



POLICY POSITION ON THE MOTOR INSURANCE DIRECTIVE



MOBILITY

Executive Summary

The European Commission intends to review the Motor Insurance Directive, which aims to help European Union residents involved in road accidents in other EU countries. In this review, FIA Region I calls on policymakers to:

- Set a three-month deadline for stating the claim's admissibility and then a two-month deadline for insurers to settle the claim afterwards
- Provide claimants with the right to recover all reasonable judicial fees from the country where the damage occurred, both in court and out of court
- Allow the injured party or their lawyers to obtain a full copy of the accident report from competent local authorities
- Ensure the mutual recognition of bonus/discount schemes when registering the car in another Member State
- The Motor Insurance Directive should be futureproof and ensure the victims' protection with the increasing automation of the driving task.



Background

The Motor Insurance Directive aims to ensure mandatory insurance coverage of all vehicles against civil liability on the European territory. Motor vehicle accident victims should be guaranteed comparable treatment, irrespective of where in the Community the accident occurs: “Each Member State shall take all appropriate measure to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance.”

Motor vehicle accident victims should be guaranteed comparable treatment irrespective of where in the Community the accident occurs

Border insurance checks against civil liability are banned within the European Union. Member states may “carry out non-systematic checks on insurance, provided that those checks are non-discriminatory and are carried out as part of a control, which is not aimed exclusively at insurance verification.”

Insurance companies should comply with minimum level of coverage – covering the whole territory of the European Union – including, as outlined in the legislation:

- Liability for personal injuries for all passengers other than the driver, resulting from the usage of a vehicle
- Members of the family of the policyholder or driver may not be excluded in respect of their personal injuries, due to the relationship with the above mentioned
- Insurance should also cover personal injuries and damage to property suffered by pedestrians, cyclists and other non-motorised users of the roads
- Insurances are not entitled to exclude victims from compensation in cases where:
 - a) persons do not have implied or express authorisation to drive the vehicle, unless the insurer can prove that the person voluntarily entered a vehicle he/she knew was stolen
 - b) persons who do not hold a license
 - c) persons who are in breach of the statutory requirements concerning the condition and safety of the vehicle
- Excluding compensation on the grounds that a passenger “knew or should have known that the driver of the vehicle was under the influence of alcohol or of any other intoxicating agent” should not be permitted

The Directive defines minimum level of coverage to be revised every five years:

- A minimum amount of 1,220,000 EUR per victim or 6,070,000 EUR per claim in case of personal injury
- 1,220,000 EUR per claim in the case of damage to property



In case the accident was caused by an unidentified or uninsured vehicle, the Directive foresees that the claimant can turn to a compensation body. The compensation body may not make compensation conditional on the victim establishing that the liable person is unable/unwilling to pay.

FIA Region I Position

Definitions

Admission or denial of liability and pleading expiration of the limitation time of 3 months: Member States should sanction insurers requiring additional information, to oppose the expiry of limitation periods, with administrative penalties and judicial costs coverage.

“Reasoned offer of compensation” should be precisely described as (1) a genuine offer to settle, (2) state what part of the compensation relates to general damage and future losses and (3) must reasonably assess costs incurred by the claimant.

A “reasoned, detailed and genuine” pre-litigation offer to the injured party should be considered by the competent court for awarding costs and interests.

Limitation periods

The divergence of limitation periods, the start of the running time and other elements, may place obstacles for citizens to get redress in cross-border accidents. FIA Region I therefore proposes to add a general minimum limitation period of 4 years, which would start from the date of the injury, or the date of the victims' acknowledgement of the injury. The running of the limitation period should be suspended during related criminal proceedings.

The divergence of limitation periods is putting obstacles for citizens to get redress in cross-border accidents

The insurers should be placed under the obligation to settle the claim within two months once the complaint is deemed admissible.





Reimbursement of legal fees

According to the Rome II Regulation, the injured parties could require the support of two lawyers/experts: “the law applicable (...) shall be the law of the country in which the damage occurs”. FIA Region I therefore supports the possibility for claimants the right to recover:

- a) Judicial fees of the lawyer or judicial expert practicing before the court and for out-of-court settlements, seized with the case in the Member State
- b) Judicial fees of the foreign lawyers or judicial expert
- c) Fees for the lawyers' and experts' costs
- d) Fees for the legal costs such as opinion on foreign law, hearing of witnesses, participation to investigation, obtaining documents, pleading abroad

The injured parties, if successful, should have the right to be reimbursed for the costs of any lawyer, judicial expert or expert if their involvement is required, and if the costs are reasonable.

*The injured party, if successful,
should have the right to be
compensated*

The need for the involvement of a foreign lawyer or judicial expert should be assessed, taking into consideration (a) the need for advice on foreign law's jurisdiction; (b) necessity to acquire documents; (c) the need to issue or participate in a foreign State to any – criminal, civil or administrative – investigations or procedures; (d) the need to appoint a foreign expert; and (e) any other relevant circumstance.

Reasonability of the costs should be assessed considering (a) the actual services rendered; (b) any actual disbursements by the lawyer or expert; (c) the likely time spent (d) complexity; (e) any potential risk to the lawyer's liability; and (f) rules and standards.

Access to documents

The Directive should oblige the Member States to ensure that the injured party or their lawyers have the right to obtain a full copy of the accident report from competent local authorities, without the need of a notarised power of attorney within 30 days.

The injured party should have the right to carry out medical assessments in his country of residence and get access to medical reports.

Portability of claims history statements

Practices diverge from one Member State/insurance company to another, and consumers are often faced with the non-recognition of bonuses when moving cross-border. FIA Region I supports the inclusion to request mutual recognition of bonus/discount schemes when consumers are registering their car in another Member State. In fact, when a person moves from one country to another, they must register their car in the new country of residence and must also contract a liability insurance for their car in the new Member State.



FIA Region I favours an obligatory mutual recognition of at least seven years with no damages. It also calls for a simplified cross-border exchange of information and documents (certificate from previous insurers), that should occur directly between the insurance companies or their national associations.

Insolvency of insurance companies

FIA Region I suggests that Article 10 be amended to ensure that:

- A fund or compensation scheme in the Member State of the insurer should eventually compensate the victim/reimburse intervention of guarantee scheme of the Member State of residence of the victim
- The body responsible for compensation also performs the task of providing compensation, at least up to the limits of the insurance obligation for damage caused by an uninsured vehicle, or if the insurance company is insolvent
- The direct right of action is extended against the body responsible for compensation

Direct right of action in cross-border cases



Direct action against the foreign insurance does not require legal proceedings to be brought against the driver who has caused the accident.

Extension of the direct right of action against the compensation bodies to the case of insurance insolvency (direct right of action).

The injured party can serve judicial documents directly against claim representatives in cross-border cases (to be added to Article 21).



FEDERATION INTERNATIONALE DE L'AUTOMOBILE
REGION I - EUROPE, THE MIDDLE EAST AND AFRICA



Fédération Internationale de l'Automobile (FIA) Region I office

FIA Region I is a consumer body representing 107 Mobility Clubs and their 38 million members from across Europe, the Middle East and Africa. The FIA represents the interests of our members as motorists, riders, pedestrians and passengers. FIA Region I is working to ensure safe, affordable, clean and efficient mobility for all. Learn more at www.fiaregion1.com

January 2018 | © FIA 2018 | All rights reserved