

Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (codified version) (Text with EEA relevance)

CHAPTER 7

SETTLEMENT OF CLAIMS ARISING FROM ANY ACCIDENT CAUSED BY A VEHICLE COVERED BY INSURANCE AS REFERRED TO IN ARTICLE 3

Article 19

Procedure for the settlement of claims

Member States shall establish the procedure referred to in Article 22 for the settlement of claims arising from any accident caused by a vehicle covered by insurance as referred to in Article 3.

In the case of claims which may be settled by the system of national insurers' bureaux provided for in Article 2 Member States shall establish the same procedure as in Article 22.

For the purpose of applying this procedure, any reference to an insurance undertaking shall be understood as a reference to national insurers' bureaux.

Article 20

Special provisions concerning compensation for injured parties following an accident in a Member State other than that of their residence

1 The object of Articles 20 to 26 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, these provisions 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 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 21 and 24 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.

Article 21

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 20(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 freedom of choice.

3 The claims representative may act 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 20(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 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 regarded as an establishment within the meaning of Article 2(c) of Directive 88/357/EEC or an establishment within the meaning of Regulation (EC) No 44/2001.

Article 22

Compensation procedure

The Member States shall create a duty, backed by appropriate, effective and systematic financial or equivalent administrative penalties, whereby, 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 its 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 its 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.

Article 23

Information centres

1 In order to enable 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:
 - (i) the registration numbers of motor vehicles normally based in the territory of the State in question;
 - (ii) 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, the date of termination of the insurance cover;
 - (iii) 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 21 of this Directive whose names are to be notified to the information centre in accordance with paragraph 2 of this Article;
 - (iv) 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 5(1) and (2);
 - (v) as regards the vehicles provided for in point (iv):
 - the name of the authority or body designated in accordance with the third subparagraph of Article 5(1) as responsible for compensating injured parties in the cases where the procedure provided for in Article 2(2)(a) is not applicable, if the vehicle benefits from the derogation provided for in the first subparagraph of Article 5(1),
 - 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 5(2);
- b or for coordinating the compilation and dissemination of that information; and
- c for assisting entitled persons to be apprised of the information mentioned in points (a) (i) to (v).

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The information under points (a)(i), (ii) and (iii) 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 point (a)(iii) of paragraph 1 shall notify to the information centres of all Member States the name and address of the claims representative appointed by them in accordance with Article 21 in each of the Member States.

3 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 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 the first subparagraph of Article 5(1) the information centre shall inform the injured party of the name of the authority or body designated in accordance with the third subparagraph of Article 5(1) as responsible for compensating injured parties in cases where the procedure provided for in Article 2(a) is not applicable.

If the vehicle benefits from the derogation provided for in Article 5(2) 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 Member States shall ensure that, without prejudice to their obligations under paragraphs 1 and 4, the information centres provide the information specified in these paragraphs to any party involved in any traffic accident caused by a vehicle covered by insurance as referred to in Article 3.

6 The processing of personal data resulting from paragraphs 1 to 5 must be carried out in accordance with national measures taken pursuant to Directive 95/46/EC.

Article 24

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 20(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 Member State of residence of the injured party in accordance with Article 20(1); in such a 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 in which the insurance undertaking which issued the policy is established;
- 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 in which the insurance undertaking which issued the policy is established.

The latter body shall 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 shall be 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;

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- 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.

Article 25

Compensation

1 If it is impossible to identify the vehicle or if, within two months of the date of 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 Articles 9 and 10. The compensation body shall then have a claim, on the conditions laid down in Article 24(2):

- a where the insurance undertaking cannot be identified: against the guarantee fund 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 a third-country vehicle: against the guarantee fund in the Member State in which the accident took place.

2 This Article shall apply to accidents caused by third-country vehicles covered by Articles 7 and 8.

Article 26

Central body

Member States shall take all appropriate measures to facilitate the timely provision to the victims, their insurers or their legal representatives of the basic data necessary for the settlement of claims.

Those basic data shall, where appropriate, be made available in electronic form in a central repository in each Member State, and be accessible by parties involved in the case at their express request.

Article 27

Penalties

Member States shall fix penalties for breaches of the national provisions which they adopt in implementation of this Directive and shall take the steps necessary to secure the application thereof. The penalties shall be effective, proportional and dissuasive. The Member States shall notify to the Commission as soon as possible any amendments concerning provisions adopted pursuant to this Article.