

Implementing Article 4(4)-4a(I) of the 5th Motor Insurance Directive

Summary of responses

August 2007



HM TREASURY



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the 5th Motor Insurance Directive
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INTRODUCTION

1.1 This document summarises the responses to HM Treasury's consultation on implementing Article 4(4)-4a(1) of the EU's Fifth Motor Insurance Directive¹ (5th MID). This consultation was launched on 1 March 2007 and closed on 24 May 2007. A final Regulatory Impact Assessment (RIA) and final legislation have been published alongside this document.

1.2 HM Treasury are grateful to all those who responded to the consultation document and commented on the partial RIA.

QUESTIONS ASKED BY THE CONSULTATION AND RIA

1.3 The consultation document and partial RIA outlined the Government's intended approach to implementing one part of the 5th MID. Broadly, Article 4(4)-4a(1) provides, in circumstances where a vehicle is dispatched from one EEA State² to another, a 30-day derogation from the general rule³ that motor insurance cover can only be provided by an insurer authorised to write business in the EEA State in which the vehicle is registered. This may be either because that State is its home state or because it has a passport to cover risks situated there through a branch or on a cross-border basis). This provision is intended to make it easier for consumers to purchase insurance where a vehicle is being imported from one EEA State to another.

1.4 In practice, this will be achieved by temporarily switching the EEA State in which the insurance risk is situated (the 'State of the risk') from the State of origin of the vehicle to the State of destination. So this gives the buyer time to register the vehicle in the UK.

Consultation document

1.5 The questions raised in the consultation document were:

- Do you have any views on the Government's proposed approach to the implementation of Article 4(4)-4a(1) of the 5th MID in the UK?
- Do you have any comments on the proposed draft Statutory Instrument?
- Do you have any comments on the partial RIA?

Partial RIA

1.6 The questions raised in the partial RIA were:

- Do you agree with the analysis of costs and benefits for the different options relating to these two measures, as well as the impact on competition and small firms?

¹ Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 (OJ L 149, 11.6.2005, p. 14).

² Article 4a(1) refers only to Member States, i.e. EU States, but the EEA Agreement of 7th March 1993 extends its application to all EEA States i.e. the 27 EU Member States and Norway, Iceland and Liechtenstein.

³ See second indented paragraph of Article 2(d) of Second Council Directive 88/357/EEC of 22 June 1988 on direct insurance (OJ No L 172, 04.07.1988, p. 1). This general rule is reflected in the UK by a statutory instrument under FSMA - see regulations 2(2)(b) and 4 of the FSMA 2000 (Law Applicable to Contracts of Insurance) Regulations 2001 (SI 2001/2635).

- Are there any alternative ways of implementing Article 4(4)-4a(1) of the 5th MID that should be considered?

1.7 Chapter 2 summarises the responses received to these questions and on other issues raised during the consultation period. Chapter 3 summarises the conclusions and sets out the next steps.

2

SUMMARY OF RESPONSES

CONSULTATION

2.1 The consultation sought views on the intended approach for implementing Article 4(4)-4a(1) of the 5th MID in the UK.

2.2 Three responses were received to the consultation including one from an insurer, one from an individual, and a joint response from two insurance trade associations. Names of organisations who have responded to the consultation are attached at Annex A.

2.3 All three respondents were supportive of the Government's intended approach to implementing Article 4(4)-4a(1). One respondent noted that the amendment will benefit both insurers and customers.

2.4 One response noted that in practice, it was possible to insure imported vehicles with UK insurers before registration in the UK, although this cover only came into effect once the vehicle reaches the UK. This response also noted several shortcomings of the current system:

- short-term insurance is seemingly unobtainable for personal motor vehicle importers from EC States other than Germany;
- where such insurance cover is available, they are limited to basic levels of third-party cover. In practice cover for fire, theft and personal loss was unobtainable;
- policies are typically written in the language of the State of origin. Combined with problems around the provision of information by both UK and foreign insurers, this leads to misunderstanding for the importer regarding the level of cover he or she is protected by. For instance, some personal importers believe that they are covered by a 'comprehensive' level of cover, when they in fact their policy only afford them third-party liability cover.

2.5 This response also expressed uncertainty over whether the Government's intended approach applied to 'fully comprehensive' cover. The draft legislation provided at Annex B to the consultation document refers to insurance relating to "*a vehicle dispatched from one EEA State to another*". No restrictions apply to the level of cover offered by this insurance.

2.6 Other comments received went wider than the specific issues being consulted on and are addressed below.

REGULATORY IMPACT ASSESSMENT

2.7 Respondents were also asked to comment on the partial RIA. The RIA specifically asked (a) whether respondents agreed with the analysis of costs and benefits for the different options relating to this measure, as well as the impact on competition and small firms and (b) whether there were any alternative ways of implementing Article 4(4)-4a(1) of the 5th MID that should be considered.

2.8 All three respondents were happy with the analysis provided in the partial RIA relating to costs and benefits and the impact upon small firms and competition.

2.9 No alternative proposals for implementing Article 4(4)-4a(1) of the 5th MID were suggested by respondents.

OTHER ISSUES RAISED DURING THE CONSULTATION

2.10 One response noted disappointment in the fact that customers importing vehicles could not choose between taking out insurance with an insurer registered in the State of origin or with an insurer registered in the State of registration. However the response also acknowledges that such a choice is not possible under the Directive - the UK has no discretion as to how it implements this feature of Article 4(4)-4a(1).

3

CONCLUSIONS AND NEXT STEPS

CONCLUSIONS

3.1 Given the responses received, the Government is content with its intended approach to implementing Article 4(4)-4a(1) of the 5th MID.

3.2 The Government believes that implementation of this Article will bring benefits to both UK consumers - through easier access to insurance cover for those importing motor vehicles into the UK from another EEA State - and UK insurers, by allowing them to insure such a vehicle without having to 'passport'⁴ into the EEA State from which the vehicle is being imported (and also by removing the requirement to enter into the exporting State's guarantee fund and motor insurance bureau).

NEXT STEPS

3.3 A final version of the Statutory Instrument (SI) is published alongside this document. The SI is accompanied by a full Regulatory Impact Assessment. This SI has been laid before Parliament ahead of a 21-day 'negative resolution' period. Subject to Parliamentary approval, and following this 21-day period, it is intended that the legislation will come into force on 5 September 2007.

3.4 The change to the definition of the 'State of the risk' will require that, as a consequential change, the Financial Services Authority (FSA) amend its definition of the State of the risk in its Handbook Glossary. The FSA has consulted on such an amendment in its October 2006 *Quarterly Consultation (No. 10)* and has amended its Handbook, subject to the SI being made. Details of this amendment are provided in the FSA's *Handbook Notice 66*, published in May 2007 and available at: http://www.fsa.gov.uk/pubs/handbook/hb_notice66.pdf.

3.5 Please direct any enquiries to:

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⁴ In practice, passporting may be costly for a UK authorised firm as the host EEA State may impose certain regulatory restrictions that go beyond the FSA's requirements in the UK.

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CONSULTATION LIST

Responses to this consultation were received from:

Aviva

Association of British Insurers and Lloyd's Market Association (joint response)

One response was received from an individual.

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