004 with the 10 new Member States¹⁷ and communicated to the Commission.

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 2003¹⁸ as the national measures transposing the Directive were adopted in the meantime and communicated

¹² 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.

¹³ The results of this consultation are available on the following website:
http://europa.eu.int/comm/internal_market/insurance/docs/motor/results_of_the_en.pdf

¹⁴ See Article 10 of the Directive.

¹⁵ Agreement between the compensation bodies and between the compensation bodies and the guarantee funds of 29 April 2002: See <http://www.cea.assur.org> (under latest news/reference material/2005).

¹⁶ Commission Decision 2003/20/EC of 27 December 2002 on the application of Article 6 of the Directive 2000/26/ (notified under document number C (2002) 5304), OJ no L8, 14 January 2003, p. 35. The text of the decision is available under the following link
http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=32003D0020&model=guichett

¹⁷ See <http://www.cea.assur.org> where a copy of the addendum to the agreement is available.

¹⁸ With the exception of France which communicated its national measures on 30 January 2004.

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 effectiveness of Article 6

1.3.1. Preliminary remarks

This part of the Paper aims at assessing the effectiveness of the compensation system provided for in Article 6 and is based on the outcome of the consultations carried out by the Commission Services.

It has proven to be very difficult to draw accurate statistics on the number of accidents occurring in Member States and falling under the scope of the Directive. The cross border factor has made it difficult to assess the exact number of accidents involving “visiting victims” under the scope of Article 6. Moreover, the collection of statistical data of this kind is not centralised at national or at Community level. Even if figures are available in most of the Member States on the number of claims handled per year by the compensation bodies, they are not always comparable since their calculation was not done on the same basis¹⁹.

It should also be noted that most of the compensation bodies started to operate only in 2003 (or even after 1 May 2004 in the case of the new Member States). Therefore, the current experience available on the effectiveness of Article 6 is rather limited.

1.3.2. Main features of the compensation bodies

The compensation bodies were established or approved by the national legal provisions transposing the Directive. Most of the compensation bodies are private entities (with the exception of Italy, Portugal and Austria, where they are public entities). The compensation bodies are usually constituted under the form of an association, insurers fund or insurers bureau. Their funding is mainly ensured through levies from their member insurance undertakings.

In most cases, the functions of the compensation body are assumed by the guarantee fund²⁰, with the exception of Spain, Greece and Poland, where the compensation body is a separate institution. In 15 Member States, the compensation body also operates as the Green Card Bureau and the information centre²¹. None of the compensation bodies are habilitated to impose sanctions to insurers as this is a competence of the Insurance Supervisory Authority.

¹⁹ For instance: in some cases, figures relate to both Articles 6 and 7 of the Directive. Article 7 of the Directive does not fall under the scope of this report as it refers to cases when it is impossible to identify the vehicle or when, within two months following the accident, it is not possible to identify the insurance undertaking concerned. In these cases, the compensation shall be provided also in accordance with the provisions of Article 1 of the 2nd Motor Insurance Directive (84/5/EEC).

²⁰ The guarantee fund is the body foreseen by the 2nd Motor Insurance Directive (84/5/EEC), which had to be established by each Member State to ensure that the victim will not remain without compensation when the vehicle which caused the accident is uninsured or unidentified.

²¹ Article 4 of the 4th Motor Insurance Directive foresees the establishment of an information centre in each Member State to make it easier for accident victims to find out who insures the liable party.

1.3.3. *Public awareness of the compensation bodies*

The awareness of the existence of a compensation body among its country residents varies from Member State to Member State²². According to Member States, the knowledge of the compensation body and of its functions is more widespread among professionals (lawyers, insurers...). Most Member States reported that specific measures have been taken to ensure that the information about their compensation body is available to everyone, especially through the internet.

The online public consultation which was launched in mid July 2005 aimed at assessing whether interested parties (European citizens, private companies, etc...), who were confronted with an accident where the intervention of a compensation body was needed, were aware of the existence of this body in their home Member State and whether they considered it to be an efficient tool for claim settlement. Although the necessary advertisement²³ was made to ensure a wide diffusion of the public consultation throughout the EU, the low number of replies (51 answers were received from 11 Member States) did not allow any objective conclusion to be drawn²⁴. In the light of this public consultation, the Commission Services will bring this matter to the attention of the European Insurance and Occupational Pensions Committee in order to identify with Member States whether there is a need to increase the public awareness of compensation bodies.

1.3.4. *Claims handled by the compensation bodies*

Most of Member States believe that the establishment of a compensation body in each country following the requirement of Article 6 created a positive change with regard to claim settlement²⁵.

The number of compensation claims handled per year in average by a compensation body varies from 0 to 2.250²⁶. An extremely important increase of the number of claims handled by the compensation bodies was noted from 2003 to 2004 in the Member States where statistics were available for the two last years (for instance, almost a 100% increase was reported in the Netherlands and even more than 200% in France, Portugal, Germany and Spain).

Most of the claims handled by the compensation bodies are related to damages that occurred in the EU. The percentage of claims managed by the compensation bodies relating to accidents that occurred outside the EU is extremely small or even inexistent in some Member

²² 7 Member States reported that their residents are well aware of the existence of a compensation body. However, 7 other Member States estimated that their residents do not know the existence of such body, out of which 5 Member States mentioned that the professionals concerned are fully informed. 7 Member States did not express an opinion on whether their residents are or are not aware but indicated that sufficient publicity was ensured through internet, press releases, etc to allow that the needed information on the compensation body is available. Finally, 4 Member States replied that they do not have yet enough experience to report on this matter.

²³ See press release IP /05/747 of 16 June 2005 on the Europa website (Rapid).

²⁴ 42 responses were received from individuals and 9 responses were collected from organisations. The outcome of this public consultation is published on the following website:
http://europa.eu.int/comm/internal_market/insurance/docs/motor/results_of_the_en.pdf

²⁵ However, 5 Member States do not have enough experience at this stage to estimate any change with regard to the establishment of the compensation body (out of them, 4 are new Member States).

²⁶ It was reported that no claim was handled by the compensation body in Cyprus, Malta and Slovenia. The highest figure of claims (2. 250) handled on average per year was reported by Italy.

States²⁷ with the exception of the Danish compensation body, which has 20% of its claims related to accidents²⁸, which occurred in third countries where the green card system is applicable.

In 10 Member States²⁹, most of the claims falling under the scope of Article 6 and handled by the compensation body are related to the non provision of a reasoned reply within 3 months by the insurance undertaking or its claims representative. However, in 8 Member States most of these claims concern cases where no claims representative was appointed.

1.3.5. Compensation of the visiting victims

The vast majority of Member States considers that, generally speaking, their compensation body is in a position to take action within the period foreseen by the Directive, namely 2 months after the date when the claim was received. In that context, only 3 Member States have indicated that their compensation body faces problems to give a reasoned reply within this period. According to them, some delay may occur when the reply from the various actors involved in the claim settlement (insurer, injured parties, information centre, etc.) is late, incomplete or inaccurate and communication between the relevant actors is too slow.

1.3.6. Functioning of the agreement between compensation bodies

The compensation body which has compensated an injured party in its Member State of residence is to be reimbursed upon request by the compensation body of the Member State where the insurer who issued the policy is established. Generally speaking the agreement signed in that context between the compensation bodies in compliance with Article 6(3) of the Directive seems to function adequately. No major difficulties to claim reimbursement of the compensation paid have been reported. However, some problems of interpretation regarding certain definitions mentioned in the agreement, which are related to the reimbursement procedure (i.e. fees handling, minimum handling fees, interest...) were raised by several Member States which suggested the fine-tuning of these concepts through additional clarifications. In that respect, it was also suggested that the adoption of implementing guidelines concerning the agreement between compensation bodies would be very useful in order to facilitate its application.

1.3.7. The subrogation rights of the compensation bodies

In accordance with Article 6(2) of the Directive, legal provisions have been adopted in all Member States to recognise the automatic subrogation of their compensation body in the right of the injured party to claim reimbursement. This subrogation permits any compensation body which provided compensation to the injured party in its Member State of residence to claim reimbursement from the party liable for the accident or from the insurer who has issued the policy covering this liable party.

²⁷ For instance in Finland, Estonia, Slovakia and Lithuania.

²⁸ Denmark has reported to have 10 claims which are related to a damage occurring in a third country out of the total of 50 claim compensations which are handled on average by its compensation body (the 40 other claims being related to a damage that occurred in one of the Member States).

²⁹ No information was available in 4 Member States on whether the claims relate to the non provision of a reasoned reply or on the fact that no claims representative was appointed. It was also reported that no claim was handled by the compensation body in Cyprus, Malta and Slovenia.

Most Member States indicate that their compensation body when using its subrogation rights does not face specific difficulties to institute proceedings for recourse against the insurance undertaking of the liable party.

1.3.8. The effectiveness of the compensation system provided for in Article 6

A clear majority of Member States believes that the establishment of a compensation body in each Member State has fulfilled its aim (i.e. allowing victims to be compensated within reasonable deadlines and on the basis of local procedures)³⁰. The main improvement achieved by Article 6 is that visiting victims are able to discuss the claim in their own language in their home country without having to face the expenses of a representative abroad. They have the possibility of dealing with the damage through procedures, which are more familiar to them. Nevertheless, it should be noted that it is now for the compensation bodies to understand the legal system and the language of the other Member State.

1.4. Conclusion

The establishment or the approval of a compensation body in each Member State has fulfilled the main objective foreseen by Article 6 of the 4th Motor Insurance Directive, although the experience in this regard is rather limited at this stage. The main impact of the compensation bodies has been to minimise the effect of legal and language barriers for a visiting victim. Generally speaking, this has contributed to accelerate the claims handling in Member States. Compensation bodies are thus seen as an appropriate complement to the claims representative system. It is also a good tool to enhance consumer protection since it guarantees that the visiting victim will not remain without compensation to which s/he is entitled when the insurance undertaking does not fulfil its obligations. Therefore, there is no need to revise Article 6 since the compensation mechanism seems to operate fairly smoothly in Member States.

However, the consultation carried out by the Commission Services has shown that this mechanism could benefit from some fine-tuning at operational level. The application of the agreement signed between the compensation bodies could be facilitated by the clarification of some of its definitions (e.g. fees handling, minimum handling fees, interest, etc ...), by the establishment of guidelines for its application and/or by an enhanced dialogue between compensation bodies to clarify some of its aspects.

In the light of the above, the Commission Services will bring this matter to the attention of the European Insurance and Occupational Pensions Committee in order to identify with Member States:

- what needs to be done at operational level in order to increase the efficiency of the agreement signed between the compensation bodies and enhance the dialogue between them;

³⁰ 19 Member States considered that the establishment of Compensation Bodies has fulfilled the aims set by the Directive. 3 Member States, disagreed and 2 Member States stated that they did not have enough experience at this stage to make an assessment on this point. Finally, 1 Member State did not reply to this question.

- whether there is a need to increase the public awareness of compensation bodies. In that context, the Commission Services intend to prepare a leaflet to inform the public about the achievements of the EU in the field of motor insurance, where among other issues the compensation mechanism provided for in Article 6 will be described.

2. PART 2: MOTOR INSURANCE AND TRAILERS

2.1. Introduction

Free movement of vehicles plays an important role in the European Union and requires the development of common rules with regard to insurance against third party liability and compensation of victims in the case of a road accident. Among those vehicles which are circulating across Europe, there are a considerable number of trailers (i.e. wheeled vehicles that can be towed by a car or truck).

According to the 1st Motor Insurance Directive³¹, each Member State shall take appropriate measures to ensure that civil liability for the use of vehicles based on its territory is covered by insurance. The concept of “vehicle” is defined in this Directive as meaning not only a motor vehicle intended for travel on land and propelled by mechanical power³² but also a trailer, whether or not it is coupled to a pulling vehicle.

During the 2nd reading of the 5th Motor Insurance Directive³³, the European Parliament discussed a possible amendment to this definition of “vehicle in order to address some difficulties which might be faced by victims of accidents involving trailers. Out of that discussion, it appeared that any modification of the 1st Motor Insurance Directive on this topic would require a prior analysis of the different systems that Member States have put in place with respect to trailer registration and insurance. Therefore, the Commission offered to examine this matter as part of its review of the 4th Motor Insurance Directive.

In this context, the Commission Services consulted Member States in April 2005 through two sets of questions. A list of general questions prepared by the Commission Services, which dealt with the problems faced by the victims of an accident involving a trailer, was sent to Member States as well as a questionnaire on tractor units and trailers which was elaborated jointly in 2002 by the Council of Bureaux and the CEA³⁴. Replies were received from all Member States in the course of spring 2005. The Commission Services received also in mid May 2005 some recommendations from the insurance industry regarding trailers coupled to vehicles in the form of a suggestion formulated by the CEA.

Interested parties were also consulted about the insurance coverage of trailers in the online public consultation, which was held from 16 June 2005 to 15 July 2005 on the website of the Commission³⁵. However as mentioned earlier in this Paper, no objective conclusion could be drawn from this public consultation as only 51 answers were received from 11 Member States.

³¹ 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 no L 103 of 2 April 1972, p. 1.

³² But not running on rails.

³³ 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 no L149 of 11 June 2005, p. 14.

³⁴ CEA (Comité Européen des Assurances) and Council of Bureaux kindly agreed that the Commission could use their questionnaire in the context of this consultation. The original text of the questionnaire was kept to avoid any potential confusion that the circulation of a new survey with similar questions might create.

³⁵ See footnotes 12 and 23 for the reference on the publication of the results of this public consultation.

Moreover, no statistics were available in most Member States about the exact number of accidents involving a trailer (coupled or not)³⁶.

This part of the Paper seeks to give an objective analysis of the insurance of trailers against third party liability in the light of the information available and the comments made by the 25 Member States and interested parties.

2.2. Review of third party liability cover for trailers in the EU

2.2.1. The main features of third party liability cover for trailers in Member States

2.2.1.1. Cover of trailers which are coupled to another vehicle

There is no common regime within the EU as regards trailer insurance and its coverage against third party liability varies from one Member State to the other. 14 Member States have reported that trailers and their towing vehicle are covered by two separate insurance policies³⁷. The other Member States have indicated that a trailer is usually covered by the same third party liability insurance as the vehicle to which it is coupled. But among the latter, there are some Member States, where a separate insurance cover is to apply in some cases when the trailer has a certain weight³⁸. Finally, it seems that in 2 Member States³⁹, a trailer can be insured either under a separate insurance policy or under the insurance policy of the towing vehicle.

The insurance cover against third party liability is to be taken in principle by the owner of the trailer⁴⁰ and is usually required for all kinds of trailers (caravans, commercial trailers, trailers for private use and agricultural trailers). 13 Member States have also reported that their compulsory insurance cover against third party liability applies whether the trailer is or is not on the road.

2.2.1.2. Cover of uncoupled trailers

The insurance cover of an uncoupled trailer against third party liability is different in almost every Member State. Generally speaking, it is possible to establish 3 main categories of insurance cover in the EU for uncoupled trailers:

³⁶ Only 5 Member States reported various data on this matter. In Portugal, the Green Card Bureau handled 707 accidents which occurred from 1 January 2005 to 19 August 2005. Out of these 707 accidents, there were 246 accidents involving a coupled trailer and 8 accidents with an uncoupled trailer (these accidents represent +/- 35% and +/- 1% respectively of the total amount of accidents handled by the Portuguese Green Card Bureau for the period considered). In the Netherlands, the Dutch Bureau reimbursed 60 claims in 2004 which related to an accident with a Dutch uninsured trailer in another Member State (this represents 10% of the total claims received by this Bureau). In Germany, 33.473 claims related to trailers were reported in 2003 out of a total number of 3.652.000 damages compensated with regard to third party liability (thus claims related to trailers seem to represent less than 1 %). In Italy, it was reported that damages involving parked trailers represent less than 2% of the total claims related to third party liability. In Belgium, trailers represent +/- 5% of the registered vehicles.

³⁷ For instance: in Luxembourg, Hungary or in Poland, etc.

³⁸ For example a separate cover will apply respectively for trailers above 500 kg in Belgium or above the weight determined contractually in France. A similar regime applies also in Slovenia for trailers above 750 kg.

³⁹ For instance in Greece.

⁴⁰ With the exception for instance of the UK, where it is the user of the vehicle (car, trailer, etc.), who takes the policy.

- 1) the third party liability of the uncoupled trailer is covered through a separate insurance⁴¹ in all circumstances;
- 2) the insurance coverage of the towing vehicle is “extended” to the uncoupled trailer⁴²;
- 3) the third party liability of the uncoupled trailer is covered depending on the circumstances by a separate insurance.⁴³

It should be noted that under UK law, a trailer is defined as a vehicle drawn by another vehicle which means that an uncoupled trailer is not seen in the national legal system of the UK as a ‘trailer’. Therefore, a UK trailer used in the UK is covered against third party liability by the insurer of the towing vehicle only whilst it is coupled⁴⁴. However, a UK trailer which is being used outside the UK needs to be insured whether it is coupled or not.

In some Member States, certain uncoupled trailers are exempted from insurance coverage against third party liability⁴⁵.

2.2.2. *Link between the insurance coverage and the registration plate number*

In 16 Member States, a trailer bears a different registration plate number from the one of the vehicle to which it is attached. In 5 other Member States, a trailer will have a different registration plate number only if it exceeds a certain weight⁴⁶. Finally, in 4 Member States⁴⁷ the trailer carries the same registration plate number as the towing vehicle in all cases. According to most Member States, the fact that a trailer has or has not the same registration plate number than the one of the towing vehicle does not necessarily affect its insurance coverage against third party liability.

2.2.3. *Claim settlement*

2.2.3.1. Settlement of claims in the case of accidents caused by an articulated vehicle

19 Member States have reported not to have any kind of national agreement between their insurers for the settlement of claims involving an articulated vehicle (vehicle which is composed of a trailer towed by a car or truck). Various types of agreement have been concluded at national level in the other 6 Member States, such as:

⁴¹ For instance in Luxembourg, Hungary, Poland, Finland, Slovakia, Austria, Lithuania, Spain, etc.

⁴² For instance: in Sweden. A similar regime is also applicable in Denmark (where the insurance cover of the last vehicle to which the trailer was coupled applies) and in the Netherlands (where the insurance cover of the towing vehicle applies to an uncoupled trailer until this trailer is not safely parked outside the traffic. Should this happen, the voluntary general liability of the trailer’s owner is usually to apply).

⁴³ For example: in the countries where the coverage is linked to the weight of the trailer (like in France or in Belgium).

⁴⁴ Usually uncoupled trailers are covered by a separate voluntary insurance for public liability.

⁴⁵ For instance in Belgium where some exemptions from insurance coverage exist under the Belgian law of 21 November 1989 with regard to certain types of uncoupled trailers (agricultural trailers, trailers used for folk events, etc.).

⁴⁶ In Portugal, any trailer weighting more than 300 kg will have its own registration plate number. In France a trailer with a weight of more than 500kg will have a registration plate number which is different from the one of the towing vehicle. Finally a trailer with a weight of more than 750 kg in the Netherlands, Belgium & Slovenia will also bear another registration plate number.

⁴⁷ This is the case for instance in the UK, Malta and Italy.

- The agreement among the Czech Insurers Bureau and its members, which determines when the insurer of the towing vehicle or the insurer of the trailer has to be preferred;
- The Danish agreement, which stipulates that the liability cover follows the towing vehicle;
- The Spanish agreement on the share of responsibility for third party liability between the trailer (30%) and the towing vehicle (70%);
- The French agreement which foresees a direct compensation, the recourse among insurance companies involved in an accident and the sharing of costs between the insurer of the towing vehicle and that of the trailer;
- The Finnish agreement which foresees the usual coverage by the insurer of the towing vehicle and the specific coverage by the insurer of the trailer when it is not attached or has caused an accident by not fulfilling sufficiently the required conditions for its use.
- The Slovak agreement which clarifies the causes of damage in case of accident with an articulated vehicle.

In the majority of Member States, the settlement of a claim involving an articulated vehicle is usually done by the insurer of the towing vehicle when it is identified and insured even if the trailer is also identified and insured. However, the claim is handled by the Guarantee Fund⁴⁸ in most of the Member States when the accident is caused by a towing vehicle which is unidentified or uninsured⁴⁹ even if the trailer is identified and insured. This also means that in case of non significant personal injuries caused by an unidentified vehicle, damages to property will not be compensated in the Member States, which have excluded their compensation by the Guarantee Fund following the application of the Second Motor Insurance Directive as modified by the Fifth Motor Insurance Directive, which establish a distinction between personal injuries and material damages in case of compensation by the Guarantee Fund for accidents due to an unidentified vehicle⁵⁰.

⁴⁸ Some claims might also be handled via the National Bureau of the country concerned in the cases falling under the application of the Multilateral Agreement of 30 May 2002 and are thus outside the scope of this report . This agreement was concluded between the National Insurers' Bureaux of the Member States of the European Economic Area and other Associated States (appendix to the Commission Decision 2003/564/EC of 28 July 2003, OJ no L 192 of 31 July 2003, p.23). It should be noted that in some Member States, the tasks of the National Bureau can be performed by the same institution as the one acting as a Guarantee Fund.

⁴⁹ Court rulings of some Member States (e.g. France) indicate that an articulated vehicle is seen as uninsured when the towing vehicle is uninsured even if the trailer is covered by a separate insurance against third party liability. This implies that the Guarantee Fund will have to compensate the victims in case of an accident occurring with this kind of articulated vehicle.

⁵⁰ See Art.1 of the 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 no L8 of 11 January 1984, p.17.However, following the entry into force of the 5th Motor Insurance Directive 2005/14/EC on 11 June 2007, Member States will not be allowed to exclude anymore compensation for damage to property once the Guarantee Fund will pay compensation for significant personal injuries to a victim of an accident caused by an unidentified vehicle. Nevertheless, Member States will be able to provide for an excess of not more than 500 Euro.

2.2.3.2. Settlement of claims in the case of accidents involving an uncoupled trailer

In Member States where the trailer is covered by its own insurance against third party liability, the insurer of an uncoupled trailer will intervene to compensate the victim in case of accident. In a few other Member States which have extended in certain circumstances the insurance cover of the towing vehicle to the uncoupled trailer, the compensation will be paid by the insurer of the towing vehicle⁵¹. Finally, in Member States where there is no third party liability cover for uncoupled trailers, a voluntary liability or property policy will apply when this kind of coverage has been foreseen⁵² by the owner/user of the trailer.

The Guarantee Fund will intervene to compensate the injuries of the victims for any accident caused by an unidentified trailer or an uninsured trailer. But in that case no compensation will be given to the injured party for the material damages if the Member State concerned has excluded this kind of compensation for accidents caused by an unidentified vehicle⁵³.

2.2.4. *Establishment of the liability in case of an accident caused by a trailer*

13 Member States have estimated that they do not face particular problems to establish the liability of the party causing the damage in the case of an accident involving an articulated vehicle. However, the other 12 Member States have reported that they are confronted with some specific problems, which are mainly related to the identification of the liable person: notably in the case of an accident which occurs with an articulated vehicle where the towing vehicle and the trailer bear a different plate number and the victim has forgotten to note down the plate number of the towing vehicle. In that case the Guarantee Fund is likely to intervene since this accident is to be perceived as being caused by an unidentified vehicle although the trailer was identified and is insured. In that context, 16 Member States have indicated that their Guarantee Fund does not seem to encounter any specific problem to compensate the injured party.

Some interesting approaches developed by Member States facilitate the establishment of the liability in case of an accident caused by an articulated vehicle, notably:

- as mentioned earlier, the agreements on claim settlement which were concluded at national level between insurers in 6 Member States⁵⁴.
- the German legal system which has introduced in 2002 an extensive liability for the registered owner of a trailer. This allows the injured party who only knows the registration plate number of the trailer to address the claim not only to the insurer of the trailer but also to the owner of the trailer⁵⁵. In addition, the German legal system gives the possibility to the victim to have a direct claim against the insurer of the towing vehicle as well as against the insurer of the trailer when both vehicles are identified.

No particular problem seems to occur for the establishment of the liability in the case of an accident involving an uncoupled trailer which is identified and has its own insurance against third party liability. However, the injured party might face difficulties to obtain compensation

⁵¹ For instance, in Denmark, the Netherlands and Sweden.

⁵² For instance, in the case of an accident occurring with a UK uncoupled trailer in the UK.

⁵³ See footnote no 50.

⁵⁴ See above point 2.3.1.

⁵⁵ Section 7 of the German Act on mandatory third party liability insurance.

for its injuries in case of accident caused by an uncoupled trailer which does not have a separate insurance against third party liability.

2.2.5. *Assessment of the insurance cover for trailers operating across the EU*

Generally speaking, the majority of Member States have regarded the current insurance system against third party liability as sufficient to allow the victim of an accident involving a trailer to obtain an appropriate compensation for the damage suffered.

12 Member States have indicated that a better convergence at European level would be useful with regard to certain aspects of the insurance rules against third party liability for trailers which are operating across the EU. However, 8 other Member States stated that the current system is sufficient and does not require any specific measure at European level⁵⁶.

Member States have mentioned that the problems encountered are mainly related to the identification of the liable party and/or its insurer. Some problems are also due to the variety of insurance regimes which exist for trailers in Member States and to the fact that the definition of a vehicle is not interpreted in the same way by all Member States.

The CEA and some Member States have suggested modifying the current system in order to give a choice to the victim of an accident involving an articulated vehicle to claim compensation against either the insurer of the towing vehicle or the insurer of the trailer. The insurer who has compensated the victim would then have a direct recourse against the liable person or his insurer. This would allow the victim to get compensated in any Member State for material damages as well.

2.3. **Conclusion**

In response to the question raised by the European Parliament, no amendment to the definition of vehicle provided for in Article 1 of the 1st Motor Insurance Directive seems necessary in the light of the above analysis. The current wording of the Directive is sufficiently clear as far as trailers are concerned since the definition of vehicle encompasses the trailers whether they are coupled or not. In that context, the Commission Services wish to recall that any trailer which is coupled or not is a vehicle and that it should therefore be properly covered by an insurance against third party liability⁵⁷.

Nevertheless, the Commission Services observe that

- there are no comparable statistics among Member States on accidents occurring with a trailer,
- there is a variety of systems for insurance cover against third party liability which exist in the European Union for trailers whether they are coupled or not,
- the concept of vehicle does not seem to be interpreted in the same way by all Member States.

⁵⁶ 3 Member States did not take a clear position on this issue and 2 other Member States mentioned that they do not have sufficient experience to reply to this question.

⁵⁷ See also Article 3 of this Directive.

The Commission Services will raise the lack of comparable statistics at the next European Insurance and Occupational Pensions Committee in order to identify with Member States the need of having an initiative at European level with the view of collecting more accurate and comparable statistics on road accidents.

Although the systems for insurance cover against third party liability were assessed by most Member States as being in general satisfactory, the Commission Services have identified at least two cases where victims might encounter difficulties to obtain compensation for an accident involving a trailer, namely:

- when the damage is caused by an articulated unit where the towing vehicle and the trailer (which is covered by a separate insurance cover or not) bear a different registration plate number and the victims forget to note down the plate number of the towing vehicle;
- when the damage is caused by an uncoupled trailer which does not have to bear the same registration plate number as the last towing vehicle and is not covered by a separate insurance coverage against third party liability.

The Commission Services believe that a possible solution which could be envisaged in order to address these two problems would be to require:

- that all Member States take the necessary measures to ensure that trailers whether they are coupled or not are duly covered by a separate insurance cover against third party liability, when they are bearing a registration plate number which is different from the number of the (last) towing vehicle;
- that all Member States allow the victim of an accident which involves an articulated vehicle to claim compensation against either the insurer of the towing vehicle or the insurer of the trailer. The insurer who has compensated the victim would have a direct recourse right against the liable party or its insurance company.

However, such a solution would require an amendment to Article 3 of the 1st Motor Insurance Directive. Such an amendment or any other alternative solution that would address the difficulties identified above would require prior impact assessment. The Commission Services believe that any modification to the motor insurance acquis with regard to the protection of victims of accidents involving a trailer could be usefully examined in the context of the planned recasting of all Directives on Motor Insurance in 2007-2008.