

Association Internationale de Droit des Assurances  
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Asociación Internacional de Derecho de Seguros  
Internationale Vereinigung für Versicherungsrecht

## MOTOR INSURANCE WORKING GROUP BULLETIN

November 2003

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### The Working Group

#### MIWG STUDIES PRESENTED AT ADAR LAW CONFERENCE IN BUCHAREST

An international conference on insurance law was held in Bucharest, Romania, from September 9 to 10. Co-organised by ADAR, the Romanian AIDA Chapter, and UNSAR, the Association that groups Romanian insurers, the conference focused on the adaptation to EU Directives of the legislation in those Central and Eastern European countries that will soon become full EU members.

Following a plenary session, the meeting continued in three sections dedicated to the issues relating to supervisory authorities, to motor insurance and to pension, health and accident insurance.

Maria Bugeanu, honorary chairman of ADAR, introduced the works within the plenary session, which saw the participation of Karoly Bard, honorary chairman of the Hungarian AIDA Chapter and member of the scientific committee of the insurance review "Assicurazioni." In his address, Dr Bard illustrated the steps taken by Hungary in adapting its legislation to the European one. This has now been accomplished and his country will join the EU in 2004 with a body of laws that is substantially in line with that of other members. The Hungarian experience may thus be viewed as a useful parameter for Romania and other candidates that are set to join the EU in 2007-2008.

In the section dedicated to third party motor liability insurance, Armando Zimolo chairman of the Motor Insurance Working Group outlined the progress of the works carried out by the MIWG focusing, in particular on the Group's basic study on the normative and management characteristics of Motor Third Party Liability insurance in the world, which has surveyed the motor insurance business in 170 countries. The study has recorded the gradual widening of



compulsory motor insurance, which has concerned the federal states of USA (where only three states still continue to not enforce compulsory insurance) and the republics of the former USSR. Starting from July 1, 2003, insurance has become compulsory also in the Russian Federation. Mr Zimolo also provided an overview on the changes in the legislation of countries due to be admitted into the EU in 2004.

Most of these countries have already taken care to harmonize their respective legislations also with reference to the IV directive which provides that, with the introduction of the right of direct action of one party in respect of the insurer, the appointment of a claims representative on the part of each insurance company, the establishment of an information center and of a compensation body in each member State. Also the compensation limits have been raised. For instance, Hungary has increased its limits to € 1,164,687 and € 1,941,145 for personal injuries and property damages respectively; Poland, as of 1<sup>st</sup> January 2004, shall set a guarantee limit for each claim of € 600,000 (€ 350,000 for each victim and € 200,000 for damages to property). The Czech and Slovak Republics and Slovenia have increased their minimum financial limits for bodily injuries to € 570,161 – € 457,280 and € 468,000 respectively; while the limit for damage to property amounts to € 158,000 – € 120,336 and € 97,000 respectively. These limits continue to be very distant for those countries, like Romania, that are due to be admitted in the EU in 2007.

As to the guarantee fund, or an equivalent system financed with percentage deducted from TPL premiums, to provide compensation for bodily injuries caused by unidentified or uninsured vehicles or by those insured by companies that have been placed under receivership, a number of former socialist Countries have introduced it following the enforcement of obligatory insurance: Romania was among the first in 1994 followed by Bulgaria and Latvia in 1997, Czech Republic in 2000 and in Macedonia, where the institutional role of the Fund includes the backing of insurance companies that are undergoing financial difficulties.

Government intervention in the area of price setting has also been greatly reduced, especially in Europe with the full implementation in 1995 of third generation directives on Freedom of Services. As from July 1, 1998, Japan also granted to insurers the freedom to decide the prices they can charge to clients. In those Countries of Central Eastern Europe, which passed from State to market oriented economies, at the beginning the determination of tariffs fell within the competence of the Ministry. In the process of harmonization with EU legislation, in the expectation of admittance in the Union, the Baltic Countries, the Czech Republic, Slovenia between 2000 and 2002,

have all enacted laws providing tariffs liberalization. In 2000 Hungary started by limiting the Ministry's powers in tariffs determination and allowing companies to fix their prices with a + or -15% margin on the basic tariffs and then, by decree no. 188 of 2002, introduced the principle of tariffs deregulation. In Poland such deregulation shall be effective as of 1<sup>st</sup> January 2004.

Ionel Dima, general manager of Avus Romania, illustrated the study carried out by AVUS managing director Dieter Pscheidl, vice chairman of the MIWG, on the compensation trends for bodily injuries. The study, which was limited to Europe, is now being extended to involve other continents as well.

The third study on the protection of minors and of weaker parties in road accidents, which is co-ordinated by vice chairman Jan Misana, who could not attend, was summarised by Mr Zimolo, who did the same for the report sent by André Tomadini on the implementation of the Fourth Directive in France (see article on pg. 4). The co-secretary general of the Comité Européen des Assurances (CEA) Jean Louis Marsaud also sent a report on the topics relating to the study he is carrying out within the MIWG and, more in general, on the issues concerning EU enlargement.

Taking part in the MIWG meeting were: Rudolf Elvers, general manager of the German Green Card Bureau, who analysed the effects of the Fourth Directive and outlined the Fifth (see article on pg. 6); Hans Dieter Knüttel, chairman of the Eastern and Central European Committee of the German Insurers' Association, who warned insurers operating in those countries that are about to be admitted in the EU against the effects that may arise from the liberalisation of tariffs, stressing the need for a stricter supervision on reserves and on the application of technical tariffs and for the implementation of a transition period so as to bring maximum insurable sums and guarantee funds in line with those existing in the EU; Kálmán Kocsis, of the Hungarian Insurers' Association, who analysed claim settlement and bonus-malus in his country following the implementation of EU directives (see article on pg. 9); and Albin Biro, of the Romanian insurance watchdog, who outlined the changes underway in his country's supervision authority in view of Romania's inclusion in 2007-2008.

The meeting, attended by a large number of insurers and ministerial and university representatives, has been convened for next year so as to provide a forum for EU members, new members and candidates to discuss data and exchange information.

In this way the ADAR conference will emerge, like the Budapest Colloquium, as a traditional appointment for AIDA at an international level. ■



## INTERNATIONAL CONFERENCE IN SOFIA: "BULGARIA GOES TO EUROPEAN ECONOMIC AREA – 2007"

By Vassia Ivanova and Thomas Hurmer

An international conference on problems related to possibilities and some obstacles which Bulgaria faces on its way to the European Economic Area with reference to insurance business and insurance markets was held in Sofia on 29<sup>th</sup> and 30<sup>th</sup> September this year.

The conference was organised by the National Bureau of Bulgarian Motor Insurers (NBBMI) and AVUS International Loss Adjusters with the sponsorship of several Bulgarian insurance companies. The conference was attended by 135 participants from 20 European countries, as well as representatives of Bulgarian insurance companies.

Welcoming addresses to the participants to the conference were made by the Chairman of the National Bureau of Bulgarian Motor Insurers Mr Tabov and the Chief of Bulgarian State Supervision Authority Mr Galabinov.

Speakers presented and discussed, among others, the following topics.

- **Hungary as an example for a country on its way to the European Union**

István Ragályi, Hungarian Motor Insurance Bureau, presented the challenges that Hungary faced successfully on its way to the European Union. It was discussed how Bulgaria and other acceding countries could benefit from the experiences that Hungary made in this transitional phase.

- **Specific topics for the insurance business**

There were reports on some interesting aspects of the insurance business. For example, Dr Michael Pickel, Hannover Re, explained the requirements in the relation ceding insurer – reinsurance and the importance of the reinsurance contract to protect the players on the Bulgarian insurance market against bankruptcy. Some important aspects of victims protection were examined by Mrs Tvetanka Krumova, BULSTRAD, and Mrs Tchana Boyuklieva, AVUS Bulgaria: how can the constitutional rights of the population and commercial entities be guaranteed and what is the role of intermediaries in this context. There were also reports on the systems of compensation in neighbouring countries by various speakers.

Many emphasised the important role of the supervising authority to protect insurers and customers against the abuse of the market system and against not fulfilling the obligations of the insurance contract.

- **Insurance fraud and organised crime**

Another main focus was the fight against insurance

fraud and organised crime, a problem that insurance companies all over Europe have to face. Reports by Dieter Pscheidl, managing director of AVUS Group and vice chairman of the Motor Insurance Working Group, and Maximilian Edelbacher, Chief of Police in Vienna and advisor in the Council of Europe, discussed the various forms of insurance fraud and organised crime. Mr Edelbacher pointed out that insurance fraud is a problem in all European countries and it is not related to "rich" or "poor" countries. He commented that about 25% of the Gross Domestic Product in Austria is subjected to insurance fraud. Austria also faces this sort of criminality – in the year 2002 there were over 500 cases of insurance fraud in the country. To his opinion each country should decide and organize by itself the fight against insurance fraud and also different countries should combine their efforts to fight together against fraud and organized crime in insurance. (On this argument, we would like to recall the study by CEA, a summary of which was published by Jean Louis Marsaud, co-secretary general of the Comité Européen des Assurances, in the previous issue of the MIWG Bulletin). Strategies to fight off these disturbances of the insurance market were proposed and discussed. Another very interesting topic concerning corruption and organised crime in insurance in all European countries was presented by Mr Pscheidl in his second report. He stressed out on the necessity to combine the efforts of all countries to fight against these extremely negative events of contemporary insurance practice and to work our measures to limit and prevent their expansion.

- **AIDA Motor Insurance Working Group**

Nedyalko Tchandarov, DZI, and Vassia Ivanova, DZI, presented the latest developments of the work of the AIDA Motor Insurance Working Group. Mrs Ivanova stressed that to enter the European Union, Bulgaria would be required to make a number of changes in all spheres of social, political, economic and cultural life in order to harmonise local legislation with that of the European Community member countries. In the field of insurance, the Bulgarian Parliament introduced in 1997 the Insurance Act. The integration of Bulgaria to united Europe is a complex process carried out in several directions using various instruments. One of these instruments is the membership and participation of Bulgarian insurers in the work of such international and world organizations, as Comité Européen d'Assurance (CEA), International Association of Insurance Law (AIDA) and International Insurance Society (IIS). The insurance industry in Bulgaria has always been connected to that in the European countries, although mainly in theory, than in insurance practice. Today Bulgaria is



open for the positive European experience in insurance, as testified by the holding of this conference.

- **Kosovo**

There was a special report about the political and economic situation in Kosovo by Mr Besnik Nikqi, CSO Prishtina.

- **Liberté, Egalité, Fraternité 2003**

Mrs Françoise Dauphin, Bureau Central Français, presented the French point of view of freedom in commerce and industry. What does freedom of services and establishment mean, what do acceding countries and the new EU-members have to expect? Mrs Dauphin emphasised the importance of the freedom to choose one's business partner without administrative restrictions. Mrs Dauphin was asked to speak about this topic because France is, from a historical point of view a very important symbol for freedom in Europe.

The outcome of the presentations and discussions during the conference was that it is very important that insurers and other parties involved in the insurance business join their forces to solve political, economic and social problems.



## Articles

### FRANCE IMPLEMENTS FOURTH EUROPEAN DIRECTIVE

By André Tomadini

*The various domestic bodies involved in the assimilation of the Fourth European Directive in France were already in a position to provide the services designed to improve the claim settlement process for road accident victims and that they were just waiting for the publication of the law. However what causes major concern, as André Tomadini observes, is the exchange of information on the indemnification laws and practices in force in each member State. This crucial factor for the success of the Fourth Directive may well be seriously impacted by the imminent admission of ten new members in the EU, which could disproportionately increase the volume and costs of the international exchanges necessary to deal with the dossiers within the framework of the Fourth Directive.*

The Fourth European Directive on motor third party liability is being assimilated in the French legislation by means of a law dated 1<sup>st</sup> August 2003. As regards Ireland, Italy, Luxembourg and Portugal, at least till recently, such assimilation was still pending and this fact had already caused a barbed reaction of the European Commission which had convened them before the Court of Justice of the European Community. Therefore France, which together with the other partners had been convened before that same Court, today finds itself in a better situation.

Without waiting for the assimilation of the Directive, France had already adopted measures committing it vis-à-vis its partners. In fact the information body is active since 1<sup>st</sup> April 2003 when it started to draw up the list of correspondents appointed by the insurers. In the meantime that body also proceeded to an exchange of information with its counterparts. For its part, the indemnification body, the operation of which is ensured by the Guarantee Fund, had created the means necessary for its activity and was ready to handle the first dossiers brought to its attention as of 20<sup>th</sup> January 2003, which is the date the Brussels Commission established for the setting up of Indemnification Bodies, as provided for by article 6 of the Directive. Also the French Guarantee Fund had already taken contacts with its counterparts in order to supply and receive information. Finally the almost-totality of insurers operating on the French market had appointed correspondents without waiting for the text of the law of assimilation in their domestic legislation.



Thus, even though the Directive suffered a delayed assimilation in the French legislation, it must be recognized that the various domestic bodies involved in such assimilation were already in a position to provide the services meant to improve the process of indemnification of damages incurred by victims and that they were just waiting for the publication of the law.

At this stage of the preparatory works, therefore, one may be quite contented as to the satisfactory growth of the whole framework supporting the success of the Fourth European Auto Directive. One must, however, make a less favorable remark: the relationship among the various players is seriously complicated by the need to exchange information as far as indemnification laws and practices in force in each member State. Considering that the European Union is soon to admit ten new Nations, one may well imagine the increased number of accidents to be handled according to the Directive and the corresponding need of information. There exists therefore a well founded concern as to the volume and costs of the international exchanges necessary to deal with the dossiers within the frame of the Fourth Directive.

In this context a first positive attitude might be that of identifying what can already simplify the comprehension of the indemnification systems of the other European partners and in this connection it is worth mentioning that the rules of third party liability of the various European States became considerably more similar in the course of these past years although preserving the notion of fault in the majority of cases and the presumption of liability in other fewer cases. In addition, it must be noted that several States have taken the commitment to indemnify weak parties, like minors, without considering fault.

A second answer may be the guidelines that the French Guarantee Fund is going to include in its Internet site in order to make clear the indemnification rules in force in the Country. These guidelines are meant to permit direct access to information without having to seek explanations from a French correspondent or, at least, when cases are not so complicated. These guidelines may also be referred to by other Partner States to create their own guidelines, as Belgium has done.

A third favorable signal is the creation of a common tool for those States that assess the psychological damage by the use of medical tables. It is known that in Europe there still continue to exist several differences as regards the indemnification of personal injuries, but a positive fact is represented by the publication of the "European assessment tables for damages to physical and psychological health" established by the Confederation of Experts on Restoration and Assessment of Personal Injuries with the cooperation of Mr. Willy Rotley, European MP and reporter for the Fourth Directive. We hope that a recommendation of the European Parliament shall contribute to further the utilization of these

tables by a high number of Member States. A further task of the authors of these tables shall be that of proposing the formation of medical evaluation teams in order that any identical issue brought to the attention of either an Athen's or Lisboa's doctor is referable to a standard case which allows to draw the same conclusion.

Beyond these coordination and harmonization efforts, however, the difficulties intrinsic to the management of international claims shall persist. As of this date the European Economic Community (EEC) is made up of 18 Countries but quite soon ten more Countries will join in. Thus a crucial bulk of information shall have to be circulated in order that each Country may be able to indemnify in conformity with the rules in force in another Country. Moreover it should not be forgotten that, when vehicles belonging to the EEC incur in an accident within the territory of an extra-European State which, however, is member of the Green Card System, the Fourth Auto Directive shall apply for indemnification, which means that reference will be made to some fifteen additional legislations. If such a plurality creates no big problem for the indemnification of damages to property, when it comes to personal injuries we face a thoroughly different and complicated matter. It is therefore quite legitimate to question the advantage of maintaining such a complex and expensive system like the *lex loci* (law in force in the Country where the accident occurred) when an indemnification according to the *lex damni* (law in force in the Country of the injured victim) would avert the already foreseeable complications.

As a matter of fact, just asking this question represents an answer to it. Who could be wishing to maintain a system that for its daily operation requires the employment of highly skilled technical and multilingual personnel who, rather than just calculate indemnification, would more frequently be called upon to carry on works of research and coordination on the application of the various systems?

To this date some States have advanced some economic reasons to discard the *lex damni* solution because it was deemed apt to alter the fragile equilibrium of insurance companies. Although this reasoning may appear understandable, in reality the quantity of international dossiers handled by insurance companies is not such as to imperil their operations. There might also be other reasons of a legal nature, but aren't they already obsolete seen the pressing reality that demands the construction of Europe, to which these considerations intend to offer a modest contribution?

To summarize it can be said that in France the assimilation of the Fourth Directive has been delayed a little but with insurers as well as with information and indemnification bodies in good working conditions. It can further be said that, as a follow up of the assimilation by all European partners, another target to be achieved is the transition from *lex loci* to *lex damni*. ■



## Implementing the Fourth Motor Insurance Directive in Germany

By Rudolf Elvers

*In a speech delivered at the International Conference held in Romania on the way Eastern and Central European legislations were gearing up to EU Directives in view of the former countries' admission into the EU, Rudolf Elvers, head of the German Green Card Bureau takes a closer look on the effects of the European Fourth Insurance Directive since its implementation on January 21<sup>st</sup>, 2003, and analyses the project for the forthcoming Fifth Directive. The implementation of the Fourth Directive, Mr Elvers says, has stood the test. The position of road accident victims is better than ever before, not least because they can express themselves in their national language thanks to the mandatory nomination of a claims representative. And that position will become even stronger with the Fifth Directive which aims to set higher and uniform compensation standards throughout the EU.*

### General points

The German legislator has implemented the 4<sup>th</sup> Directive in time. It became effective as from 1<sup>st</sup> January 2003 – namely 20 days before the deadline. At that time other European countries had been far away from reaching this status. Belgium, Greece and Great Britain fulfilled the condition last minute – one day before deadline.

In the meantime all countries except Ireland have transacted the Directive. In Italy the decree which transposed the Directive was published the 30<sup>th</sup> of June. But for example in France the decrees in relation to the work of the information centre and the compensation body are still missing. This is not unusual because the Law entered into force the 1<sup>st</sup> August 2003.

At present the Commission is not willing to extend the rules of the Directive to Switzerland. Switzerland as a transit country must take part in the system. Therefore the GDV, the German association, had just signed a bilateral agreement with the Swiss national Bureau of insurance to reach at least the nomination of claims representatives, the implementation of rules and time limits for claims settlement and the creation of an information centre – the most important point.

### German Transformation Law

Regarding the implementation of the Directive the German legislator has adopted as essential guideline not to go beyond the provisions of the Directive and the absolute demands required for Germany. There is only one exception:

The introduction of a time limit for a settlement of three months at maximum made no difference between a do-

mestic accident and an accident abroad. Insofar the legislator anticipates a revision intended in the 5<sup>th</sup> Directive.

On this occasion, there is principally only a repetition of the text of the Directive which is slightly tightened up.

Accordingly, the insurer or his claims representative is required to make a reasoned offer of compensation immediately – or at least – provided liability is not contested and the damages have been quantified.

However, in cases where liability is denied or has not been clearly determined or the damages have not been fully quantified a reasoned reply has to be given to the applicant's request. Whoever might expect a definition of "reasoned reply" by the legislator will become disappointed. Finally, it is a question of jurisdiction to provide for clarity in this respect. We will see how a judge in Sicily will interpret that legal term.

When exceeding the deadline the only sanction is to pay late interests (5 percent above the basis rate of interest according to the discount transition law).

### Claims Representative

The nomination of the claims representative is a condition in ordwd down neither in the Directive nor in our law. This, anyhow, has a considerable meaning for the practice. I suppose we all agree, that certain contractual components have to be included in such an agreement in any circumstances. In particular, the components are as follows:

- codification of the scope of activity and power (of the claims representative in order to avoid internal disputes for example in relation to "false" claims settlement,)
- fixation of the way regarding the flow of fast information. (the claims representative will have to arrange things with his insurer, for example the legal position in the country of the accident. He cannot cover the whole area of application of the Green Card System on the basis of his own knowledge).
- The foreign insurer's possibility to intervene into the claims settlement of his claims representative,
- Financial modalities (pre-financing, reimbursement)
- The level of the handling fees. (The handling fees applied in the Green Card System may serve as guideline) and
- The clash of interests, (namely cases in which the claims representative of the responsible insurer is at the same time the insurer of the victim).

But as said before: Partners are free to define the subject matter of their contracts.

Furthermore it is controversial whether the victim can sue against the claims representative directly in his domestic country. However, this would be desirable from the point of view of the victim.



### Information centres

German law establishes that the name and address of the appointed claims representative as well as any change only have to be notified to the Central Hotline of the German Motor Insurer – as the official German information centre is called – and not to all other information centres in the States of the EU as foreseen in the Directive. Furthermore, it has been regulated, that the information centres have to give among themselves all necessary information. In this respect the information centres have signed a cooperation agreement which should enable them to distribute the data via a mutual website. But this target has not been reached yet all information centres.

For example there are further problems regarding the information centres of France and Portugal. The Portuguese information centre does not answer. It is not even clear whether it has taken up work although the agreement has been signed. The French information centre still covers only 60% of the market. In other words, rotten apple – already known in the past – continue their way.

The three conditions under which victims in Germany are entitled to apply to the information centre are:

- they must have their domicile in Germany or
- the vehicle which caused the accident is normally based in Germany or
- the accident occurred in Germany.

### Conditions and tasks

The compensation body according to § 12 a compulsory insurance law shall become active in three groups of cases:

- First: the time limit of three months in relation to the victim was not observed. (This means, that the victim has not provided a reasoned reply to the points made in his claim for compensation neither by the foreign insurer nor his claims representative).
- Second: the foreign insurer has failed to appoint a claims representative. This concerns most of the cases the German compensation body has to deal with. Very often it is only false alarm and we find the claims representative. In other cases the insurer refers the victim to itself. This is in our opinion an evasion of the Directive and therefore not acceptable.
- Third: Neither the vehicle nor the insurer of the vehicle which caused the accident can be identified within two months following the accident.

As the compensation body – prior to the final take over of the claim – has to inform the liable insurer or his claims representative about the fact that a claim has been imposed against it, the compensation body can only make a final settlement of the claim after further two months. This means, that the foreign insurer – in our opinion only after

five months in total – loses the control on the further settlement of the claim. The Italian compensation body started immediately after the three month period with the handling of the claim.

### Governing body and technical practice of claims settlement

In Germany the German Guarantee Fund "Verkehrsofferhilfe e.V." has agreed to take over the task as compensation body. Consequently the Verkehrsofferhilfe intervenes in place of the foreign insurer or his claims representative who did not fulfil his obligations. However, the Guarantee Fund will not settle the claims itself. The law expressly allows this. The Verkehrsofferhilfe shall – such as in cases where for example it is impossible to identify the vehicle or where the vehicle is uninsured – mandate member insurers to handle the claim. In such a case the insurer concerned can be sure that all time limits have been observed. It has the authority to make the final handling of the case itself. Within the scope of its mandate the insurer maintains contact with the victim during the settlement of the claim. It is the same practise as for domestic claims. After the settlement the insure renders account with the Verkehrsofferhilfe.

The Guarantee Fund then will try to obtain the payments back from the foreign compensation body. It is up to the latter to obtain or not a reimbursement from the failing insurer. However, this is a fair solution. It affects the market setting the origin of the settlement.

### Agreement between the Compensation Bodies and the Guarantee Funds

As mentioned above, the compensation bodies have not only the right of reimbursement among each other but also against the Guarantee Funds in cases where the competent insurer or vehicle cannot be identified.

For that purposes the compensation bodies and the guarantee funds have signed an agreement on 19<sup>th</sup> February 2002 which has been accepted by the European Commission.

### Summary

The implementation of the 4<sup>th</sup> Directive has stood the test. The victim is in a better position as before. He can express himself in his national language and problems have been kept within limits. Let us see the further development.

### Proposal regarding the 5<sup>th</sup> motor insurance Directive.

The proposal presented in the beginning of June 2002 is governed by a long list of separate points. Only some essential points can be dealt with in this venue.



From the German point of view the points of special interest are:

- the increase and indexation of the légal minimum amounts of cover,
- the protection of pedestrians and cyclists,
- the extension of the claims representative's duties and
- the supplement to the definition of "normally Based"

#### **Legal minimum amounts of cover**

The minimum amounts of cover according to the 2<sup>nd</sup> motor insurance Directive are applicable for now 15 years without any change. They shall be adjusted. The concepts are have stirred a controversy between the EU Commission and Parliament.

The last increases provided by the European Parliament are:

- for bodily injury € 10 million per accident and
- for property damage € 5 million per accident, whatever the number of victims.

In addition to this and undisputed, the new minimum amounts of cover in the future shall be adjusted automatically every five years according to the European consumer price index. In addition exists the asking for transitional provisions at least for the new candidate countries of the EU.

#### **Bodily Injury**

Principally, the German motor liability insurers do not have difficulties to increase the minimum amounts of cover. However, problems result from the fact that

- on one hand the minimum amounts of cover must be sufficient in relation to a complicated and serious claim and
- on the other hand in case of several injured persons there must be a limited coverage.

The European delegate Mr. Rothley has already signalled that the European Parliament would, under no circumstances, accept a sum under € 2 million which, however, will not be acceptable to Greece, Portugal, Spain and of course the candidate members next year.

Further development have to be awaited.

#### **Property damage**

There is also a problem in connection with the minimum amounts of cover regarding property damage. This comes from a pretty unknown decision of the European Court of Justice in the legal case Mendes Ferreira and Delgado Correia Ferreira C-348/98. The Court of Justice on 14<sup>th</sup> September 2000 has decided that the maximum liability limits in cases of strict liability – that means liability without fault – must not be lower than the minimum amounts of cover. As the judgement has become final and conclu-

sive, this means that the maximum liability limits have to be adapted.

#### **Protection of pedestrians and cyclist**

The most difficult and mostly discussed item of the proposal of the directive has been the protection of pedestrians and cyclists. The insurance shall cover personal injuries suffered by pedestrians and cyclists as a consequence of an accident in which a motor vehicle is involved irrespective whether the driver is at fault. This proposal runs counter to foundations of EU motor insurance Law, because questions of cover and liability are mixed up. Therefore the Parliament proposed to delete the provision. The justification reads: "A motor insurance Directive should not be used to amend Member States' laws on civil liability". At present there are considerable doubts as to whether this proposal will remain in the 5<sup>th</sup> motor insurance Directive.

#### **Extension of the claim representative's duties**

I will come now to the extension of the claim representative's duties. The original draft has provided to enable the claims representative according to the 4<sup>th</sup> Directive to settle also Green Card cases on behalf of the foreign insurer. At first view it seemed a good idea. But this would lead to the fact that the claims representative, at least, must have knowledge of two legal systems and the claims handling. There are the following questions:

- How shall he be able to remain up-dated?
- And how shall the victim protect himself to avoid that the claims representative applies the legal system being more favourable to his insurer but not to the victim?
- And what happens in cases where the insurer who is supposed to be concerned is not competent?

All this shows that it would not be desirable to do so.

In the meantime the Commission is away from this and will only establish the same technical rules and time limits for settlement as in the 4<sup>th</sup> Directive for all sorts of claims settlement.

#### **Supplement of the definition of normally based**

I come to the last point of our interest, the intended supplement of the definition of the normally based. I recall: up to now the territory in which a vehicle with a false registration plate was considered to be normally based on the territory of the member state which issued the registration plate. Now the base for vehicles with false or without registration plate shall be the territory of that state in which the accident has occurred. The provision which goes back to a proposal of our Bureau is especially welcome. It helps us to avoid that damages – especially with the BCF – will burden our market in the future. ■



## THE EFFECTS OF EU INSURANCE DIRECTIVES ON MOTOR THIRD PARTY LIABILITY LEGISLATION IN HUNGARY

By Kálmán Kocsis

*As Hungary takes a step closer to full EU Membership, Kálmán Kocsis of the Hungarian insurers' association, after having provided a general outline on how MTPL is regulated in his country, examines the insurance business and the impact of the Fourth Directive on local insurance legislation. The steps taken by Budapest to accommodate EU insurance directives into national law are being closely monitored now that Hungary and nine countries, several of which former Soviet block republics, are due to become the latest members of the EU starting May 2004.*

A general MTPL insurance system covering all the vehicles that take part in the road traffic has existed since the 1<sup>st</sup> January 1971 in Hungary. Based on the experiences of the last ten to twelve years, the introduction of the contractual system on 1<sup>st</sup> July 1991 was very important with respect to strengthening a competitive insurance market with many players instead of the insurance monopoly which existed earlier.

The regulation in force since the 1<sup>st</sup> January 2001 had kept many elements of the earlier one but because of the introduction and detailed regulation of the limits in MTPL insurance, it was more advantageous to create a new set of rules than to modify the existing one repeatedly.

This solution was correct in my opinion, in spite of it that it was foreseeable that we will again have the problem in the autumn 2003 to modify this new rule or to create a new government decree.

### **General outline of Motor Third Party Liability insurance in Hungary**

In order to cover accidents, all vehicle owners in Hungary will have to underwrite a Third Party Liability Insurance contract with an insurance company to the limit amount and keep the policy in force by performing regular premium payments.

This obligations shall be binding for the actual operator of the vehicle from the time the vehicle is provided with registration plate to the time the vehicle is eventually withdrawn from road traffic, except for any periods of discontinuance. In the event of temporary road use, the insurance contract (preliminary cover certificate) shall extend at least to the period which the temporary traffic licence and the registration plate are valid for.

It is stated by the law that no vehicle may be operated in the territory of the Hungarian Republic unless these conditions are complied with.

There are no groups of people or vehicle categories (i.e. the State, police, army and so on) that are exempt from concluding TPL insurance contract. The concept of the vehicle is defined in the rule and this definition is broader than it is given in the Highway Code. It means, the operators of trailers, semi-trailers, agricultural tractors, slow vehicle fitted with registration plates, working machines and bicycles with auxiliary engines are obliged to conclude TPL insurance contract too.

The control of the performance of the duty to conclude TPL insurance makes possible that it is not allowed to put a vehicle into road use, to produce records related to the operator in the traffic licence/vehicle registry book, to exchange the registration plate of the vehicle, to perform periodical mechanical check-ups unless a certificate evidencing Third Party Liability Insurance coverage has been produced.

Conclusion of the insurance contract shall be certified by the insurance policy or a certificate issued by the insurer. The fact that the insurance policy is kept in force on an ongoing basis by regular premium payments shall be proven by the payment order certifying actual payment and/or a certificate issued by the insurer.

It is a strict rule of the Government Decree that the insurer shall be obliged to accept a domestic vehicle operator's proposal on the conclusion of an insurance policy under the terms and conditions as specified in Annex 1 of the Decree, made in accordance with the insurer's tariff system, up to the limit amount specified in the Government Decree.

Any insurer which earlier concluded an insurance contract with the submitter of a proposal and terminated it due to gross imputed misconduct of the insured or the earlier policy was terminated due to a failure to make premium payments, may refuse to conclude another contract for a year after the term of insurance expires.

The sum of the insurance cover was not limited between 1971 and 2000. It has been limited since the 1<sup>st</sup> January 2001. The sums of the limits seem to be sufficient.

By virtue of the policy, the insurer – including the Guarantee Fund – shall indemnify the claimants up to a limit amount of HUF 500 million for material losses caused by each single loss event (approximately € 1,900,000). In the event of losses due to personal injury, the insurer shall indemnify each of the claimants up to a limit amount of HUF 300 million by virtue of the policy (approximately € 1,150,000).

Separated from the data bank of vehicles existing in the Central Office of the Interior Ministry another data bank was founded in July 1991 that contains the data of the Third Party Motor Liability Insurance policies.



The Central Office shall keep records – containing data regulated by the Appendix of the Insurance Act from 1995 – of Motor Third Party Liability insurance contracts concluded for vehicles provided with a traffic licence as well as preliminary cover certificates issued.

The data base contains the following data:

- name, particulars and address (residence) of the policy-holder,
- registration number of the vehicle,
- chassis number of the vehicle,
- in case of change of the registration plate, date of changing and the former registration number,
- the name of the insurer and the policy number,
- date of the beginning of the insurance cover,
- in case of termination of the policy, date and reason of the termination.

Through its information system, the insurer shall promptly notify the Central Office of the Interior Ministry about the conclusion of the insurance contract, the issuance of a preliminary cover certificate, and the termination of a preliminary cover certificate or an insurance contract concluded earlier.

The Central Office shall release information concerning the data of the vehicle causing the damage if requested by the claimant, the insurers, the Guarantee Fund, the National Bureau, the State Supervision of Financial Institutions and the police authorities. If requested by the claimant, the Association of Hungarian Insurance Companies shall also be obliged to provide information on the Motor Third Party Liability insurance data of the operator causing the damage as well as the payments of indemnity that may be performed to the debit of the Guarantee Fund.

The Guarantee Fund (according to the usage of the rule: Indemnity Account) was created by the Government Decree No. 58/1991 that introduced the contractual system of the MTPL insurance and regulated as follows: claimant may demand settlement of his claim caused in the territory of Hungary by an operator with no insurance contract in force or by a vehicle whose operator is unknown against the Association of Hungarian Insurance Companies according to the general conditions regulated in the rule and in its Appendix.

In order that the Association can meet his obligations the insurers were obliged to fulfil payment to a separate account of the Association in the ratio of their premium income originating from MTPL insurance in such a degree that the Association can meet all his obligations. According to the rule the minimal sum to be paid was determined in 3 per cent of the premium income originating from MTPL insurance and should be transferred quarterly. The

Guarantee Fund should account to each insurer for the amounts paid up to the Guarantee Fund by the insurers' balance sheet date.

In the meantime the rule was modified and the Indemnity Account (further on Guarantee Fund) was founded from the above mentioned separated account. The manager of the Guarantee Fund is our association although until January 1996, the foundation of the Motor Insurance Bureau of the Association of Hungarian Insurance Companies their tasks were completed in co-operation with Allianz Hungaria Insurance Co.

The rules in connection with functioning the Guarantee Fund have hardly changed during the last years. One of the most important change is that obligatory minimum amount to be paid is already not determined in the rule. After obtaining our information member companies meet their occasional liability to pay voluntary. During the last three years member companies did not fulfil any payment because our bureau could manage his operation from the profit of the reserves and the recourse returns.

The other change is that our bureau – like insurance companies – has to account of his results to the Supervision.

As mentioned above the victim has a direct right against the Guarantee Fund, too. The victim does not have to prove that the liable owner is not able or is not willing to pay compensation, even the Guarantee Fund may institute an action at law or may be litigated in order to perform its tasks prescribed.

The Guarantee Fund – except in some cases – pays the same sum of indemnity as the MTPL insurer on the basis of the insurance contract in force, i.e. there is no deductible franchise to the debit of the claimant.

The main rules are as follows:

- The Guarantee Fund shall provide indemnity only to the degree in which the claimant may not demand the settlement of its claim based on social insurance or property and liability insurance (except for "CASCO" vehicle insurance).
- The Guarantee Fund does not cover any claims for recoveries arising from property and liability insurances or social security. This exclusion does not include recovery claims raised by the "CASCO" insurer of the vehicle (at present).
- The Guarantee Fund shall not provide indemnity for damage to a vehicle caused by another vehicle whose operator is unknown, damage to the road, any traffic structures pertaining to the road, electric and telecommunications equipment, other public utilities, their accessories, and advertising equipment.
- If there is a dispute between the Guarantee Fund and the insurer, as to which of them should indemnify an in-



nocent claimant, the amount of indemnity to be paid shall be advanced by the Guarantee Fund and accounts shall be settled subsequently with the insurer of the party caused the damage. The amount of indemnity to be paid shall also be advanced by the Guarantee Fund if there is a dispute between the insurer, which of them should indemnify an innocent claimant.

- Losses of foreign claimants shall be paid by the Guarantee Fund only if indemnity payment is due for Hungarian citizens in similar cases in the claimant's country at the time of such accident.
- The Guarantee Fund may demand from the operator with no insurance policy in force to refund all its costs and expenses incurred in relation with settling the claim of the claimant. Such costs may also be specified in the form of a lump sum.

The insurers shall specify their premium amounts for the following year by vehicle categories as listed in the Annex 2 of the Gov. Decree, by tariff categories, and by no claims bonus and extra premium categories. Premium amounts may be differentiated by the insurer within each tariff category and each of the bonus-malus categories.

The insurer shall publish their tariffs for the following year in two national dailies by October 30 every year and make available their tariffs for the following year in their offices for receiving clients as well as on the Internet.

The insurer may not change published premium amounts during the year.

The insurer has to prepare their separated account of his results and sent it to the Supervision till the 31<sup>st</sup> May of the next year.

The rules listed above mean for us that in Hungary a competitive premium system is valid among the companies based on claim statistics that is free of every limitation.

#### **Rules of the cross-frontier traffic**

Hungary has been a member of the Green Card System since 1961 and since 1974 has been a member of the Multilateral Agreement. Hungary has signed bilateral agreements with each member of the Council of Bureaux.

The duties of the Hungarian National Bureau have been fulfilled by the Association of Hungarian Insurance Companies since 1991 (until the establishing of our Bureau in 1996 with the co-operation of the Allianz Hungária Insurance Co., like the Guarantee Fund).

The territorial scope of the MTPL insurance is regulated in the Government Decree as follows: The insurance policy shall cover the territory of the Republic of Hungary, as well as the territory of those countries which are parties to the International Green Card Agreements. The insurance policy shall also cover the country/ies with the National Bu-

reau of which the Hungarian National Bureau has concluded a separate agreement. The list of participating countries shall be published by the Supervision.

In order that the National Bureau shall promptly inform the Supervision if there are any changes produced in terms of

- any of the countries which are signatories to the Green Card Agreement and which have concluded bilateral agreements with the National Bureau;
- any of the countries which are parties to conventions on licence numbers;
- any of the countries which have concluded separate bilateral agreements with the National Bureau.

The Supervision shall publish the list of participating countries in the Hungarian Gazette by January 15 every year.

Different from the above limits:

In the event of a loss caused by the insured abroad, the indemnity obligation of the insurer shall be applied in accordance with the third party motor liability insurance regulations of the country where such loss event has occurred if the vehicle has an international insurance certificate valid for the country concerned on the day of such loss event or it has been waived by virtue of a convention supplementing the agreement on such international insurance certificate.

In the event that any loss is caused by a Hungarian operator with no valid insurance policy in the territory of the countries specified in the Appendix of the Government Decree, the claim of the claimant or the reclaim of the foreign National Bureau or any of its members concerned shall be paid by the Guarantee Fund in accordance with the respective provisions.

In order for a vehicle registered abroad to enter the territory of the Republic of Hungary,

- the operator (driver) shall have a valid international certificate evidencing third party liability insurance coverage, or
- the vehicle shall bear the registration plate and the country sign of a country which is a party to the convention on licence numbers (Multilateral Agreement), or a country with the national office of which the Hungarian National Bureau concluded a similar agreement. (These rules will be soon modified).

If a certificate evidencing valid insurance coverage is not produced, a border insurance contract for a limited period of time shall be concluded with a Hungarian insurer when entering the territory of the Republic of Hungary, and the policy evidencing it shall be kept with the operator (driver). These contracts cover only losses caused within the territory of the Republic of Hungary.

These provisions shall not apply if any other regulation



provides otherwise as regards the insurance obligations of operators of foreign military vehicles stationed in or passing the territory of the Republic of Hungary:

The Customs Authority shall check whether they are in compliance with the provisions mentioned above when a vehicle registered abroad is to enter the territory of our country.

If a loss has been caused by operating a vehicle registered abroad in the territory of the Republic of Hungary, claims shall be enforced against the National Bureau. The National Bureau may employ any of the insurers or their legal representative to settle claims and provide legal representation in litigation. If the insurer of the vehicle causing the damage concludes an agreement – as approved by the National Bureau – with a Hungarian insurer to settle claims for losses caused by its insured, any such claims for indemnity shall be settled by such insurer, unless otherwise provided by the National Bureau.

In the above mentioned case the victim is deemed to be foreign, claims may only be enforced against the National Bureau on the basis of these regulations if Hungarian citizens are entitled to exercise similar rights in the claimant's country at the time of such accident.

The victim has a direct right of action not only against the Guarantee Fund but also against the insurer and the National Bureau.

#### **The earlier EU directives and the present regulation**

On the basis of the above mentioned we mean that the present rules in force basically meet the requirements of the earlier EU Motor directives. Therefore our plan is to modify and amend only several points of the present rules.

The most important questions:

- spreading of the territorial scope of the border insurance contracts to the territory of each EEA member country,
- in respect of the MTPL insurance a detailed regulation of cross-border activity seems to be needed, although these questions are regulated in law 60 of 2003 on insurance companies and insurance activity in detail. The law was accepted by the Parliament this June and will expectedly enter into force on the 1<sup>st</sup> May 2004.
- Modification of the rules of the bonus-malus system in order to make the competition stronger among the insurer. (In this respect we curiously follow the results of the dispute between the EU Committee and some member states).
- Harmonizing the Hungarian limits with that of the member countries and third countries, respectively.

#### **Transformation of the 4<sup>th</sup> EU Motor Insurance Directive**

The above mentioned new insurance law contains a lot of regulations that harmonize with the requirements of the 4<sup>th</sup> EU Motor directive, while the other rules meeting the provisions of the 4<sup>th</sup> Directive will be determined during the creation of the new Government Decree on MTPL insurance.

For example:

- duty of appoint the claims representative,
- duty to compensate the injured party and send a reasonable reply within the prescribed deadline, respectively,
- authorisation of a body to fulfil the duties of the information centre and the compensation body.

The new law on insurance contains the definitions, the most important tasks, the data of the policy register to be kept, period of keeping the data and other rules in connection with information service.

Our present concept about working according to the regulation of the Directive is as follows:

#### **The Information Centre**

The duties of the Information Centre will be fulfilled by the Motor Insurance Bureau working in the frame of the Association of Hungarian Insurance Companies. Our Bureau has an on-line connection with the computer of Central Office of the Interior Ministry and has a strong controlled right to access into the vehicle and the insurance policy registers of the Office. So, in possession of the registration number of the vehicle caused the accident and the date of the accident we can give the name of the MTPL insurer and the policy number. Naturally further data about the vehicle, for example: make and type, colour can help in granting more precise information. Information about the place of the accident can be helpful, too.

Data of the claims representative of the Hungarian insurers in the member countries will be stored in the central computer of the Association. Updating of these data can be done by the respective insurance companies directly.

If the claimant informs us about the date of the accident and the registration number of the vehicle caused the accident by e-mail, fax-letter or post name and address of the MTPL insurer, and the policy number will be given to him within a few days. If the informs us about the country of his residence, too, also the data of the claims representative of the insurer in question – functioning in his country – will be given. Our plan is to make available these data through Internet, too, but it needs modification of the present law.

#### **The Compensation Body**

The duties of the Compensation Body will be fulfilled also by the Motor Insurance Bureau. On the basis of the for-



eign experiences our aim is, too, that the claimant will be indemnified by the Compensation Body only in exceptional cases.

### The Claims Representatives

Some of the Hungarian insurance companies are subsidiaries of one of the big insurance companies having their seat in a EU member state, even there is also a Hungarian insurance company that has a subsidiary in a prospective member country. Naturally these insurers and their affiliated companies.

### Basic elements of bonus-malus system in Hungary

According to the original regulation of 1992 bonus-malus system applied only to passengers cars covered by individual Third Party Liability Insurance policy. Unified and detailed prescriptions of the system referring to all insurance companies and all contract were regulated by a finance minister's decree.

The system consisted of the following categories:

- one basic category (A0)
- 10 no claim bonus categories (B1 – B10)
- 4 malus (extra premium) categories (M1 – M4)

Each category had an index number which showed the change of premium amount in every category, compared with the basis premium amount (which was considered as being 100%). (Until 31.12.97 insurers were obliged to use compulsory and unified premium amounts specified by the decree of the finance minister. Even following this period they could depart from the average tariff specified by the finance minister only gradually and up to the degree [plus-minus 5,10 then 15%] specified in law).

Index number and also premium amount in bonus categories diminished with 5% in each category, max. reduction of premium amount in category B10 was 50%.

Index numbers of malus categories were M1 – 1.15; M2 – 1.35; M3 – 1.6; and M4 – 2.0.

A new contracting party was put into category A0.

In the event that a contracting party had no claims to be taken into consideration based on the observation period, his classifications has changed and he stepped into the next (better) category. In case of one loss event his classification was lowered by 2, in case of two loss events by 4, in case of three loss events by 6 categories. In case of four losses taken into consideration his classification was M4, in every case for the next insurance period.

Observation period lasted between July 1 and June 30 of the next year and the contracting party had to pay the new premium amount calculated on the basis of bonus-malus system, taken into consideration the loss events caused in

the observation period of his no claim status in the same period. This new premium was due from January 1 of the next year.

The first observation period lasted between 01.07.91 and 30.06.92, and its "result" modified the premium amount due to 01.01.93 etc.

In order to step into a higher tariff category (in case of no loss event) insurance policy had to be in force for 9 months at least during the observation period.

In case of any loss event such stipulations didn't exist.

### Other regulations.

Classification of the contracting party was modified by every loss event – apart from the person of driver – in case of an allowance from the contracting party. The contracting party had therefore the possibility to pay the amount of indemnity back to the insurance company within a period of six weeks after receiving the information letter of the insurer. In this case the loss event didn't modify the classification of the next year.

In case the policy terminated and the contracting party concluded a new policy within one year he could keep his previous B/M classification. For this purpose the insurance company had to give him a certification with the following data:

- cause and time of the termination of the policy
- classification of the last period
- information about no claim status or about loss events caused after the last observation period, which determined the classification at the time of the termination of the policy.

In case of more than one year after the termination of the last policy contracting party was already not allowed to keep his previous bonus-malus classification.

There was also no possibility to take into consideration bonus-malus classification reached before when the previous policy terminated due to failure to make premium payments.

Bonus-malus system applied to every vehicle with registration number covered by individual policy as of January 1, 2001. New vehicle categories are: lorries, buses, motorbikes, trailers and farm machines.

Concerning passengers cars there was no change in this respect. Structure of bonus-malus system (basic, 4 malus and 10 bonus categories) also was unchanged, but the new regulation didn't prescribe compulsory index numbers. The insurer may specify the insurance premium payable by those insured which caused more than four losses taken into consideration during the observation period in an amount not exceeding the double of the premium to be paid for category M4.



It is a new possibility that any bonus-malus classification already achieved shall be preserved and the term of entitlement therefore shall be continued if the insured contracts a new policy, and after that the previous policy is terminated within a year. It is however allowed only for a vehicle pertaining to the same vehicle category.

If the policy is terminated due to failure to make premium payments, the bonus category may not be carried forward; the malus classification shall remain valid, however within a year.

As regards motorbike, the bonus-malus classification shall be modified to the same extent as in case of passengers cars, and as regards other vehicle categories, the bonus-malus classification shall be lowered by one category in the event of one loss taken into consideration as opposed to the current year's classification.

There is no change in the prescriptions of the decree concerning new contracting parties, entering the system. If a new contracting party concludes a policy, he shall be classified as A0, and the policy shall be in force for 9 months during the observation period. There is also no change in the prescriptions of the decree in the event that the vehicle concerned is put to use by an unauthorised third party and the fact thereof is reported to the police. Any losses caused by such an unauthorised driver shall not effect the classification of the policy.

### Sanctions

Taking into consideration that the present law on insurance and the new law entering into force on the day of our accession into the EU are very effective and contain very strong rules for the Supervision both in order to control the companies and the executive it is not planned to introduce further sanctions.



## AFTER LONG WAIT RUSSIA ENFORCES COMPULSORY MOTOR TPL, BOOSTING INSURANCE INDUSTRY AS A WHOLE

*The Russian Duma has approved the law that will enforce compulsory Motor TPL in the Russian Federation, filling not only a legislative vacuum but opening the insurance industry to new opportunities, such as the creation, according to estimates, of 10,000 new jobs. Though the law came into force in July 2003, many issues still need to be clarified, like, for example, if foreign operators will be allowed to underwrite MTPL*

The adoption of the law establishing Motor TPL in November 2002 essentially widens the scope of insurance companies' activities and brings them to mass-scale insurance. The law will come into force from July 2003. According to Russian Association of Motor Insurers, or RSA, estimates, annual loss from road accidents amounts to 2% of GDP. The introduction of compulsory MTPL allows insurance companies to write annual premiums amounting to several billion dollars and the increase in insurance industry capitalisation by \$ 700 million in the next three years (RSA estimates). In addition to this, 10,000 jobs are expected to be created.

However, there exist potential dangers alongside the great opportunities.

First of all, there is a contradiction between social emphasis of this type of insurance and its commercial payback. In the course of time, the practice will prompt an optimum tariff policy. At first, insurers will have to cover losses from the compulsory MTPL (and many consider them unavoidable) at the expense of incomes from other types of activities – country houses insurance, insurance against accident etc. To remain stable and solvent, an insurance company is recommended to have a MTPL share in its overall insurance portfolio not exceeding one third of it. According to RSA estimates, it's mainly the companies where this type of business accounts for 10-15 percent of all operations that are ready to set about the compulsory MTPL. Multi-disciplined large insurance companies can afford this, since they have something to secure themselves with. Therefore, the criticism directed at insurers in connection with introduction of the compulsory MTPL and regarding their "acquisitiveness and greed" seems to be unfounded. Motor insurance is classed among high-risk activities, and it's especially true with respect to Russia.

The introduction of compulsory motor insurance has triggered wide controversy because it constrains the freedom of insurers. For example, tariffs are set down at a ministerial level and have been kept deliberately low (an average of € 106 in Moscow), in line, on the other hand, with the



just as low maximum rates (400,000 Rubles, approximately € 15,000 ).

The methods of computing depreciation will be uniform; franchises are not provided for. Supervision over companies' activity will be tighter. For all that, it's an insured person who will decide on an insurer – and here, the very principle of market economy – competition between suppliers of a particular insurance service – is built in the Law on compulsory MTPL insurance.

#### **System of limits, rate schedule and factors**

Out of the limit of liability of 400,000 roubles, 240,000 roubles will be paid out for the injury caused to those involved in a traffic accident, and the maximum rate of compensation for damaged property amounts to 160,000 roubles. By experts' estimates, Russians privately own about 27 million cars. Under the law on compulsory MTPL, the tariffs on this type of insurance are to be set by the government and worked out by the Ministry of Finance.

Lengthy and tense debates were required to finalize the tariffs. Earlier, the RSA demanded that a basic tariff should be set at 2,800 roubles. The Economic Development Ministry advocated the reduction of the tariff and increasing factors. In the end, all the parties agreed on a compromise figure of 1,978 roubles proposed by the Ministry of Finance. As for the factors, they are to be set depending on a region, experience as a driver, accident rate and power of a vehicle's engine. The highest factor – 2 – is assigned to Moscow; it is 1.8 for St Petersburg and is a mere 0.4 for the rural area.

A factor of 1.3 is assigned to drivers aged under 22 and with experience as a driver of less than 2 years. For the next group, which covers those under 22 years old and with experience as a driver of over 2 years, it is 1.2. A factor of 1.15 is assigned to drivers who are over 22 years old and have the experience of less than 2 years. All the rest are freed from the age loading.

The law provides for penalties for the absence of insurance. A fine for the lack of insurance policy, ranging from 500 to 800 roubles, and a fine of 300 roubles for breaking terms and conditions set out in it, is expected to be introduced by the end of 2003 by virtue of a special supplement to the Traffic Code. Breaking terms and conditions set out in it is expected to be introduced by the end of 2003 by virtue of a special supplement to the Traffic Code.

The optimum level of rates will be determined with the time only depending on financial indicators and traffic accident rates. Also, establishment of an RSA guarantee fund is under way: it is designed to pay compensation in the event when a culprit of the event is unknown or has disappeared. The fund is also designed to render assistance to small regional companies in difficult situations. At

the first stage, only RSA members will be allowed to write compulsory MTPL. By April 2003, its membership had reached 85 companies.

The law will start working to the full extent of its power provided that consensus is reached between drivers, pedestrians, judges, traffic police officers and, finally, insurers themselves.

#### **Remaining issues**

Some Russian insurers, who already have a large portfolio of MTPL, are developing programmes taking the availability of a voluntary insurance policy into account. One of the options is to provide for the possibility to cancel an earlier concluded voluntary MTPL insurance contract, taking the unused part of the insurance premium into account when drawing up a compulsory policy. Another option offers a programme of extended cover on compulsory insurance at the expense of full employment of funds paid towards the cost of a voluntary policy.

There are some other problems and points, which are not clear yet.

**Will the 2004 budget earmark funds** for financing insurance of State motor transport as well as for subsidising (in the amount of 50% of the policy value) insurance of disabled persons and war veterans?

**Will foreign companies be allowed to write the compulsory MTPL insurance?** So far, they have taken no particular interest in this type of insurance in contrast to life insurance. Under the law "On organizing insurance business", compulsory types of insurance are reserved for local companies only. Different interpretations are proposed as well. This issue may arise in the course of defining the procedure and conditions for licensing of this class.

**A huge flow of customers and documents.** Only practice will give an answer to the question as to how well or badly insurance companies will cope with the flow of customers, who are required and wish to insure their motor liability, at the first stage, and with the flow of claims, at the second stage. Many insurers will have to learn, in the process, how to handle a large-scale customer base.

**The experience in other types of compulsory insurance.** Many ask themselves the question as to how useful may be experience of another mass-scale class – compulsory health insurance – to insurance companies when implementing the compulsory MTPL, and how successful this preceding experience has been in itself.

**Database.** Within what period of time they will manage to



create (and at whose cost it will be done) a single federal information system and how full the data stored in it will be concerning concluded contracts, insurance events and transport vehicles.

**Examination.** It remains unclear how auto examination rules – damage appraisal and verification of a traffic accident itself – will look like with a view to fraud prevention. Besides, it is necessary in the time ahead to lay down requirements for adjusters and to determine on a single State register of professional adjusters.

The insurance community has expressed its anxieties:

- whether the insurance community, which, as is known, is made up of competing companies, will be able to launch a single system of insurance and claims settlement;

- whether the previous system of establishing insurance reserves will prove to be adequate under the conditions of applying single tariff;
- whether uniformity in law enforcement practice will be ensured or to what extent it will be;
- whether introduction of compulsory MTPL insurance will cause an explosive and uncontrolled rise in insurance frauds, which will bring about the increase in losses and destabilize the entire insurance sector at once.

Both RSA and the entire insurance community will have to deal with all this. In the matter of the imposition of compulsory MTPL, the State has provided insurers with the opportunity to participate in the MTPL market organisation and regulation at all stages.





## News from the world

### IRELAND

#### Lawyers driving up insurance premiums

A three-year investigation into the insurance industry has blamed solicitors and barristers for driving up the cost of premiums for Irish drivers. In a report, the Motor Insurance Advisory Board (MIAB) will recommend sweeping changes to the way accident claims are dealt with and paid. The report says solicitors and barristers' fees add up to 42% to the cost of paying out for accidents

The report recommends:

- ending payment of lump sums to victims - they should instead receive an annual payment for their lifetime.
- changing the law to force judges to take into account the wider implications of awarding huge sums of money.
- a new fast-track arbitration method to decide on claims where possible, as an alternative to expensive court proceedings.
- the establishment of a watchdog to make sure the insurance industry passes on the savings to the motorist. The report also accuses many solicitors of being paid on the double when they win insurance claims for clients. In a substantial number of cases, solicitors get an average of 10% from their clients' compensation on top of their fees from the insurance company, because they took the case on a pay-if-you-win basis.

Fixed fees were abolished to increase competition between lawyers but instead legal fees have increased by 43% over the past six years. The MIAB report blames the €1.2bn a year car insurance industry in this country for failing to look after the interests of its clients.

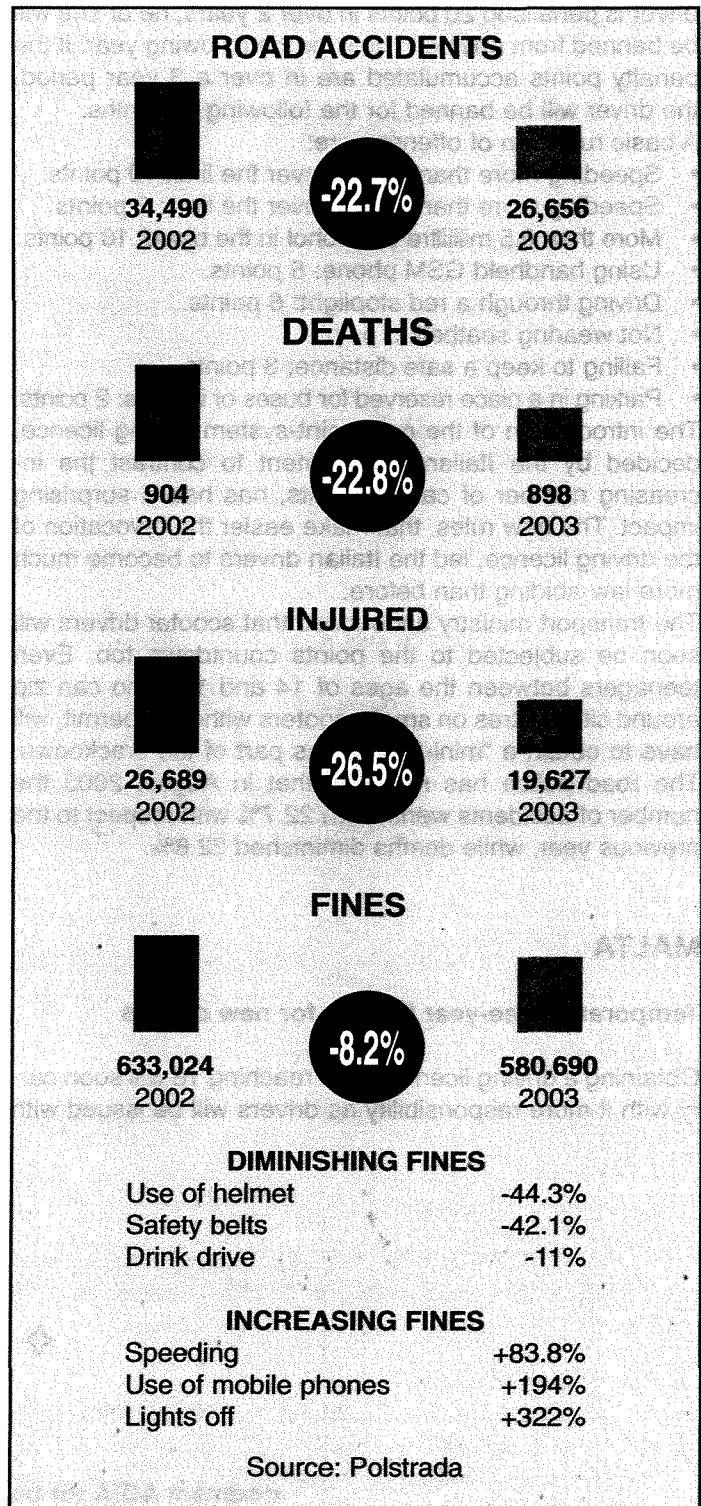
Even though accidents are decreasing in Ireland, premiums continue to rise faster than inflation - 57% over the past 10 years - and by more than the amount companies need to cover increased claims. But the costs to the insurance companies are also the highest in Europe, with legal fees increasing in just three years from 35% to 42% in 1999. Compensation pay-outs also top the EU league.

### ITALY

#### Fewer road deaths with point-system licence

In Italy, in summer 2003 (more precisely, the 1st of July),

a new highway code came into force. Among other things, it posits a point-system driving licence. Every licence has 20 points. Now, when an Italian driver is caught by a policeman to breach the rules of the road, not only has to pay a monetary fine, but also, depending on the importance of





the infraction, some points are cut from his driving licence. When the driver runs out of points, in order to be able to continue to drive, he has to take (and obviously to pass) again a theoretical and practical driving test.

Foreign drivers who accumulate 20 points in a year will be banned from driving in Italy for the following 2 years. If the driver is penalised 20 points in over 2 years, he or she will be banned from driving in Italy for the following year. If the penalty points accumulated are in over a 3 year period, the driver will be banned for the following 6 months.

A basic rundown of offences are:

- Speeding more than 40 kph over the limit: 10 points.
- Speeding more than 10 kph over the limit: 2 points.
- More than 0.5 millilitre of alcohol in the blood: 10 points.
- Using handheld GSM phone: 5 points.
- Driving through a red stoplight: 6 points.
- Not wearing seatbelt: 5 points.
- Failing to keep a safe distance: 3 points.
- Parking in a place reserved for buses or invalids: 2 points.

The introduction of the new point-system driving licence, decided by the Italian Government to contrast the increasing number of car accidents, has had a surprising impact. The new rules, that make easier the revocation of the driving licence, led the Italian drivers to become much more law-abiding than before.

The transport ministry announced that scooter drivers will soon be subjected to the points countdown too. Even teenagers between the ages of 14 and 18, who can zip around city centres on small scooters without a permit, will have to obtain a "mini-licence" as part of the crackdown. The road police has revealed that in August 2003 the number of accidents went down 22.7% with respect to the previous year, while deaths diminished 22.8%.

## **MALTA**

### **Temporary three-year licence for new drivers**

Obtaining a driving licence upon reaching 18 will soon carry with it more responsibility as drivers will be issued with

a temporary three year licence that can be withdrawn. The transport ministry hopes that the new system coupled with more rigorous training and testing procedures would enable new drivers to drive correctly, safely, legally and with "due care and consideration to other road users." The new system, which will come into force by the end of 2003, will see new drivers subjected to a penalty point system for offences committed. Each new driver would be issued a temporary three-year licence that could be withdrawn if during the three years the driver accumulates more than 12 penalty points. A driver that loses the licence would have to undergo the full driving test all over again to be awarded another one. Penalty points will be awarded according to the seriousness of the offence and may vary from three to 11 points on each occasion. If drivers on probation have not exceeded 12 points by the end of the three-year period, a full licence valid for 10 years will be issued upon application. The new system will only apply to new drivers.

## **UNITED KINGDOM**

### **UK consumers lead the way in online insurance**

The latest market research suggests that UK consumers are leading the way when it comes to buying financial products online. In 2002, 1.3 million bought car insurance over the Internet, more than half of the total for the whole of Europe. According to the research, 18 million car insurance quotes were generated on the Internet in 2002, 76% more than in the previous year. This figure is expected to rise by a similar amount this year. Buying insurance on the Internet is faster, more convenient and cheaper than over the telephone. The most important benefit of buying online is the price, most insurers give at least 5% discount to people who buy their insurance this way and some give even more. Online car insurance industry was worth £187 million in 2002, representing 8% of all premiums sold; it is expected that it will be close to 15% in 2003.





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