

## DRAFT 6TH MOTOR VEHICLE DIRECTIVE

<b>THE SCOPE OF COMPULSORY INSURANCE</b>	
<b>Recital</b>	<b>Proposed text</b>
<p>Directive 72/166/EEC states that the purpose of motor vehicle insurance is to guarantee civil liability arising from the use of a terrestrial motor vehicle. Directive 84/5/EEC stipulates that the guarantee must cover damage to property and bodily injury. Although the states remain at liberty to define the scope of risks covered, the purpose of the guarantee is compensation for the damage sustained by the victims. This is not the case for non compensatory damages which, if included in the law of a member state, must be born solely by the responsible party and not by the community of insured persons.</p>	<p style="text-align: center;"><i>Article 1</i></p> <p>The following addition is made to Article 1 of Directive 84/5/EEC</p> <p><i>The insurance referred to in Article 3 paragraph 1 of Directive 72/166/EEC must cover damage to property and bodily injury. It does not apply to non compensatory damages which are still covered by the responsible party.</i></p>

<b>COMPENSATION FOR WEAK VICTIMS</b>	
<b>Recital</b>	<b>Proposed text</b>
<p>The obligation placed upon the member states to introduce compulsory civil liability insurance on the driving of motor vehicles (motor vehicle insurance) by Directive 72/166/EEC is intended to protect the victims of road accidents. Pedestrians, cyclists, passengers in a vehicle and other non-motorised road users, considered to be weak victims, need even greater protection. This is why the intention of Directive 2005/14/EC is to generalise compensation for non-driving victims in Europe by stipulating that the civil liability insurer must cover damage sustained by pedestrians, cyclists and other non-motorised users to the extent that the rules of national civil law grant them the right to do so. To complete this provision it should be clarified that the compensation of these victims by the civil liability insurer is independent of the existence of fault by the driver of the motorised vehicle, and therefore of civil liability.</p>	<p style="text-align: center;"><i>Article 2</i></p> <p>The insurance referred to in Article 3, paragraph 1 of Directive 72/166/EEC compensates pedestrians, cyclists, passengers in a vehicle and other non-motorised road users who, following a road accident involving a motorised vehicle, have sustained personal injury.</p> <p>Only if the victim is seriously at fault may the beneficiary's compensation be reduced or withdrawn.</p> <p>In the absence of insurance covering the vehicle, the right to compensation is exercised directly against the organisation created in every member state in compliance with point 4 of Article 1 of Directive 84/5/EEC, according to the rules in force in that state.</p>

## THE FATE OF DRIVERS

Recital	Proposed text
<p>Compulsory motor civil liability insurance introduced by Directive 72/166/EEC covers damage sustained by third parties following a road accident involving a motor vehicle. Hence a driver who is the only individual involved in a road accident cannot obtain compensation for personal injury under motor civil liability insurance in the absence of a responsible third party<sup>1</sup>. The extension of compulsory insurance to personal injury sustained by drivers provides a solution for this situation. However, this new compulsory insurance would not follow the same regime as the compulsory insurance introduced by Directive 72/166/EEC.</p>	<p style="text-align: center;"><i>Article 3-1</i></p> <p>Every member state shall take all due measures, subject to the application of Article 4 of Directive 72/166/EEC<sup>2</sup>, to ensure personal injuries sustained by the driver of the motor vehicle are covered by insurance of the type referred to in Article 3, paragraph 1, of Directive 72/166/EEC</p>
<p>In this way the minimum guarantees fixed by Article 1 of Directive 84/5/EEC and replaced by those of Article 2 of Directive 2005/14/EC do not apply to personal injury sustained by drivers following a road accident involving a motor vehicle without a responsible third party. The payment of this compensation must obey special rules intended to protect this category of victim. This is why specific minimum guarantees must be introduced as part of the compulsory insurance referred to in the previous article. These minimum guarantees must be calculated separately from the benefits paid by social security organisations.</p>	<p style="text-align: center;"><i>Article 3-2</i></p> <p>Notwithstanding possible higher guarantees prescribed by the member states, every member state requires that the amounts provided for by compulsory insurance referred to in the previous indent shall provide a minimum cover of one million euros per victim, not including the benefits paid by social security.</p>
<p>However, the main guarantee conditions provided for by Articles 2 and 3 of Directive 84/5/EEC apply to this new compulsory insurance.</p> <p>As part of the fight against risks on the road the states may nevertheless provide for legal exclusions from the guarantee.</p>	<p style="text-align: center;"><i>Article 3-3</i></p> <p>Every member state has the option to introduce legal conditions excluding from the insurance referred to in Article 2-1 of this Directive the use or driving of vehicles by persons:</p> <ul style="list-style-type: none"> <li>- Not explicitly or implicitly authorised to do so, or</li> <li>- Persons not holding a licence allowing them to drive the vehicle in question, or</li> <li>- Who do not comply with the technical and legal obligations concerning the state and the safety of the vehicle concerned, or</li> <li>- Who are in a state of inebriation or under the influence of drugs.</li> </ul>

<sup>1</sup> In France, road accidents involving a single vehicle and no pedestrian represented 20.3 % of injured persons in 2004 and 38.4 % of deaths. In cities one accident out of five occurs without a third party being involved (ONIRS).

<sup>2</sup> Article including a list of possible derogations from the compulsory insurance provided for in article 3 of directive 72/166/EEC.

## LORRY-TRAILER COMBINATIONS

Recital	Proposed text
<p>Lorry-trailer combinations make up a significant percentage of international road traffic. Directive 72/166/EC stipulates that all terrestrial motor vehicles including trailers, shall be subject to compulsory insurance. However, the report submitted by the European Commission on 19 December 2005 states that the rules on insurance and liability concerning trailers are not harmonised in the European Union, in particular because certain member states encounter specific problems linked to the identification of the responsible person when the tractor and the trailer have different number plates. In order to protect the victims of road accidents involving lorry-trailer combinations, the issue of compensation must be kept separate from the identification of the insurer who must intervene (insurer of the trailer or the tractor).</p> <p>The difficulties encountered arise from the fact that three important aspects of the question are dealt with differently by the member states :</p> <ul style="list-style-type: none"> <li>- Registration of trailers</li> <li>- Compulsory trailer insurance</li> <li>- Responsibility in the event of an accident involving a trailer</li> </ul> <p>In order to find a solution which best accommodates the existing situations, the system is based on two approaches:</p> <ul style="list-style-type: none"> <li>- Firstly to allow the victim to approach either of the insurers of an articulated vehicle,</li> <li>- Then, where necessary, to allow the insurer who has compensated the victim to make a claim against the other insurer of the articulated vehicle.</li> </ul>	<p style="text-align: center;"><i>Article 4</i></p> <p>Every member state shall take due measures to ensure the trailers referred to in Article 1.1 of Directive 72/166/EEC, notwithstanding existing solutions for trailers bearing the same number plate as the tractor vehicle, are covered by a civil liability insurance contract in compliance with Article 3.1 of the same directive..</p> <p>Every member state shall take due measures to ensure that where a lorry-trailer combination, i.e. composed of a tractor vehicle and a trailer, is involved in a road accident, the person injured may choose to either take direct action under Article 4d of Directive 90/232/EEC against the insurer of the tractor vehicle or against the insurer of the trailer – the insurer in question must initially assume responsibility for the entire articulated vehicle in relation the injured person, on behalf of whom the insurer intervenes.</p> <p>The insurer of one of the parts of a lorry-trailer combination who has paid compensation to the injured persons, whether this be the insurer of the tractor vehicle or the insurer of the trailer, shall where necessary have a right of appeal against the insurer of the other part of the articulated vehicle, or against any other party who will ultimately bear responsibility for damages.</p>

<b>CLAIMS BY SOCIAL SECURITY BODIES</b>	
<b>Recital</b>	<b>Proposed text</b>
<p>By introducing the system of representatives, information centres and compensation bodies, the 4th Motor Directive 2000/26/CE was intended to facilitate the compensation of persons injured during a road accident. However to calculate the amount due to the victim, the insurer or the compensation body must be aware of the monies paid by social security. It is therefore only logical for the latter to be reimbursed by the insurer's representative. The definition of injured person in Directive 72/166/EC must be amended to this end.</p>	<p style="text-align: center;"><i>Article 5</i></p> <p>Point 2 of Article 1 of Directive 72/166/EC is amended as follows:</p> <ul style="list-style-type: none"> <li>- injured person: any person entitled to compensation for damage caused by vehicles; injured persons shall also include bodies which, due to a legal, assumed or statutory obligation, pay benefits to the injured person.</li> </ul>

<b>PRESCRIBED PERIOD</b>	
<b>Recital</b>	<b>Proposed text</b>
<p>Article 4d of Directive 90/232/EEC stipulates that persons injured following an accident caused by a vehicle covered by the insurance referred to in Article 3, paragraph 1, of Directive 72/166/EEC, are entitled to take direct action against the insurance company covering the civil liability of the responsible person. This right of direct action shall apply for a period of 4 years as from the accident<sup>3</sup>.</p>	<p style="text-align: center;"><i>Article 6</i></p> <p>In Article 4d of Directive 90/232/CEE the following paragraphs have been added:</p> <p>This right of direct action against the insurance company covering the civil liability of the person responsible shall apply for four years as from the date of the accident.</p> <p>This period shall be suspended as soon as:</p> <ul style="list-style-type: none"> <li>- The injured person submits his claim for compensation, either directly to the insurance company covering the person having caused the accident, or to its representative responsible for settling claims. The suspension of this prescribed period applies until this insurance company or its representative responsible for settling claims makes a reasoned offer of compensation in the event that responsibility is not contested and the damages have been quantified, or provides a reasoned response in cases where responsibility is rejected or has not been clearly established or where the damage has not been entirely quantified, in compliance with Article 4,</li> </ul>

<sup>3</sup> The moment when the prescribed period begins to run is objectively regulated in many member states. The period begins on the day the accident occurred or the day when the damage subsequently came to light (Italy, Spain, France). In other states the beginning of the period is determined using subjective criteria: the period only begins when the injured person is aware of the circumstances justifying his demand and of the person liable to pay compensation (Germany, Austria, Netherlands and Finland). Often the states where the beginning of the period is subjective fix maximum prescribed periods determined against objective criteria so that rights to compensation lapse in any event for example at the end of a period of ten years after the accident (Germany for damage to property) or a period of thirty years (Austria, Germany for bodily injury), even if the injured person does not for example always know the person who caused the accident.

paragraph 6 of Directive 2000/26/EC or,

- The injured person submits a demand for compensation to the compensation body in the member state in which he is resident, until such point as the compensation body ceases to intervene, in compliance with Article 6, paragraph 1 of Directive 2000/26/EC.

A suspension of the prescribed period shall mean the intervening period will not be counted until such time as the insurer has responded to the request for compensation submitted to him or when the compensation body gives notification that it will no longer intervene.

As soon as the person has notified their injury, the insurance company covering the person who caused the accident, or its representative responsible for settling claims, shall inform the injured person without delay in writing or using a permanent data medium of the period during which direct action may be taken.

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