

# Consultation Paper

## Implementing the **Fourth Motor Insurance Directive**

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## SUMMARY

1. The simplest way of summarising this consultation paper will be to run through an example of how the claims process might work. Let's suppose a British resident goes on holiday to France, and whilst there is the victim of an accident caused by a driver using a vehicle which is normally based in France and is insured through an establishment in France. When they return home, the British resident (the claimant) could either follow through the claim him/herself, or could contact their own insurer who may act on their behalf.
2. **STEP 1:** The claimant or their insurer would contact the UK **information centre**, providing the French vehicle's registration number. The UK information centre would then contact the French information centre, who would be obliged to provide them with the name and contact details of the French insurer and their claims representative in Britain, which the UK information centre will then pass back to the claimant or the claimant's insurer. Section 1 sets out proposals to approve the Motor Insurers' Information Centre as the UK's information centre and provide them with the necessary powers and duties. Of course the UK information centre will also need to be able to provide information on British insurers in the reverse situation.
3. **STEP 2:** The claimant or their insurer would then contact the **claims representative** of the French insurer in Britain – every motor insurer will be required to appoint local claims representatives in each other Member State. The claims representative must be able to deal with the claim and to represent the insurer who has appointed them before the national authorities of the State where the claimant is resident, including before the courts where rules of private international law give that court jurisdiction. Regulations governing the way in which insurers conduct business will have to be altered and the proposed measures are set out in Section 2. It is expected that in almost all cases, the claim will be settled out of court, via the claims representative. The insurer will be required to deal with claims within 3 months, and if they fail to provide a reasoned response or offer of compensation within this time, they will be liable to pay interest on any amount of compensation eventually offered or awarded.
4. **STEP 3** (if necessary): If the responsible driver's insurer fails to appoint a claims representative, and/or does not make a reasoned offer of compensation or reasoned reply to the claim within 3 months of the claim being presented, the claimant may present a claim to the **compensation body** in the UK. Each member state is required to establish or approve a compensation body for such purposes, and Section 3 sets out proposals for the UK's compensation body. They will then respond to the claim within 2 months, if the insurer does not respond in the meantime. The UK compensation body would then reclaim the amount paid from the French compensation body, which could in turn recover the sums paid out from the driver who caused the accident or that driver's insurer. If the driver is uninsured or the vehicle or insurer cannot be identified, the UK compensation body would reclaim the amount paid from the French guarantee fund.
5. Injured parties cannot present claims to the compensation body if they have taken legal action directly against the insurance undertaking. It is not intended to

give access to the compensation body to all UK accident victims - Section 3 explains why this is not considered necessary.

6. Inevitably, there is always a small minority of cases that get taken to court, e.g. because liability or damages are disputed, or the insurer makes no response to a claim. The whole system outlined above rests on an understanding that an accident victim can claim directly from the insurer of the liable motorist, and this is already allowed in civil law in most Member States. However, in the UK at present, a claim must be made against the other driver and any court action must be taken against them (although insurers are, of course, legally required to pay judgements given against their insured drivers). Section 4 discusses the impact of the directive on UK civil law, and how it will give claimants in other Member States a **direct right of action against motor insurers** in court. It seeks views on whether this right should be extended to all UK victims in road traffic accidents – i.e. including situations governed purely by domestic law in which a person who suffers loss or is injured in a motor accident in the UK is resident in the UK.

## INTRODUCTION

### THE DIRECTIVE

7. The Directive arises from concerns in all the Member States that in the event of an accident caused by a driver in a Member State, to a person resident in another Member State, it was difficult for the visiting person who suffers the damage or injury to pursue a claim, even when the accident is caused by a vehicle insured and based in the EU. Faced with an unfamiliar legal system in a foreign language, many claimants abandoned their claims. Complaints to the European Commission led initially to an attempt to reach voluntary agreement between the insurers of each Member State on a system for handling claims on a reciprocal basis. Unfortunately agreement could not be reached and in 1997 the Commission made formal proposals for a Directive.
8. While the consequences of road traffic accidents would still be dealt with under local law, Article 3 of the Directive requires each Member State to provide a right of action for anyone who suffers damage or injury (referred to in the Directive as an “injured party”) in such an accident while visiting another Member State directly against the insurer of the driver responsible for the accident. For example, a UK resident who is the victim of a road traffic accident in Italy would have a right to make a claim for compensation against the insurer of the driver responsible, if the vehicle were insured and based anywhere in the EU. Article 4 of the directive requires a mechanism to be put in place so that the UK resident could make the claim back in the UK when they return there. The other provisions of the Directive support this right and require practical measures to be implemented to allow drivers to make use of that right.
9. The converse situation, where a person is the victim, in the State where they are resident, of a road traffic accident for which a foreign, visiting driver is liable,

is covered by the long established international motor insurance "Green Card" system.

10. The 4<sup>th</sup> Motor Insurance Directive was adopted by the European Parliament and the Council on 16 May 2000 and published in the Official journal on 20 July 2000. A copy of the Directive is at annex B. The UK must have implementing measures in place by 20 July 2002 and those measures must come into effect by 20 January 2003. This consultation document seeks your views on the implementing measures the Government is proposing; it is of course the case that the UK, in common with all the Member States, must implement the Directive in our local law. The question whether we should implement does not arise but we would, nevertheless, value input from you on how we should implement. The paper also seeks views on whether a right of direct action against motor insurers should be extended to UK residents who suffer loss or injury in motor accidents in the UK.

#### WHICH PARTS OF THE UK DO THESE PROPOSALS RELATE TO?

11. The Directive has to be implemented throughout the United Kingdom. The proposals contained in this consultation document would apply across the UK. Please note that all statutory references should be interpreted as including the corresponding legislation in Northern Ireland.

## HOW TO RESPOND

12. We welcome comments from all interested parties. Comments should be sent in written form to reach us by **17 July 2002**, to:

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All comments may be made public, if you wish your comments to be kept confidential please say so in your response. If you are responding on behalf of a group, please provide a summary of the people or organisations your response represents.

## QUESTIONS

13. We are also happy to answer any further questions you may have:

With general questions please contact Anna Silvester at the addresses above, or on tel. 020 7270 1389.

If you have questions on the direct right of action against insurers in court, please contact Fovazia Khan

Lord Chancellor's Department, Civil Law Development Division, 3<sup>rd</sup> Floor, Southside, 105 Victoria Street, London, SW1E 6QT

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## ORDERING COPIES OF THE CONSULTATION PAPERS

14. This consultation document can be found on the Treasury's website, at <http://www.hm-treasury.gov.uk>, or hard copies can be ordered by contacting the Treasury public enquiries unit, on 020 7270 4558.

15. Once published, the FSA consultation document referred to in section 2 will be available at <http://www.fsa.gov.uk> - there is a link to the publications area from the left hand margin of the home page. Those wanting hard copies can order them from the FSA publications helpline at 0845 608 2372. If you have more general queries for the FSA, these may be routed through the FSA switchboard on 020 7676 1000.

## SECTION 1 - THE INFORMATION CENTRE

16. In order to claim against the insurer of the liable party in a road traffic accident the claimant must be able to obtain information about that insurer. Since they will be seeking to make a claim against the insurer after they have returned to their State of residence they will need to have the right to obtain details of the insurer and of that insurer's local claims representative in that State.

17. Each Member State must establish or approve an Information Centre charged with keeping a register containing the necessary information or with co-ordinating the compilation and dissemination of the information, and in either case with assisting UK residents who are victims of road accidents in other Member States to obtain that information (Article 5(1)(c)). The UK intends that its Information Centre will compile and disseminate information. This means that a UK resident who is the victim of a road accident while visiting another Member State, say Italy, would apply to the UK Information centre on his return to the UK. The UK Information Centre would then contact Italy's Centre giving them the registration number of the vehicle. The name of the insurer and of that insurer's UK Claims Representative would be passed to the UK Centre for onward transmission to the UK accident victim.

18. The information which must be provided to a claimant on identifying a vehicle is:

- The numbers of insurance policies covering that vehicle and the date of termination of cover in the case of a policy which has expired
- The number of a "Green Card" if the vehicle is covered by one for the accident in question
- The name and address of the insurer and of their Claims Representative
- Where the vehicle is exempted by legislation in the other Member State from the requirement to be insured (e.g. exempted under the Road Traffic Act in the UK), the name of the body which will deal with a claim.
- The Information Centre is also required to provide the name and address of the registered keeper in the case of accidents where the injured party has a "legitimate interest" in knowing this information – for example, where the vehicle was uninsured but not exempt from the requirement to be insured.

Section 4 consults on whether to extend the direct right of action to UK residents who suffer loss or injury in motor accidents in the UK. If it is decided to do this, the Information Centre will be required to provide to the accident victims on request the name of the insurer and the number of any insurance policy covering the use of the vehicle.

UK law already requires drivers to provide information about their insurer after an accident. Access to the Information Centre might place visiting European victims in a more favourable position than local victims; we would appreciate comments on this.

19. The UK intends to approve the existing Motor Insurers' Information Centre (MIIC) as its Information Centre. Regulations will be made under the European Communities Act to amend the Road Traffic Act 1988 so as to impose duties and confer rights on the relevant bodies and persons and to implement the requirements of the Directive in the UK.

20. The first duty to be imposed on the MIIC as the Information Centre will be to collect information. Some of the necessary information is already contained on the Motor Insurance Database (MID). Some 26 million records of vehicles, the insurers who issue policies to cover their use and of policy details have been loaded. These are mainly records of privately owned vehicles and their insurers and include policy numbers and commencement and expiry dates. Insurers have loaded these details voluntarily in order to assist the police in enforcing the motor insurance requirement and the MID will be the principal though not the only source of the information the Information Centre must collect.

21. In order to meet the requirements of the Directive, **it is proposed that insurers will be required to supply the relevant information for inclusion on the database within a fixed number of days from when a policy is issued or terminated.** We appreciate that there are practical and resource difficulties in imposing a duty to provide information immediately. It is intended to allow for this by setting a deadline at 4, 7 or 14 days. Insurers will, of course, have to supply the information on request by the Information Centre at any time.

We would appreciate comments from insurers on this proposal and the costs of meeting the suggested deadlines.

22. *Amendments to the Motor Vehicles (Third Party Risks) Regulations will require the MIIC to collect information which will identify vehicles and their insurers. A duty will be imposed on insurers to provide the information to MIIC either by loading it onto the MID within a deadline from the time cover is in place or directly in response to an enquiry if that deadline has not been reached. MIIC will be required to load the information onto the MID.*

23. Records of some vehicles and their insurers have not yet been loaded onto the MID. These are principally fleet vehicles, vehicles temporarily held in the motor trade in the expectation of being sold, vehicles which are uninsured by virtue of their owners having complied with the conditions laid down in s144 of the Road Traffic Act 1988 (depositors) and vehicles whose third party liabilities are accepted by their owners backed by a security. Fleet vehicles and those held by motor traders in the expectation of selling them are normally covered by a generic policy which does not identify particular vehicles. In those circumstances insurers cannot supply the required information to the database. **It is proposed to require fleet owners and motor traders to keep records of vehicles in their possession covered by a generic policy and to supply details of those vehicles to their insurer or the database within 4, 7 or 14 days.**

We would appreciate comments on this proposal and on the costs of meeting this requirement.

24. *Amendments will impose a duty on fleet managers to keep details of vehicles covered by their fleet policy and within a deadline to supply those details either to their insurer or for inclusion on the MID. Before the deadline expires they will be required to supply details of vehicles and of their insurance cover in response to an enquiry by the MIIC. Similar duties will be imposed on motor traders and*

*on owners of vehicles covered by securities or used in compliance with s144 of the Road Traffic Act (RTA) 1988.*

25. Records of details of vehicles which are uninsured under the exemptions in s144(2) of the RTA 88 are required to be kept under the Motor Vehicles (Third Party Risk) Regulations 1972 and may be provided to the MIIC for inclusion on the database under the Motor Vehicles (Third Party Risk) (Amendment) Regulations 2001.

26. In order to ensure that the Information Centre can provide the required information to accident victims, owners of vehicles exempted from the requirement to be insured (known in the Regulations as the “specified bodies”) will be required to supply details of those vehicles to the MIIC for inclusion on the database. In the case of vehicles temporarily in their possession they will be required to supply details from their records in response to an enquiry from the Information Centre. Temporarily will be defined as 4, 7 or 14 days.

We would appreciate comments from specified bodies on the costs of meeting this requirement.

*27. Specified bodies must keep records of all vehicles in their possession which are exempt from the requirement to be covered by insurance. A duty will be imposed on them to provide details of such vehicles for inclusion on the MID when they have been in their possession for a certain time. Details of vehicles in their possession for a lesser period must be provided to the Information Centre on request.*

28. The second duty on the MIIC as the UK’s Information Centre will be to provide details of insurers and their Claims Representatives in the State where the victim is resident. The Information Centre will have a general duty to cooperate with the Information Centres of other Member States. MIIC will be allowed to make a reasonable charge for responding to enquiries from accident victims. Calculation of this charge will take into account that the database serves other functions and is not used only for meeting the requirements of the Directive. The charge will be set by the Secretary of State.

We would appreciate comments on the need for a charge and on the level at which it should be set.

*29. Amendments of the Regulations will require the Information Centre to respond to accident victims or to other Member State’s Information Centre’s queries within a reasonable time and to provide names of insurers and their Claims Representatives in other Member States upon payment of a reasonable charge.*

30. In the event that a motorist responsible for an accident is found to be uninsured or if the identity of his insurer cannot be established in response to enquiries by the Information Centre the case will be treated as involving an uninsured driver. In those circumstances or where the victim has any other legitimate interest in obtaining the information, the Information Centre will enquire of the Vehicles Register at DVLA and provide the accident victim or the foreign Information Centre with the name and address of the registered keeper.

*31. For this purpose a duty shall be placed on the Information Centre to provide information to an accident victim making an enquiry or to a foreign Information Centre making an enquiry on behalf of an accident victim. The Information Centre will be empowered to make enquiries of the Vehicles Register and the Vehicles Register will have a duty to supply information which the Information Centre requires in order to satisfy the requirements of the Directive.*

## SECTION 2 - CLAIMS REPRESENTATIVES

32. To enable injured parties to make a claim when back in their State of residence, in a language and with procedures familiar to them, the Directive requires all insurance undertakings which cover motor vehicle liability (other than carrier's liability) to appoint claims representatives resident or established in every other EU Member State. UK insurers will not be required to appoint claims representatives in the UK. Insurers will be free to choose their own claims representatives, who may work for more than one insurer. The claims representatives' job will be, on behalf of the insurer, to collect all the necessary information relating to a claim, to take appropriate action to settle the claim including paying compensation, and where provided for by the Directive to represent the insurer in court.
33. In the UK, the Government propose to make it a threshold condition for authorisation for insurers to write this class of business that they must appoint claims representatives. This threshold condition would be added to those in Part I of Schedule 6 to the Financial Services and Markets Act (FSMA) 2000, by the Treasury making an order under paragraph 9(b) of Schedule 6. Existing insurers would be required to appoint claims representatives by 20 January 2003 and to notify the Information Centre of their appointees. The FSA would then make any necessary changes to their Handbook of Rules and Guidance.
34. The Directive also requires that where liability is not contested and damages have been quantified, insurers are required to make a reasoned offer of compensation within 3 months of the date the claim was presented to the insurer or their claims representative. If liability is denied or not clearly determined, or the damages have not been fully quantified, the insurer is required to provide a reasoned reply to the points made in the claim within the same 3-month timeframe. Where the insurer fails to meet this deadline, interest will be payable on any amount of compensation eventually offered or awarded by the court to the injured party.
35. In the UK, it is proposed that these requirements relating to the 3-month deadline will also be implemented by changes to the FSA's Handbook of Rules and Guidance (see also paragraph 57 below). The FSA have powers to take action against insurers who breach their rules. Additionally, private individuals have the right to sue an insurer who causes them loss by breaching an FSA rule (including a rule made requiring insurers to pay interest on a claim), thereby enabling them to enforce any breach. The Treasury propose to make regulations under FSMA 2000 to give all "injured parties" within the meaning of the Directive the same right (e.g. non-individuals carrying out a business).
36. In line with the requirements of the Financial Services and Markets Act 2000 and with the FSA's commitment to openness, the FSA will consult publicly on proposals to make changes to its Handbook, and will carry out a full cost benefit analysis. In order to comply with the terms of the Directive, such changes are likely to be required in relation to the threshold conditions (to impose the requirement to appoint claims representatives); the systems and controls requirements (to define the obligations and responsibilities the claims representatives should have); and the conduct of business requirements (to

outline the minimum standards firms will be expected to meet when dealing with motor claims from victims, for example in relation to time taken to make an offer or the point from which interest might be payable if there are delays). A Consultation paper will shortly be published by the FSA focused on the changes necessary to its rules in order to implement the Directive. Further changes may follow following consultation on the new regime for the sale of general insurance business (announced by the Treasury on 12 December 2001).

### **SECTION 3 - THE COMPENSATION BODY**

37. The Directive requires each Member State to establish or approve a Compensation Body. The purpose of the Compensation Body is to provide compensation to victims if the insurer does not meet the requirements of the Directive or if the driver responsible for the damage or injury is uninsured. A victim may claim from the Compensation Body if an insurer or their local Claims Representative has not made a reasoned response to their claim within three months, if an insurer has not appointed a Claims Representative in their State of residence (unless the victim has made a claim directly against the insurer and received a reasoned reply within three months), if it is impossible to identify the vehicle causing the accident or if within two months of making a claim it has been impossible to identify the insurer of the vehicle causing the accident.
38. When it receives a claim the Compensation Body must immediately notify the insurer of the vehicle causing the accident or their claims representative, and the Compensation Body in the state where the insurer of the vehicle causing the accident is established and, if known, the person who caused the accident.
39. The Compensation Body must take action on a claim from an injured party within 2 months but shall terminate that action if the insurer of the other party or his Claims Representative subsequently makes a reasoned response.
40. When it has paid compensation, the Compensation Body in the State where the victim is resident will have a right to recover the amount paid from the Compensation Body in the State where the insurer's establishment which issued the relevant policy is located. That body will in turn have a right of recovery against the person causing the accident or his insurer. The arrangements for recovery of compensation paid out shall be in accordance with an agreement to be reached between the compensation bodies in each Member State and will not form part of the implementing legislation.
41. The Motor Insurers' Bureau who manage the UK's guarantee fund, will be approved as the UK's Compensation Body.
42. Even if the direct right of action is extended to all UK residents who suffer loss or injury in a motor accident in the UK (as discussed in section 4), access to the Compensation Body will not be necessary. UK insurers will not be required to appoint Claims representatives in the UK; the victim's right to compensation is already protected by provisions in the Road Traffic Act 1988 which requires payment within seven days after a judgement is given, their right to compensation if a driver responsible for an accident is uninsured or untraced is protected by the Agreements between Government and the Motor Insurers' Bureau.
43. *A duty will be placed on MIB as the Compensation Body to accept claims made in accordance with the provisions of the Directive and to pay compensation in response to such claims. MIB will be required to enter into an agreement with the other Compensation Bodies in respect of recovery of compensation paid out.*

## **SECTION 4 – DIRECT ACTION AGAINST INSURERS IN COURT**

44. This section of the Consultation Paper deals with the impact of the Directive if an out of court settlement cannot be reached and the claim is brought to a court.
45. The Fourth Motor Insurance Directive requires Member States to provide persons who suffer loss or injury in a motor accident in a Member State other than their Member State of residence, with a direct right of action against the insurer of the person responsible for the accident. The Directive aims to reduce the difficulties that can arise when someone who suffers loss or injury in a motor accident makes a claim against someone resident in another Member State.
46. Implementing the Directive will mean that when a claim is made as a result of a road traffic accident in a Member State other than the one where the victim is resident, the insurer, rather than the driver allegedly responsible for the accident, can be the defendant in any civil claim for damages.
47. Other Member States already provide a right for motor accident victims to sue the driver's insurer. This is in contrast to law in the UK, where the person who suffers loss or is injured is generally only entitled to sue the person who caused the loss or injury. The general rule is that a person can sue another person only if they have a "cause of action". This entitles one person to obtain a remedy from another person in the courts. The right to bring a claim must arise out of statute or common law.
48. Therefore, the Directive, once implemented in the UK, will give residents of other European Union Member States who suffer loss or are injured in motor accidents in the UK a right which does not currently exist for UK residents who suffer loss or are injured here, namely that a non-UK resident will be able to sue a British insurer directly, whereas a UK resident cannot currently sue the insurer in the UK, except in certain limited circumstances provided for by the Third Parties (Rights against Insurers) Act 1930.
49. This creates a potential anomaly and raises the question whether the right created by the Directive should be extended to accidents purely covered by domestic law. However, in the absence of evidence that such a change would provide any substantial practical benefit, it may be considered disproportionate in the light of the extremely small number of claims affected by the Directive.
50. The Motor Insurers Bureau have indicated that on average the UK courts deal with less than 50 claims a year from residents living in other Member States. The majority of these are dealt with in Northern Ireland. It is estimated that about 45,000 claims made by UK residents reach the UK courts.
51. If such a change were to be introduced, it would be restricted to motor accident claims and would not extend to other classes of litigation.

**52. Advantages of Extending the Right to UK residents who suffer loss or injury in motor accidents in the UK:**

- it would create the same right for UK residents who suffer loss or injury in motor accidents in the UK as for residents of other Member States who suffer loss or injury here, which would provide for fairness and consistency;
- it might help to create a more streamlined system;
- it could assist towards obtaining rapid access to repair of any damage;
- at present a person suffering injury or property damage as a result of a road traffic accident is reliant on the co-operation of the driver apparently responsible to pursue a claim against that driver's insurer, and claims can be frustrated if the driver fails to notify the insurer of the accident;
- there would be little difference in practice to the handling of a claim, as currently the insurance company is usually fully involved and effectively takes over the conduct of the claim before there is any question of issuing proceedings;
- the court would still have discretion to join the driver as a party to the proceedings if appropriate, and where evidence needed to be provided, any driver who was not a party could be required to provide witness statements or give evidence in court.

**53. Disadvantages of Extending the Right to UK residents who suffer loss or injury in motor accidents in the UK:**

- the driver allegedly responsible for the accident might be excluded from the proceedings or have less involvement in the claim which alleges negligence against him or her, as the insurer would be the defendant;
- the driver might lose the opportunity to settle privately in order to preserve their no claims bonus;
- the involvement of the driver as a party or a witness might negate any streamlining effect;
- the number of internal claims that would be affected could be disproportionate to the number of claims involving residents of other Member States that the courts currently deal with;
- a general principle of the existing civil law is that there should be a direct causal link between the parties, and thus that the person directly causing the loss or injury should be sued;
- the change would make little practical difference in these particular cases, but the effect of the change could have a significant impact on the UK courts and the traditional role of the defendant.

Do you consider that the right to sue insurers direct should be extended to UK residents who suffer loss or injury in motor accidents in the UK?

54. If it is decided to provide a direct right of action against British motor insurers to persons resident in the UK who suffer loss or are injured in the UK, this can be achieved by means of regulations under section 2(2)(b) of the European Communities Act (ECA) 1972.

55. Under Article 5(3) of the Directive, Member States are required to ensure that the injured party is entitled for a period of seven years after the accident to obtain certain information on the insurance undertaking from the Information Centre in the Member State where he or she is resident. This does not affect the Limitation Act 1980, which sets out a time limit of three years from the date of the cause of action or date of knowledge to bring a personal injury claim for damages, and six years from the date on which the cause of action accrued for an action founded on tort other than for personal injury (e.g. damage to the victim's car or other property). In Scotland, the equivalent actions in delict have a time limit of 3 and 5 years respectively from the cause of action (Prescription and Limitation (Scotland) Act 1973). This Directive does not introduce new limitation periods for cases which are heard by the courts and it is thus not intended to amend the limitation periods established by the 1980 Act.

56. Section 1 of this paper indicates that, if the right to sue motor insurers is extended to UK domestic law, the road accident victim should be able to use the UK Information Centre to obtain details of the insurer and the relevant policy.

57. Article 4 (6) of the Directive requires Member States to adopt provisions to ensure that where an offer of compensation is not made within three months (where liability is not contested), interest is payable on the amount of compensation offered by the insurance undertaking or awarded by the court to the injured party (see para 34 above). In order to meet this requirement provision will be made for the rate of interest awarded by the court to be the same as in those cases that have not met the required time limit but do not reach the courts. The subject of interest in cases which do not reach the courts will be addressed in the FSA's separate Consultation Paper which focuses on the changes necessary to their rules in order to implement the Directive.

**Jurisdiction:**

58. This Directive does not override the existing rules of private international law governing the civil jurisdiction of the courts. Within the European Union the relevant rules are contained in Council Regulation (EC) No 44/2001 of 22 December 2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters which came into force on 1 March 2002. (Denmark is not covered by this Regulation but it is covered by the 1968 Brussels Convention which is materially in the same terms).

59. Under the present arrangements an injured party living in the UK has the following jurisdictional options available under the Regulation:

- He can sue the party who has injured him in the Member State where the latter is domiciled (Article 2);
- He can also sue that party in the courts for the place where the harmful event occurred (Article 5(3))

60. Following the commencement of the Directive the position will be different in that the injured party will have some additional options to sue the insurance company which insured the party that injured him (Article 11):

- In the courts of the Member State where the insurer is domiciled (Article 9(1)(a));
- In the courts of the Member State where the injured party is domiciled (Article 9(1)(b));
- Where an insurer is not domiciled in a Member State, in the courts of the Member State where the insurer has a branch, agency or other establishment, provided the dispute arises out of the operations of that branch, agency or other establishment (Article 9(2));
- In the courts for the place where the harmful event occurred (Article 10).

## ANNEX A: QUESTIONNAIRE

We welcome comments on any proposal in, or aspect of, the consultation document. However, this questionnaire collates the specific questions contained in the consultation document or regulatory impact assessment, which we would particularly value feedback on. We hope this makes it easier for you to provide comments.

1. UK law already requires drivers to provide information about their insurer after an accident. Access to the Information Centre might place visiting European victims in a more favourable position than local victims. Do you have any comments on the likely effects of this, or whether it would be favourable to give UK accident victims access to the information centre? (Section 1 proposes that if, following the consultation in section 4, it is decided to extend the direct right of action to UK motor accident victims in the UK, then access to the Information Centre would also be given to such injured parties).
2. Do you (insurers, fleet vehicle owners, motor traders and specified bodies under the Motor Vehicles (Third Party Risk) Regulations, in particular), have comments on the proposals to require details to be supplied for inclusion on the Motor Insurers Database within 4, 7, or 14 days? Can you provide estimates of the costs of meeting this requirement, and within the suggested deadlines?
3. Do you think that the Motor Insurers Information Centre should set a charge for obtaining information? Do you have comments on the level at which a charge should be set?
4. Do you consider that the right to sue motor insurers direct should be extended to UK residents who suffer loss or injury in motor accidents in the UK?
5. Do you have any estimates or figures on:
  - i. How many UK residents go abroad each year, and how many drive their own vehicles abroad?
  - ii. How many UK residents are victims of road traffic accidents elsewhere in the EU each year?
  - iii. How many foreign drivers come to the UK each year?
  - iv. How many have accidents?
  - v. How big might the time savings be?
6. Do you have any further figures estimating the likely costs and benefits of:
  - i. implementing the Directive, and
  - ii. extending a direct right of action to UK residents who suffer loss or injury in motor accidents in the UK?

## **ANNEX B – THE DIRECTIVE**

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

(Fourth motor insurance Directive)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN  
UNION,

Having regard to the Treaty establishing the European Community, and in particular  
Articles 47(2) and 95 thereof,

Having regard to the proposal from the Commission(1),

Having regard to the opinion of the Economic and Social Committee(2),

Acting in accordance with the procedure laid down in Article 251 of the Treaty(3), in the  
light of the joint text approved by the Conciliation Committee on 7 April 2000,

Whereas:

(1) At present, differences exist between provisions laid down by law, regulation or  
administrative action in the Member States relating to insurance against civil liability in  
respect of the use of motor vehicles and those differences constitute an obstacle to the free  
movement of persons and of insurance services.

(2) It is therefore necessary to approximate those provisions in order to promote the sound  
functioning of the single market.

(3) By Directive 72/166/EEC(4), 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.

(4) By Directive 88/357/EEC(5), the Council adopted provisions on the coordination of  
laws, regulations and administrative provisions relating to direct insurance other than life  
assurance and laying down provisions to facilitate the effective exercise of freedom to  
provide services.

(5) The green card bureau system ensures the ready settlement of claims in the injured  
party's own country even where the other party comes from a different European country.

(6) The green card bureau system does not solve all problems of an injured party having to  
claim in another country against a party resident there and an insurance undertaking  
authorised there (foreign legal system, foreign language, unfamiliar settlement procedures  
and often unreasonably delayed settlement).

(7) By its Resolution of 26 October 1995 on the settlement of claims arising from traffic  
accidents occurring outside the claimant's country of origin(6), the European Parliament,  
acting under the second paragraph of Article 192 of the Treaty, called on the Commission  
to submit a proposal for a European Parliament and Council Directive to solve these  
problems.

(8) It is in fact appropriate to supplement the arrangements established by Directives  
72/166/EEC, 84/5/EEC(7) and 90/232/EEC(8) in order to guarantee injured parties  
suffering loss or injury as a result of a motor vehicle accident comparable treatment  
irrespective of where in the Community accidents occur; for accidents falling within the  
scope of this Directive occurring in a State other than that of the injured party's residence,  
there are gaps with regard to the settlement of injured parties' claims.

(9) The application of this Directive to accidents occurring in third countries covered by  
the green card system, affecting injured parties resident in the Community and involving

vehicles insured and normally based in a Member State does not imply an extension of the compulsory territorial coverage of motor insurance as provided for in Article 3(2) of Directive 72/166/EEC.

(10) This entails giving the injured party a direct right of action against the insurance undertaking of the responsible party.

(11) One satisfactory solution might be for injured parties suffering loss or injury as a result of a motor vehicle accident falling within the scope of this Directive and occurring in a State other than that of their residence to be entitled to claim in their Member State of residence against a claims representative appointed there by the insurance undertaking of the responsible party.

(12) This solution would enable damage suffered by injured parties outside their Member State of residence to be dealt with by procedures familiar to them.

(13) This system of having claims representatives in the injured party's Member State of residence affects neither the substantive law to be applied in each individual case nor the matter of jurisdiction.

(14) The existence of a direct right of action against the insurance undertaking for the party who has suffered loss or injury is a logical supplement to the appointment of such representatives and moreover improves the legal position of injured parties of motor vehicle accidents occurring outside that party's Member State of residence.

(15) In order to fill the gaps in question, it should be provided that the Member State where the insurance undertaking is authorised should require the undertaking to appoint claims representatives resident or established in the other Member States to collect all necessary information in relation to claims resulting from such accidents and to take appropriate action to settle the claims on behalf and for the account of the insurance undertaking, including the payment of compensation therefor; claims representatives should have sufficient powers to represent the insurance undertaking in relation to persons suffering damage from such accidents, and also to represent the insurance undertaking before national authorities including, where necessary, before the courts, in so far as this is compatible with the rules of private international law on the conferral of jurisdiction.

(16) The activities of the claims representative are not sufficient in order to confer jurisdiction on the courts in the injured party's Member State of residence if the rules of private international law on the conferral of jurisdiction do not so provide.

(17) The appointment of representatives responsible for settling claims should be one of the conditions for access to and carrying on the activity of insurance listed in class 10 of point A of the Annex to Directive 73/239/EEC(9), except for carriers' liability; that condition should therefore be covered by the single official authorisation issued by the authorities of the Member State where the insurance undertaking establishes its head office, as specified in Title II of Directive 92/49/EEC(10); that condition should also apply to insurance undertakings having their head office outside the Community which have secured an authorisation granting them access to the activity of insurance in a Member State of the Community; Directive 73/239/EEC should be amended and supplemented accordingly.

(18) In addition to ensuring that the insurance undertaking has a representative in the State where the injured party resides, it is appropriate to guarantee the specific right of the injured party to have the claim settled promptly; it is therefore necessary to include in national law appropriate effective and systematic financial or equivalent administrative penalties - such as injunctions combined with administrative fines, reporting to supervisory authorities on a regular basis, on-the-spot checks, publications in the national official journal and in the press, suspension of the activities of the company (prohibition on the conclusion of new contracts for a certain period), designation of a special representative of the supervisory authorities responsible for monitoring that the business is

run in line with insurance laws, withdrawal of the authorisation for this business line, sanctions to be imposed on directors and management staff - in the event that the insurance undertaking or its representative fails to fulfil its obligation to make an offer of compensation within a reasonable time-limit; this should not prejudice the application of any other measure - especially under supervisory law - which may be considered appropriate; however, it is a condition that liability and the damage and injury sustained should not be in dispute, so that the insurance undertaking is able to make a reasoned offer within the prescribed time-limit; the reasoned offer of compensation should be in writing and contain the grounds on the basis of which liability and damages have been assessed.

(19) In addition to those sanctions, it is appropriate to provide that interest should be payable on the amount of compensation offered by the insurance undertaking or awarded by the court to the injured party when the offer has not been made within the said prescribed time-limit; if Member States have existing national rules which cover the requirement for late-payment interest this provision could be implemented by a reference to those rules.

(20) Injured parties suffering loss or injury as a result of motor vehicle accidents sometimes have difficulty in establishing the name of the insurance undertaking providing insurance against civil liability in respect of the use of motor vehicles involved in an accident.

(21) In the interest of such injured parties, Member States should set up information centres to ensure that such information is made available promptly; those information centres should also make available to injured parties information concerning claims representatives; it is necessary that such centres should cooperate with each other and respond rapidly to requests for information about claims representatives made by centres in other Member States; it seems appropriate that such centres should collect information about the actual termination date of the insurance cover but not about the expiry of the original validity of the policy if the duration of the contract is extended owing to non-cancellation.

(22) Specific provision should be made with respect to vehicles (for example, government or military vehicles) which fall under the exemptions from the obligation to be insured against civil liability.

(23) The injured party may have a legitimate interest in being informed about the identity of the owner or usual driver or the registered keeper of the vehicle, for example if he can obtain compensation only from these persons because the vehicle is not duly insured or the damage exceeds the sum insured, this information should also be provided accordingly.

(24) Certain information provided, such as the name and address of the owner or usual driver of the vehicle and the number of the insurance policy or the registration number of the vehicle, constitutes personal data within the meaning of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>(11)</sup>; the processing of such data which is required for the purposes of this Directive must therefore comply with the national measures taken pursuant to Directive 95/46/EC; the name and address of the usual driver should be communicated only if national legislation provides for such communication.

(25) It is necessary to make provision for a compensation body to which the injured party may apply where the insurance undertaking has failed to appoint a representative or is manifestly dilatory in settling a claim or where the insurance undertaking cannot be identified to guarantee that the injured party will not remain without the compensation to which he is entitled; the intervention of the compensation body should be limited to rare individual cases where the insurance undertaking has failed to comply with its duties in spite of the dissuasive effect of the potential imposition of penalties.

(26) The role played by the compensation body is that of settling the claim in respect of any loss or injury suffered by the injured party only in cases which are capable of objective determination and therefore the compensation body must limit its activity to verifying that an offer of compensation has been made in accordance with the time-limits and procedures laid down, without any assessment of the merits.

(27) Legal persons who are subrogated by law to the injured party in his claims against the person responsible for the accident or the latter's insurance undertaking (such as, for example, other insurance undertakings or social security bodies) should not be entitled to present the corresponding claim to the compensation body.

(28) The compensation body should have a right of subrogation in so far as it has compensated the injured party; in order to facilitate enforcing the compensation body's claim against the insurance undertaking where it has failed to appoint a claims representative or is manifestly dilatory in settling a claim, the body providing compensation in the injured party's State should enjoy an automatic right of reimbursement with subrogation to the rights of the injured party on the part of the corresponding body in the State where the insurance undertaking is established; the latter body is the best placed to institute proceedings for recourse against the insurance undertaking.

(29) Even though Member States may provide that the claim against the compensation body may be subsidiary, the injured person should not be obliged to present his claim to the person responsible for the accident before presenting it to the compensation body; in this case the injured party should be in at least the same position as in the case of a claim against the guarantee fund under Article 1(4) of Directive 84/5/EEC.

(30) This system can be made to function by means of an agreement between the compensation bodies established or approved by the Member States defining their functions and obligations and the procedures for reimbursement.

(31) Where it is impossible to identify the insurer of the vehicle, provision should be made so that the ultimate debtor in respect of the damages to be paid to the injured party is the guarantee fund provided for in Article 1(4) of Directive 84/5/EEC situated in the Member State where the non-insured vehicle, the use of which has caused the accident, is normally based; where it is impossible to identify the vehicle, provision must be made so that the ultimate debtor is the guarantee fund provided for in Article 1(4) of Directive 84/5/EEC situated in the Member State in which the accident occurred,

HAVE ADOPTED THIS DIRECTIVE:

## Article 1

### Scope

1. The objective of this Directive is to lay down special provisions applicable to injured parties entitled to compensation in respect of any loss or injury resulting from accidents occurring in a Member State other than the Member State of residence of the injured party which are caused by the use of vehicles insured and normally based in a Member State. Without prejudice to the legislation of third countries on civil liability and private international law, this Directive shall also apply to injured parties resident in a Member State and entitled to compensation in respect of any loss or injury resulting from accidents occurring in third countries whose national insurer's bureaux as defined in Article 1(3) of Directive 72/166/EEC have joined the Green Card system whenever such accidents are caused by the use of vehicles insured and normally based in a Member State.

2. Articles 4 and 6 shall apply only in the case of accidents caused by the use of a vehicle

- (a) insured through an establishment in a Member State other than the State of residence of the injured party, and
- (b) normally based in a Member State other than the State of residence of the injured

party.

3. Article 7 shall also apply to accidents caused by third-country vehicles covered by Articles 6 and 7 of Directive 72/166/EEC.

## Article 2

### Definitions

For the purpose of this Directive:

- (a) "insurance undertaking" means an undertaking which has received its official authorisation in accordance with Article 6 or Article 23(2) of Directive 73/239/EEC;
- (b) "establishment" means the head office, agency or branch of an insurance undertaking as defined in Article 2(c) of Directive 88/357/EEC;
- (c) "vehicle" means a vehicle as defined in Article 1(1) of Directive 72/166/EEC;
- (d) "injured party" means an injured party as defined in Article 1(2) of Directive 72/166/EEC;
- (e) "the Member State in which the vehicle is normally based" means the territory in which the vehicle is normally based as defined in Article 1(4) of Directive 72/166/EEC.

## Article 3

### Direct right of action

Each Member State shall ensure that injured parties referred to in Article 1 in accidents within the meaning of that provision enjoy a direct right of action against the insurance undertaking covering the responsible person against civil liability.

## Article 4

### Claims representatives

1. Each Member State shall take all measures necessary to ensure that all insurance undertakings covering the risks classified in class 10 of point A of the Annex to Directive 73/239/EEC, other than carrier's liability, appoint a claims representative in each Member State other than that in which they have received their official authorisation. The claims representative shall be responsible for handling and settling claims arising from an accident in the cases referred to in Article 1. The claims representative shall be resident or established in the Member State where he is appointed.
2. The choice of its claims representative shall be at the discretion of the insurance undertaking. The Member States may not restrict this choice.
3. The claims representative may work for one or more insurance undertakings.
4. The claims representative shall, in relation to such claims, collect all information necessary in connection with the settlement of the claims and shall take the measures necessary to negotiate a settlement of claims. The requirement of appointing a claims representative shall not preclude the right of the injured party or his insurance undertaking to institute proceedings directly against the person who caused the accident or his insurance undertaking.
5. Claims representatives shall possess sufficient powers to represent the insurance undertaking in relation to injured parties in the cases referred to in Article 1 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.
6. The Member States shall create a duty, backed by appropriate, effective and systematic financial or equivalent administrative penalties, to the effect that, within three months of the date when the injured party presented his claim for compensation either directly to the insurance undertaking of the person who caused the accident or to its claims representative,
  - (a) the insurance undertaking of the person who caused the accident or his claims

representative is required to make a reasoned offer of compensation in cases where liability is not contested and the damages have been quantified, or

(b) the insurance undertaking to whom the claim for compensation has been addressed or his claims representative is required to provide a reasoned reply to the points made in the claim in cases where liability is denied or has not been clearly determined or the damages have not been fully quantified.

Member States shall adopt provisions to ensure that where the offer is not made within the three-month time-limit, interest shall be payable on the amount of compensation offered by the insurance undertaking or awarded by the court to the injured party.

7. The Commission shall report to the European Parliament and Council on the implementation of paragraph 4, first subparagraph, and on the effectiveness of that provision as well as on the equivalence of national penalty provisions before 20 January 2006 and shall submit proposals if necessary.

8. The appointment of a claims representative shall not in itself constitute the opening of a branch within the meaning of Article 1(b) of Directive 92/49/EEC and the claims representative shall not be considered an establishment within the meaning of Article 2(c) of Directive 88/357/EEC or an establishment within the meaning of the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters(12).

## Article 5

### Information centres

1. For the purposes of allowing the injured party to seek compensation, each Member State shall establish or approve an information centre responsible:

(a) for keeping a register containing the following information:

1. the registration numbers of motor vehicles normally based in the territory of the State in question;

2. (i) the numbers of the insurance policies covering the use of those vehicles for the risks classified in class 10 of point A of the Annex to Directive 73/239/EEC, other than carrier's liability, and where the period of validity of the policy has expired, also the date of termination of the insurance cover;

(ii) the number of the green card or frontier insurance policy if the vehicle is covered by one of those documents in case the vehicle benefits from the derogation provided for in Article 4(b) of Directive 72/166/EEC;

3. insurance undertakings covering the use of vehicles for the risks classified in class 10 of point A of the Annex to Directive 73/239/EEC, other than carrier's liability, and claims representatives appointed by such insurance undertakings in accordance with Article 4 whose names shall be notified to the information centre in accordance with paragraph 2 of this Article;

4. the list of vehicles which, in each Member State, benefit from the derogation from the requirement for civil liability insurance cover in accordance with Article 4(a) and (b) of Directive 72/166/EEC;

5. regarding the vehicles provided for in point (4):

(i) the name of the authority or the body designated in accordance with the second subparagraph of Article 4(a) of Directive 72/166/EEC as responsible for compensating injured parties in the cases where the procedure provided for in the first indent of Article 2(2) of Directive 72/166/EEC is not applicable, if the vehicle benefits from the derogation provided for in Article 4(a) of Directive 72/166/EEC;

(ii) the name of the body covering the vehicle in the Member State where it is normally based if the vehicle benefits from the derogation provided for in Article 4(b) of Directive 72/166/EEC;

- (b) or for coordinating the compilation and dissemination of that information;
- (c) and for assisting entitled persons to be apprised of the information mentioned in points (a)(1), (2), (3), (4) and (5).

The information under points (a)(1), (2) and (3) must be preserved for a period of seven years after the termination of the registration of the vehicle or the termination of the insurance contract.

2. Insurance undertakings referred to in paragraph 1(a)(3) shall notify to the information centres of all Member States the name and address of the claims representative which they have appointed in accordance with Article 4 in each of the Member States.

3. The Member States shall ensure that the injured party is entitled for a period of seven years after the accident to obtain without delay from the information centre of the Member State where he resides, the Member State where the vehicle is normally based or the Member State where the accident occurred the following information:

- (a) the name and address of the insurance undertaking;
- (b) the number of the insurance policy; and
- (c) the name and address of the insurance undertaking's claims representative in the State of residence of the injured party.

Information centres shall cooperate with each other.

4. The information centre shall provide the injured party with the name and address of the owner or usual driver or the registered keeper of the vehicle if the injured party has a legitimate interest in obtaining this information. For the purposes of this provision, the information centre shall address itself in particular:

- (a) to the insurance undertaking, or
- (b) to the vehicle registration agency.

If the vehicle benefits from the derogation provided for in Article 4(a) of Directive 72/166/EEC, the information centre shall inform the injured party of the name of the authority or body designated in accordance with the second subparagraph of Article 4(a) of that Directive as responsible for compensating injured parties in cases where the procedure provided for in the first indent of Article 2(2) of that Directive is not applicable. If the vehicle benefits from the derogation provided for in Article 4(b) of Directive 72/166/EEC, the information centre shall inform the injured party of the name of the body covering the vehicle in the country where it is normally based.

5. The processing of personal data resulting from the previous paragraphs must be carried out in accordance with national measures taken pursuant to Directive 95/46/EC.

## Article 6

### Compensation bodies

1. Each Member State shall establish or approve a compensation body responsible for providing compensation to injured parties in the cases referred to in Article 1.

Such injured parties may present a claim to the compensation body in their Member State of residence:

- (a) if, within three months 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, the insurance undertaking or its claims representative has not provided a reasoned reply to the points made in the claim; or
- (b) if the insurance undertaking has failed to appoint a claims representative in the State of residence of the injured party in accordance with Article 4(1). 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 of presenting the claim.

Injured parties may not however present a claim to the compensation body if they have taken legal action directly against the insurance undertaking.

The compensation body shall take action within two months of the date when the injured party presents a claim for compensation to it but shall terminate its action if the insurance undertaking, or its claims representative, subsequently makes a reasoned reply to the claim.

The compensation body shall immediately inform:

(a) the insurance undertaking of the vehicle the use of which caused the accident or the claims representative;

(b) the compensation body in the Member State of the insurance undertaking's establishment which issued the policy;

(c) if known, the person who caused the accident,

that it has received a claim from the injured party and that it will respond to that claim within two months of the presentation of that claim.

This provision shall be without prejudice to the right of the Member States to regard compensation by that body as subsidiary or non-subsidiary and the right to make provision for the settlement of claims between that body and the person or persons who caused the accident and other insurance undertakings or social security bodies required to compensate the injured party in respect of the same accident. However, Member States may not allow the body to make the payment of compensation subject to any conditions other than those laid down in this Directive, in particular the injured party's establishing in any way that the person liable is unable or refuses to pay.

2. The compensation body which has compensated the injured party in his Member State of residence shall be entitled to claim reimbursement of the sum paid by way of compensation from the compensation body in the Member State of the insurance undertaking's establishment which issued the policy.

The latter body shall then be subrogated to the injured party in his rights against the person who caused the accident or his insurance undertaking in so far as the compensation body in the Member State of residence of the injured party has provided compensation for the loss or injury suffered. Each Member State is obliged to acknowledge this subrogation as provided for by any other Member State.

3. This Article shall take effect:

(a) after an agreement has been concluded between the compensation bodies established or approved by the Member States relating to their functions and obligations and the procedures for reimbursement;

(b) from the date fixed by the Commission upon its having ascertained in close cooperation with the Member States that such an agreement has been concluded.

The Commission shall report to the European Parliament and the Council on the implementation of this Article and on its effectiveness before 20 July 2005 and shall submit proposals if necessary.

#### Article 7

If it is impossible to identify the vehicle or if, within two months following the accident, it is impossible to identify the insurance undertaking, the injured party may apply for compensation from the compensation body in the Member State where he resides. The compensation shall be provided in accordance with the provisions of Article 1 of Directive 84/5/EEC. The compensation body shall then have a claim, on the conditions laid down in Article 6(2) of this Directive:

(a) where the insurance undertaking cannot be identified: against the guarantee fund provided for in Article 1(4) of Directive 84/5/EEC in the Member State where the vehicle is normally based;

- (b) in the case of an unidentified vehicle: against the guarantee fund in the Member State in which the accident took place;
- (c) in the case of third-country vehicles: against the guarantee fund of the Member State in which the accident took place.

#### Article 8

Directive 73/239/EEC shall be amended as follows:

(a) In Article 8(1) the following point shall be added:

"(f) communicate the name and address of the claims representative appointed in each Member State other than the Member State in which the authorisation is sought if the risks to be covered are classified in class 10 of point A of the Annex, other than carrier's liability."

(b) In Article 23(2) the following point shall be added:

"(h) communicate the name and address of the claims representative appointed in each Member State other than the Member State in which the authorisation is sought if the risks to be covered are classified in class 10 of point A of the Annex, other than carrier's liability."

#### Article 9

Directive 88/357/EEC shall be amended as follows:

In Article 12a(4) the following subparagraph shall be added: "If the insurance undertaking has failed to appoint a representative, Member States may give their approval to the claims representative appointed in accordance with Article 4 of Directive 2000/26/EC(13) assuming the function of the representative appointed according to this paragraph."

#### Article 10

##### Implementation

1. Member States shall adopt and publish before 20 July 2002 the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.  
They shall apply these provisions before 20 January 2003.
2. When these measures are adopted by the Member States, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.
3. Without prejudice to paragraph 1, the Member States shall establish or approve the compensation body in accordance with Article 6(1) before 20 January 2002. If the compensation bodies have not concluded an agreement in accordance with Article 6(3) before 20 July 2002, the Commission shall propose measures designed to ensure that the provisions of Articles 6 and 7 take effect before 20 January 2003.
4. Member States may, in accordance with the Treaty, maintain or bring into force provisions which are more favourable to the injured party than the provisions necessary to comply with this Directive.
5. Member States shall communicate to the Commission the text of the main provisions of domestic law which they adopt in the field governed by this Directive.

#### Article 11

##### Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

## Article 12

### Penalties

The Member States shall fix penalties for breaches of the national provisions which they adopt in implementation of this Directive and take the steps necessary to secure their application. The penalties shall be effective, proportional and dissuasive. The Member States shall notify these provisions to the Commission not later than 20 July 2002 and any subsequent amendments thereof as soon as possible.

## Article 13

### Addressees

This Directive is addressed to the Member States.

Done at Brussels, 16 May 2000.

For the European Parliament

The President

Nicole Fontaine

For the Council

The President

Manuel Carrilho

(1) OJ C 343, 13.11.1997, p. 11 and OJ C 171, 18.6.1999, p. 4.

(2) OJ C 157, 25.5.1998, p. 6.

(3) Opinion of the European Parliament of 16 July 1998 (OJ C 292, 21.9.1998, p. 123), confirmed on 27 October 1999, Council Common Position of 21 May 1999 (OJ C 232, 13.8.1999, p. 8) and Decision of the European Parliament of 15 December 1999 (not yet published in the Official Journal). Decision of the Council of 2 May 2000 (not yet published in the Official Journal) and Decision of the European Parliament of 16 May 2000.

(4) OJ L 103, 2.5.1972, p. 1. Directive as last amended by Directive 84/5/EEC (OJ L 8, 11.1.1984, p. 17).

(5) OJ L 172, 4.7.1988, p. 1. Directive as last amended by Directive 92/49/EEC (OJ L 228, 11.8.1992, p. 1).

(6) OJ C 308, 20.11.1995, p. 108.

(7) 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 L 8, 11.1.1984, p. 17). Directive as last amended by Directive 90/232/EEC (OJ L 129, 19.5.1990, p. 33).

(8) Third Council Directive (90/232/EEC) of 14 May 1990 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 L 129, 19.5.1990, p. 33).

(9) First Council Directive (73/239/EEC) of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJ L 228, 16.8.1973, p. 3).

Directive as last amended by Directive 95/26/EC (OJ L 168, 18.7.1995, p. 7).

(10) Council Directive (92/49/EEC) of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ L 228, 11.8.1992, p. 1). Directive as amended by Directive 95/26/EC (OJ L 168, 18.7.1995, p. 7).

(11) OJ L 281, 23.11.1995, p. 31.

(12) OJ C 27, 26.1.1998, p. 1 (consolidated version).

(13) 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 L 181, 20.7.2000, p. 65).

## **ANNEX C – PARTIAL REGULATORY IMPACT ASSESSMENT**

### PURPOSE AND INTENDED EFFECT

These proposals are intended to make it easier for residents of an EU Member State who have been victims of a motor accident while in another EU Member State to pursue a claim. This will be achieved by implementing measures described in the Fourth Motor Insurance Directive.

### BENEFITS

For UK residents who are the victims of a road accident when in another EU Member State, it becomes much simpler and quicker to pursue a claim against the foreign driver. This results from other Member States implementing the Directive. Residents from other Member States will derive similar benefits if they are victims of accidents in the UK.

In order to be able to derive better estimates of the potential benefits, we are seeking information on:

- How many UK residents go abroad each year, and how many drive their own vehicles abroad?
- How many UK residents are victims of road traffic accidents elsewhere in the EU each year?
- How many foreign drivers come to the UK each year?
- How many have accidents (caused by UK drivers)?
- How big might the time savings be?

An estimate may then be made of:

Benefits = number of accident victims affected x average cost savings per claim.

### *Impact of extending a direct right of action to domestic law*

We have not been able at this stage to quantify the likely costs or benefits of introducing a direct right of action under domestic law. However, the ABI has indicated that there would be a number of potential benefits for motor accident victims. At present a person suffering injury or property damage as a result of a road traffic accident is reliant on the co-operation of the driver apparently responsible to pursue a claim against that driver's insurer, and claims can be frustrated if the driver fails to notify the insurer of the accident. The ABI believes that a direct right of action could assist towards rapid access to damage repair and early assessment of the need for medical rehabilitation, and that it would also allow better claims - and hence cost - control by the insurer.



Interest will become payable on claims where insurers fail to respond to a claim within 3 months. Since it is standard practice amongst insurers to make an offer of compensation or reasoned response to the claim within 3 months from the presentation of the claim to the insurance undertaking anyway, insurers should not incur such charges.

### **Compensation Body**

Costs will depend on how many claims are made. However, compensation payments should be reimbursed. Claims from UK victims against foreign insurers should be reclaimed from compensation bodies in other EU Member States under reciprocal arrangements. Conversely, where the UK compensation body has to reimburse another compensation body, the amount should be recoverable from the liable UK insurer, or if the driver was uninsured, from the Guarantee Fund.

### **Court Proceedings**

The Association of British Insurers (ABI) has indicated that the costs and benefits of implementing the Directive itself are likely to be limited, given the low number of cases which come to court at present (see para 50 in consultation paper). It believes that most claims which could be made under the Directive are likely to be made anyway under the existing regime, bearing in mind the prevalence of cross-border legal expenses cover.

**We would appreciate any further figures which consultees can provide of the likely costs and benefits of a) implementing the Directive, and b) extending a direct right of action to UK residents who suffer loss or injury in motor accidents in the UK.**

### RISKS

Risk that information cannot be collected or cannot be collected in reasonable time. This depends on (a) timely and accurate input to the MID or (b) quick and accurate responses to direct queries made by MIIC.

Enabling a direct right of action against insurers may result, in some cases, in defendants losing their opportunities to defend a claim or settle privately to preserve their no claims bonus.

### SECURING COMPLIANCE

The requirements of the Information and Compensation bodies will become statutory obligations under amendments to the Road Traffic Act.

Requirements implemented by changes to FSA rules and threshold conditions (to appoint claims representatives and respond to claims within 3 months etc.) will be enforced under the FSA's existing monitoring and enforcement powers under the Financial Services and Markets Act 2000.