



Association Internationale de Droit des Assurances  
International Association for Insurance Law  
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Asociación Internacional de Derecho de Seguros  
Internationale Vereinigung für Versicherungsrecht

## MOTOR INSURANCE WORKING GROUP BULLETIN

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### The Working Group

#### THE MOTOR INSURANCE WORKING GROUP MEETING: FROM ROSARIO, ARGENTINA, TO SINAIA, ROMANIA

By Armando Zimolo

The meeting of the AIDA Motor Insurance Working Group which took place on November 9, 2001 in Rosario, within the framework of the VII Iberolatinoamerican Congress, was the widest ever in terms of international participation. It was in fact attended by delegates from 11 countries: besides Italy and Spain, also Argentina, Brazil, Colombia, Cuba, Honduras, Mexico, Paraguay, Uruguay, Venezuela.

The results so far achieved by the MIWG, with the constantly updated international comparative study on TPL, the detailed studies of Vice-Chairmen Pscheidl and Misana, were illustrated in Rosario at the International Presidential Council of AIDA and successively analysed during a special meeting with Latin American delegates, who have sent and will send information regarding the developments of motor insurance in their respective countries. Participants received a copy of the October 2001 MIWG Bulletin, which was unanimously appreciated for the wide coverage it gave of crucial international TPL insurance issues.

The general report records the gradual extension of compulsory motor insurance in those countries that were part of the Soviet Union or had a communist regime and in a number of states in USA. Over the past years, compulsory TPL has been enforced in Belarus, Georgia, Kirghizistan, Vietnam and in Alabama, Florida, Iowa e Mississippi. In Europe the largest country where TPL is still not compulsory is Russia, where a specific bill continues to languish in parliament; in Asia, China, where however in the absence of specific legislation authorities impose a formal recom-



mendation obliging drivers to subscribe an insurance when a car is purchased, Azerbaijan, Tajikistan, Turkmenistan, Uzbekistan, North Korea, Mongolia, Laos, Cambodia, Myanmar, Nepal, Sri Lanka, Afghanistan as well as Saudi Arabia, Yemen and Lebanon; in the USA, New Hampshire, Tennessee, Wisconsin, which however enforce the financial responsibility regime; in Africa, Ethiopia, Eritrea, Somalia, Angola, Guinea, Madagascar, Mozambique. In Latin America, insurance is not compulsory in Cuba, in a number of small countries in the Caribbean; in Ecuador, Nicaragua, Panama, Paraguay; it is partially enforced, especially with regard to public transportation, in Bolivia, Colombia, Guatemala, Honduras, Mexico, Peru, Uruguay. It is compulsory for all types of vehicles, compliance is slack in Argentina, Brazil, Chile, Costa Rica, Dominican Republic, Haiti, Jamaica, Venezuela.

In the US, though a high level of insurance spending is recorded - as testified also by the fact that the incidence of TPL motor insurance premiums on overall non-life business in the USA is higher than that registered on average in Europe and Japan - 14% of drivers are uninsured (with peaks of 32% in certain states, such as Colorado) despite the fact that penalties for non-compliance include fines, imprisonment, licence or registration revocation, confiscation of licence plates and, in some Florida counties, Louisiana and Connecticut, vehicle impounding.

With respect to the previous edition, we have received new data from Bosnia Herzegovina, Hungary, Latvia, Lithuania, Macedonia, Yugoslavia.

The Rome Office of Assicurazioni Generali, which is charge of the study, has updated the economic data and statistics - gathered from a number of yearbooks - relating to various countries, adding data also for those countries that have not sent their replies to the questions we had sent to various government offices, associations or supervisory authorities. We have tried to work out autonomously a wide international comparative study on the economic conditions and requirements of emerging countries so as to have objective criteria of comparison.

Liability limits, changes in the criteria for the compensation of bodily injuries, criteria for the determination of tariffs, State control, fiscal incidence on insurance policies, principles of liability, direct claims handling, prevention measures adopted are issues that have been analysed in the study. These are some of the topics that have made the study into a useful proposal tool for the gradual harmonisation of legal systems. In fact, closer economic links within various countries, the adoption in the EU of a single currency, the common markets that are gradually being created in various other regions impose that people who move from one country to another should have uniform guarantees and possibly similar to the ones they would have in their country of residence.

These principles were shared by the participants of the MIWG meeting, which was attended also by the Chairman of the Iberolatinoamerican Congress, Prof. Fernando Sanchez Calero and by the Chairman of the organising committee in Argentina Eduardo Mangialardi.

Argentina obtained from the Presidential Committee the honour to host 12<sup>th</sup> AIDA World Congress in 2006. It is hoped that the current economic crisis will be over by that time.

The Iberolatinoamerican Congress analysed crucial issues for the global insurance market, namely intermediation trends, e-commerce, reinsurers' liability, the powers of ombudsmen and their effects on TPL motor insurance and other types of insurance. A large portion of the Congress was dedicated to life assurance topics and to its role as an integrative tool in the welfare state.

Rosario, Argentina's second most important city, proved to be an ideal venue for the conference also because it hosts a university which provides graduate courses in insurance sciences.

After the meeting with the Latin American delegates, the MIWG is due to meet in Sinaia, Romania. This will provide the opportunity to meet the delegates from Central-Eastern Europe to discuss the basic report on motor TPL in the world - which currently includes 137 countries and with those having a federal structure over 200 legal systems - and the detailed studies on compensation trends of bodily injuries and on the protection given to the weaker parties in traffic accidents, namely minors.

The results that will emerge from the Sinaia meeting will be presented, after the Presidential Council Meeting in London on May 15, in the AIDA World Congress in New York next October. The New York Congress will represent the conclusive chapter of the work carried out by the MIWG work in these past years. AIDA sections, ministerial bodies, associations, insurance companies that have contributed to the effort by furnishing information for this comparative study are invited to send to the MIWG Bulletin the latest statistical data of their countries.

The MIWG has set up an observatory on the way motor insurance is handled in the world, which, in order to be efficacious, requires the constant backing of all the parties that have so far given their support. In this way, the observatory, besides being a study tool, can cut for itself a political role, by carrying out a continuous monitoring of the legal and economic changes underway, and thus be in a position to encourage a policy of harmonisation to meet the requirements of citizens.



## Articles

### IMPLEMENTING THE FOURTH MOTOR INSURANCE DIRECTIVE

*European Union Members must adopt the Directive governing motor TPL by July 2002*

By Kathrin Pscheidl

On 16<sup>th</sup> May 2000 the European Parliament and the council published the directive 2000/26/EC, concerning the harmonisation of the legislation of the Member States relating to insurance against civil liability in respect of the use of motor vehicles. It amends the council directives 73/239/EEC and 88/357/EEC. The Member States have to adopt and publish the laws, regulations and administrative provisions necessary to comply with this directive before 20 July 2002.

The first country of the EEA that already adopted these measures was Austria. The national council transformed the directive into national law and published it in the „Bundesgesetzblatt“ on fourth January 2002. In Germany the ministry of justice presented a draft for the conversion of the directive in November 2001. The draft contains much more than just the adoption of the directive, such as:

- 1) application of the regulation for the offer procedure and the deadlines also for national accidents
- 2) use of the information centre also for internal accidents
- 3) tax exemption for the compensation body
- 4) in case of insolvency of the insurance undertaking the compensation body is obliged to enter earlier with recovery right against compensation body of origin and further on against guarantee fund, if so regulated.

Non EU countries like Switzerland, Poland, Czech Republic, Hungary and Slovenia are also interested to implement the above mentioned directive into national law.

Usually the green card bureau system ensures the ready settlement of claims in the injured party's own country where the other party comes from a different European Country. But the green card bureau system doesn't solve all problems of an injured party having to claim in another country against a party resident there and an insurance undertaking authorised there. The injured party has to deal with a foreign legal system, a foreign language, unfamiliar settlement procedures and often unreasonably delayed settlement.

Therefore the 4th Motor Insurance Directive should ensure that the injured party receives compensation more rapidly and with less difficulties. The objective of the directive is to improve the settlement procedure for claims of 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.

**The main principles are as follows:**

- 1) The introduction of the right of direct action by the interested party in respect of the insurer of the counterpart responsible
- 2) The appointment of a claims representative by each insurance company
- 3) The establishment of an information centre and a compensation body in each Member State

**Direct right of action (actio directa)**

Each Member State of the European union has to ensure that injured parties referred to in Article 1 of the directive have a direct right of action against the insurance undertaking covering the responsible person against civil liability. The directive obliges the Member States to guarantee direct action solely to the victims of accidents, which occurred outside the respective countries of residence. The direct right of action improves the legal position of injured parties of motor vehicle accidents occurring outside that party's State of residence.

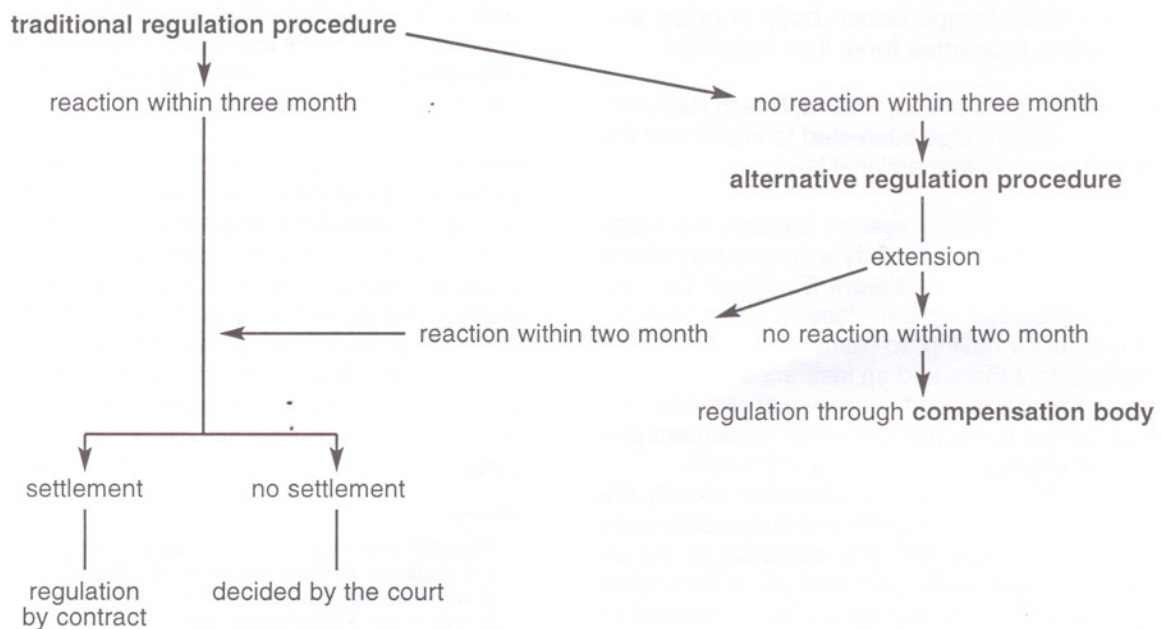
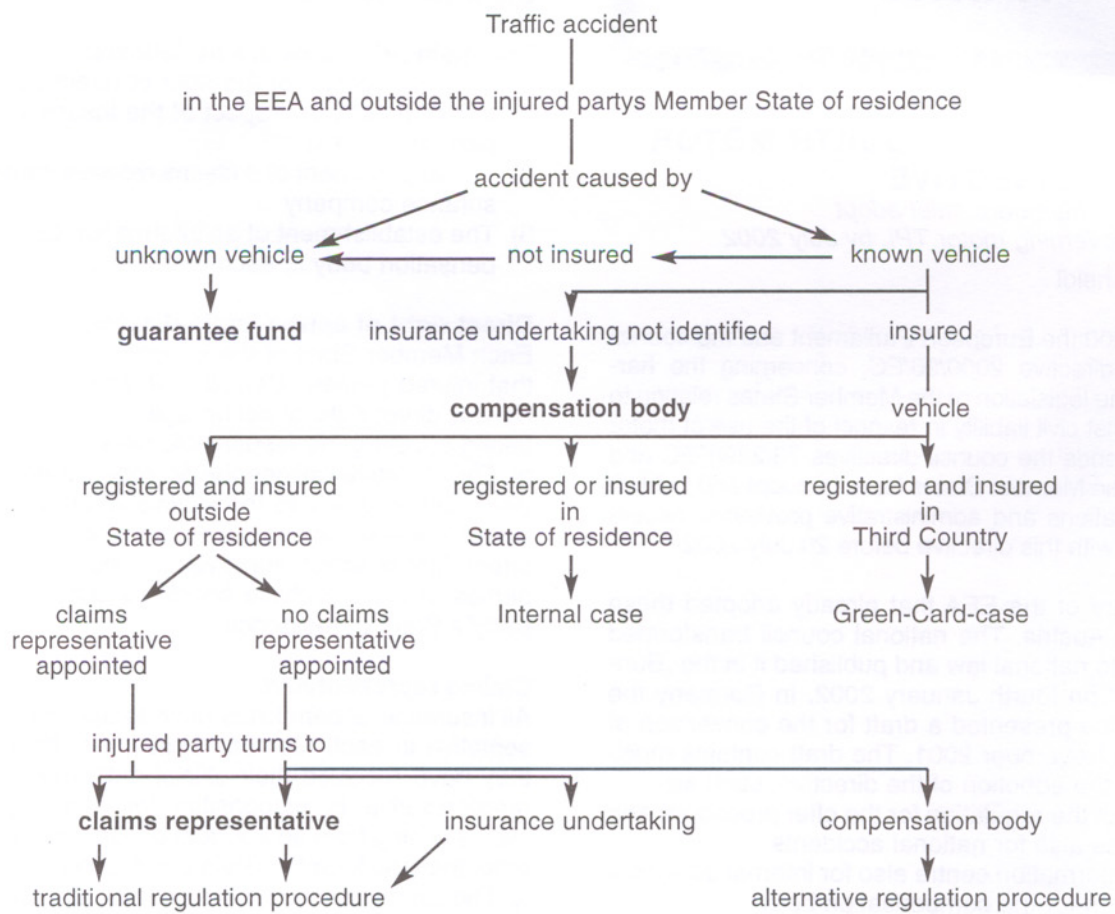
**Claims representative:**

All insurance undertakings have to appoint a claims representative in each Member State other than that in which they have received their official authorisation. The claims representative is responsible for handling and settling claims arising from an accident occurring in a Member state other than the Member State of residence of the injured party. The claims representative collects all information necessary in connection with the settlement of the claims and takes the measures necessary to negotiate a settlement of claims. The requirement of appointing a claims representative doesn't preclude the right of the injured party to institute proceedings directly against the person who caused the accident or his insurance undertaking.

Within three month 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, they are required to make a reasoned offer of compensation in cases where liability is not contested and the damages have been qualified or to provide a reasoned reply to the points made in the claim where liability is denied. When the offer is not made within the three month time limit, interest should be payable on the amount of compensation offered by the insurance undertaking or awarded by the court to the injured party<sup>1</sup>.

<sup>1</sup> The offer of the insurer to the claimant is set down in numerous legal systems. In Italy, for example, this obligation has been set down since 1977. It establishes a maximum limit of 60 days within which the insurer must make an offer which is binding if the damaged party accepts.

**SYSTEM OF THE FOURTH MOTOR INSURANCE DIRECTIVE**





### Information centres

Injured parties suffering loss or injury as a result of motor vehicle accidents sometimes have difficulty in establishing the name of the insurance undertaking providing insurance against civil liability. In the interest of such injured parties, Member States should set up information centres to ensure that such information is made available promptly. The information centres have to co-operate with each other and respond rapidly to requests for information about claims representatives made by centres in other Member States.

### Compensation bodies

All Member States have to establish a compensation body to which the injured party may apply where the insurance undertaking has failed to appoint a claims representative or is manifestly dilatory in settling a claim or where the insurance undertaking cannot be identified. The intervention of the compensation body should be limited to rare individual cases where the insurance undertaking has failed to comply with its duties. Therefore the compensation body has to limit its activity to verifying that an offer of compensation has been made in accordance with the time limits and procedures laid down.

The compensation body which has compensated the injured party in his Member State of residence should be entitled to claim reimbursement of the sum paid by way of compensation from the compensation body in the Member State of the insurance undertakings establishment which issued the policy. Injured parties may not present a claim to the compensation body if they have taken legal action directly against the insurance undertaking.

Further discussions about the passive legitimation of the compensation body and even of the claims representative are continued. The court practice will show if legal action will be only accepted to provoke activity or if it will also be a possibility for the victim to sue for the evaluation of his compensation according to the applicable law.



## WHAT FUTURE FOR DIRECT CLAIMS HANDLING?

*The direct right of action of the injured party against the third party insurer is nearly realised all over Europe. Direct claims handling dominates the regulation procedures, especially in Belgium, France, Portugal, Sweden and Spain. But not in Ireland and Great Britain. Are the times right for a wider application of the procedure?*

By Kathrin Pscheidl

### Situation in Europe

In Europe an injured party who suffered loss or injury as a result of a motor vehicle accident has two possibilities to have its claim settled promptly: its own insurance company or the third party's insurer, respectively the third party, that is liable for the accident. The direct right of action of the injured party against the third party insurer is nearly realised all over Europe, except in Ireland and Great Britain.

Nevertheless in many European countries the insurance company of the injured party takes the appropriate action to settle the claim, not the third party insurance. Direct claims handling dominates the regulation procedures, especially in Belgium, France, Portugal, Sweden and Spain. In France, for example, 80 % of all claims are settled by direct claims handling. The direct claims handling there is based on an outline agreement of the French insurers association, that is called "IDA" (Indemnisation Directe de l'Assuré), in Belgium it is regulated in the "RDR" and in Italy in the "CID" agreement.

The injured party has a legitimate interest in a fast, unbureaucratically settlement by its own insurance company and a right on appropriate compensation. In the interest of the injured party the insurance companies in most European countries are obliged to offer direct claims handling whereas the injured party has the option to chose its own or the third party insurer to have the claim settled. The injured party keeps his right to claim the third party directly for a higher liability quota or a unjustified non compensated damage.

Direct claims handling improves the regulation procedure by being faster, unbureaucratic, cheaper and therefore extremely customer friendly. It also realizes many advantages for the insurance companies themselves. The reduction of internal administrative expenses is outstanding, in Spain and Belgium for example, the insurers save up to 50% of the usual costs. Also unnecessary extra costs are avoided. An inquiry into motor vehicle accidents with material damages reveals, that in Germany the extra costs are 50% more than in France, two times higher than in Italy and Great Britain and even three times higher than in Spain.

In Germany the system of direct claims handling was refused by the majority of the motor insurers. Many, especially smaller insurance companies, are afraid of disadvantages, either because they can not offer the service of a big insurance company or because their damage quote is very good and they would suffer high losses in case of a flat rate-agreement. Big German insurers, most of all the "Allianz", speak up for direct claims handling, because of its wide range of advantages and plan to implement this settlement procedure in the near future.

In Austria the motor insurers concluded a recourse agreement, that will be applied in 2009: Victims of a motor vehicle accident can turn directly to their own insurance company, in case of an accident with only material damage up to € 5.000. The insurance company of the injured party does the payment of compensation and is entitled to claim reimbursement from the third party insurer of the sum paid.

A problem some insurers fear concerning direct claims handling is the tendency of the direct regulating insurer to negate partial responsibility for the accident in case of contentious legal position. In Austria the insurers agreed on a liability table, that indicates the sole responsibility in most accidents like rear-end collision, change of lane or violation of pre-eminence.

The recourse agreement protects Austrian insurers from the general tendency of too generous regulation. Each direct regulating insurer obtains maximum € 1.300 from the third party insurance of the responsible party. In case that Germany will introduce direct claims handling in the near future, it is pretty sure, that Austria will follow soon-maybe already in 2003.

The system of direct claims handling: the example of IDA in France

According to the direct claims handling agreement, for example the IDA in France, the injured party of an accident with two motor vehicles involved, is able to claim from its own insurer for his material damages. The insurance company settles the claim according to the present situation and the legal position, which means within the scope of liability of the third party and after examination of the claims conditions. The liability decision is based on a quota table, that is relevant (but not compulsory) for the recourse between the regulating and the liable insurance company.

One of the most important conditions for a settlement through direct claims handling is the filled, underwritten European claims report from both parties in the accident

involved. The insurance company, which regulates the claim and does the payments, has a right of reimbursement against the third party insurance. The recourse procedure always depends on the amount of the claim: In case that the material damage of the motor vehicle (reparation costs or total loss, without extra costs) is not higher than € 5,335, the insurer is just allowed to claim a flat rate of € 1,036<sup>1</sup>.

The amount of the flat rate is quoted according to the contributory negligence of the regulating insurer's insured, corresponds to the average reparation costs in France and is updated yearly. Because of the flat rate the recourse became easier and too generous compensation through the injured party's insurance to the detriment of the third party insurance is avoided. If the payment in favour of the injured party is below the flat rate, the regulating insurer receives more money within the scope of recourse. If the payment comes to more than the flat rate, the insurance company receives less, but in most cases it keeps the balance.

The liability decision is based on certain standardized liability situations with liability quotas. All in all 22 liability situations and three quotas exist (no liability, shared 50:50 liability and full liability). In a motor vehicle accident with material damage more than € 5,335, up to the amount of € 16,000, no flat rate exists. In that case the regulating motor insurer claims his payments fully from the third party insurance, that has the right to check the amount of payments. If the damage goes beyond € 16,000, the state of affairs and the legal position are decisive. There are special regulations for motor vehicle accidents with more than two vehicles involved.

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<sup>1</sup> An increasing number of claims are being settled with this system in many EU countries. In Belgium between 70-75% of all road claims was settled by the RDR inter-company agreement. In Italy, 1,244,538 accidents were reported in 2001; this represents 60% of all material damages. In Spain some 90% of all accidents was settled by CIDE and ASCIDE. Though the Portuguese inter-company agreement settled in 1996 only 17% of motor claims, the result represents a satisfactory improvement over the previous five years.



## TOUGHER ACTION URGED TO STOP ROAD DEATHS IN FRANCE

*The death toll of traffic accidents in 2001 was 7,616, only 27 less than in the previous year, well below the government's planned reduction. Though very high, the number of road accident deaths in France are in line with those recorded in other countries both in Europe and in other parts of the world. The French government has promised a series of measures aimed at drastically cutting the number of road victims.*

By Franco Esposito - Soekardi

The French Ministry of Transportation released late last January the final figures relating to road circulation in 2001. In what has been unanimously commented as a "bad" year for road traffic, the number of accidents in the year was 119,689 and 159,132 people were injured. Compared to the previous year, the number of accidents recorded a 1.3% decrease (121,233) and that of injuries by 2.5% (162,117).

The ministerial report revealed that alcohol continues to be the highest single cause of road accidents, originating 45% of all accidents in 2001. The other most significant cause was speeding. Fines written by traffic police showed that a growing number of drivers have ignored speed limits, currently set at 130 km/h on highways. It should be noted, in this regard, that the number of fines in the last few months has globally risen by 30%, with peaks of 40% in certain areas, namely in Marseilles and Toulouse. In the capital, the number of accidents involving deaths increased 60% in the first 10 months of 2001, compared to the final death toll of 67 for the whole of 2000. The main causes for these deaths that took place in Paris were the "usual" ones: high speed and disregard of red lights. What has changed, though, is the "index of seriousness" of the traffic violations, which has considerably worsened. The speed has greatly increased and the number of drivers that show no regard whatsoever to traffic lights or stop signs has risen significantly.

As far as speeding is concerned, the problem at first glance may appear to be the direct consequence of the "hypocrisy" of the speed limits that are effectively imposed on highways. The road police says that it is nowadays difficult to find officers who are willing to write fines for speed violations of, say, 150 km/h when the speed limit is 130 km/h. The ministry has also admitted that this is often the case, stressing, however that if it did officially increase the speed limit on highway to 150 km/h, drivers would be speeding at 180 km/h. Thus the aim that the ministry has set for itself is to effectively oblige drivers to comply with the official speed limits and, consequently, to advise the police to be less lenient. In the weekends, French highways

are patrolled by over 20,000 gendarmes, but it is increasingly becoming clear that they are not sufficient to impose what the Transportation minister defines as a beneficial "fear of the traffic police."

But the figures released by the Ministry have been unceremoniously rejected by Claude Got, road safety expert and vice chairman of CEESAR, the European centre for the study of safety and security. Prof Got, who has dedicated the past thirty years of his life in promoting and improving road safety, recently said, in an interview published on Le Figaro, that according to other available data, deaths have not decreased by 27 as the Ministry announced, but they have actually increased by 71, "which is not at all a negligible number." Even on the global number of deaths, Prof. Got believes that in France around 8,000 people lose their lives each year following road accidents. Just consider the remedies and precautions that have been taken – he says – for the mad cow crisis, which has provoked but a handful of victims, it is clear that very little is being done for road safety. "Unless public authorities take immediate and serious action to fight against this massacre, road traffic accidents will continue to be the main cause of mortality among young people and these figures will not improve."

Prof. Got who added that more could be done if only there was the political will to do it. The number of highway patrolmen in France has not increased and, what is worse, the number of fines has not "budged an inch" in the past years.

The objective set by the ministry to reduce by 50% the number of road accident deaths by 2002 has resulted in but a "media gesticulation" and that it does not "have a clue" on how to achieve the promise. According to Prof. Got, it is the real measures that have not been implemented also because it would take a lot of courage to disregard the increasing pressure exerted by what he calls the "speed lobby." The real solution to the problem would be to limit the speed of vehicles at construction, to install black boxes in each car and above all to ensure that the Traffic Code is draconically imposed.

The solutions to stop the "hecatomb" are many and had been the topic of an article written by former MIWG Chairman Louis Carrère d'Encausse in the March 1999 issue of the Bulletin. On that occasion Mr Carrère d'Encausse gave a balance of the first hundred years of the motor age. A balance not at all rosy: 8 million deaths (i.e. the population of New York or Tokyo, of Senegal or of Sweden) and 250 million injuries in a century of car travel. "As to the future – he wrote – it is necessary to fight the evil at the source by intervening both on the car and on the person who drives it."

## COMPULSORY MOTOR TPL IN LATVIA

*The Baltic Republic was one of the first among the former Soviet Republics to implement compulsory motor TPL legislation. The regulations imposed in Latvia could act as an example of how lawmakers could go about implementing compulsory motor TPL in those countries of the former USSR that still have to apply it. Some aspects of the law now enforced in the Republic are very innovative, such as the compulsory contribution on the part of insurers to road accident prevention measures – an obligation imposed only in very few other countries. The Bulletin takes a closer look at the compulsory law three years after it was enforced in the country.*

The Law on the Compulsory Third Party Liability Insurance for Inland Motor Vehicle Owners of the republic of Latvia (hereinafter – The Law) came into force on 1 September 1997.

The following classes of vehicles (while used in traffic) have to be covered by compulsory insurance:

- cars,
- trucks,
- buses,
- motorcycles and motor scooters,
- tractors and other self-propelled vehicles,
- trailers,
- trams and trolley-busses.

Bicycles, cars, vehicle with the maximum speed less than 50 km/h and capacity of engine less than 50 cm<sup>3</sup> are legally exempted from compulsory insurance.

Article 33 of the Law provides the indemnification against the loss caused by a trailer (semi-trailer) or other rigid haulage transport vehicle:

- 1) If the loss has been caused by trailer (semi-trailer) or other rigid haulage transport vehicle which upon the road accident has been connected to a tractor or other towing vehicle insurance indemnification to the victim shall be paid by the insurer which has insured third person liability of the tractor or other towing vehicle owner.
- 2) If the loss has been caused by trailer (semi-trailer) or other rigid haulage transport vehicle which upon the road accident has not been connected to a tractor or other towing vehicle insurance indemnification to the victim shall be paid by the insurer which has insured third person liability of the trailer (semi-trailer) owner.

The Motor TPL Insurance legislation does not provide regulations for motorboats and crafts. There are 878,648 vehicles registered in Latvia on 01.07.01. According the Statistical Yearbook 2000 Latvia has approximately 2.43 million inhabitants.

The percentage of uninsured vehicles changes within the 45-55% according the season if we take into consideration the number of registered vehicles and the insured vehicles. We should explain that this data is not objective due to the fact that in Latvia there is a great number of vehicles that in practise do not take part in road traffic. More objective ratio is the specific weight of the number of the insured vehicles in comparison with the number of technically inspected where it fluctuates around 100% within the limits of 1 year. It is interesting to note that the low specific weight of the indemnities paid from the Guarantee fund in respect of total number of indemnities paid in Motor TPL Insurance is within the limits of 7-9%.

In Latvia, motor TPL Insurance is issued on the vehicle.

### Foreign Motorists.

The Law and the terms and conditions of the Guarantee Fund are applicable to foreign motorists whether they are the cause of or victims of accidents. Concerning the use of the terms and conditions of the Guarantee Fund in respect of foreign motorists it is foreseen the applicability on the basis of reciprocity in the draft of the new Law. If the foreign motorist cannot present the Green Card valid in Latvia, he has the possibility to purchase the Border Insurance policy with the minimum insurance period of 15 days.

### Required Covers.

The Law requires insurance for personal injury and damage to property. Liability limits are effective from 01.01.2001. Insurer's liability limits for the loss incurred to the Person resulting from road traffic accident per person includes:

- losses that a victim has suffered for damage to health and in connection with temporary disability – up to 10,000 LVL (16,180 USD),
- losses that victim has suffered in connection with permanent disability – up to 1000 LVL (1,620 USD) per year and the period is unlimited practically all the rest of the life,
- losses incurred to the survivors due to the death of the supporter – up to 1000 LVL (1,620 USD) per year for all entitled,
- funeral expenses – 400 LVL (650 USD).

Insurer's liability limits for the loss caused to the property resulting from a road traffic accident includes:

- loss due to damage or destruction of the vehicle, loss due to damage or destruction of road, road construction elements and buildings, loss due to damage or destruction of the victim's property – up to 9000 LVL





(14,560 USD). Loss due to environmental damage – up to 1000 LVL (1,620 USD).

These amounts of insurance liability are fixed by the Cabinet of Ministers. It is also possible to write additional contract in case there is a wish to have higher liability limits.

The Law requires cover within the same liability limits in respect of passengers carried in the vehicle, but if the passenger is at the same time the owner of the vehicle who caused the accident there is no cover for him.

#### The Guarantee Fund.

The Guarantee Fund is established by law.

The Traffic Bureau in co-operation with the Insurers sets the Guarantee (reserve) Fund for the compulsory third party liability insurance for inland motor vehicle owners. The goal of the fund is to ensure the insurance indemnity to cover the loss caused by:

- a) the vehicle the owner of which has failed to insure his third party liability;
- b) an unknown vehicle except the loss caused to the property or the environment;
- c) the vehicle being out of the possession of the owner, preserver or user without their fault and due to the illegal activities performed by other persons;
- d) the vehicle registered overseas the owner of which has failed to conclude the insurance contract upon crossing the border.

The loss to be indemnified in cases envisaged in the international covenants shall be covered from the resources of the Guarantee Fund.

Liability limits are the same as mentioned before.

#### Claims paid by the Guarantee Fund:

| YEAR                        | INDEMNITIES | RTA*  |
|-----------------------------|-------------|-------|
| 1997                        | 89          |       |
| 1998                        | 1,133       | 816   |
| 1999                        | 1,396       | 1,295 |
| 2000                        | 1,386       | 1,233 |
| 2001 (1 <sup>st</sup> half) | 671         | 616   |

\* - The number of road traffic accidents, where the suffered party is entitled to receive the indemnity from the Guarantee Fund.

The average percentage of the claims paid from the Guarantee Fund is 7-9%. If we compare the percentage of the claims paid at the beginning of Motor TPL Insurance and percentage of the claims paid in 2001 there is tendency of

percentage decreasing (9.45% at the beginning of 1998 and 5.58% in I half of 2001 paid claims from the Guarantee Fund).

The claimant who has received the refusal from the Guarantee Fund has the possibility to appeal to the Court.

#### State Control, Authorisation to Operate and Technical Reserves.

Insurance Business is under the State control according to:

- 1) the Law "On Insurance Companies and Their Supervision";
- 2) the Law "On Insurance Contract";

According to the Law "On Insurance Companies and Their Supervision" in order to start the insurance business and to obtain the licence (and particularly for the transaction of Motor TPL Insurance business), it is necessary to have a minimum capital, to present the copies of the statutes, the list of share holders, the proof of the payment for the setting up the guarantee fund, data about planned income and expenses, an activity programme, etc.

According to this Law, the technical reserves are foreseen to fulfil the obligations under the insurance and reinsurance contracts. In order to secure the stability of the activities of the insurer, it is necessary to have its own (additional) resources including capital reserve that is stocked up by the assets from the profit.

The IBNR claims reserve has to be set up according to the Law "On Insurance Companies and Their Supervision" and calculated according to Insurance Supervisory Inspection's "Guidelines on the setting up the technical reserves and the methods on its calculation." Since 01.07.2001 the Insurance Supervisory Inspection has been taken over by Commission of Finance and Capital Market (CFCM).

#### Tariffs: Basic Premiums and Charges

The basic insurance premiums (tariffs) are fixed according to the Law and "Provisions of the Compulsory Third Party Liability Insurance for Inland Motor Vehicle Owners' Premiums, their Increasing and Reducing Order and the Liability Limits of the Insurers" issued by the Cabinet of Ministers of the Republic of Latvia (hereinafter – the Provisions).

Insurance premiums are fixed taking into consideration:

- a) the type of the vehicle,
  - b) the gross mass of the vehicle,
  - c) the place the vehicle is registered,
  - d) the owner whether he is the private or legal person.
- Having regard the extent of the risk and the number of



the vehicles the following additional coefficients to the insurance premiums are fixed:

- 1) in Riga – coefficient 1.2
- 2) within the other territory of Latvia – coeff.1

If the insurance was in force 12 month before the contract is concluded or the new contract is concluded and the owner of the vehicle or the legal user has not caused the road traffic accident during this period and has not driven the vehicle being under the influence of alcohol, drugs and psychotoxic medicine the insurance premium is reduced.

If the owner of the vehicle or the legal user has caused one or several road traffic accidents with the vehicle indicated in the policy or has driven the vehicle being the influence of alcohol, drugs and psychotoxic medicine the amount of the insurance premiums is increased.

The following bonus, malus system is applied according to the Provisions No.199 of Cabinet of Ministers adopted on 27.05.1997.

**Administrative and underwriting costs**

According the available information the administrative and underwriting costs is not strictly limited. It depends on each insurance company separately.

The following assets from the Motor TPL Insurance premium are made to:

- The Guarantee Fund for Compulsory Motor TPL Insurance – 7% from the premiums received in domestic TPL Insurance and 12% from the premiums received in International TPL Insurance (Green Cards).
- Fund for the Interest Protection of the Insured for the Compulsory Third Party Liability Insurance for Inland Motor Vehicle Owners – 1% form the premiums received in TPL Insurance business;
- The Road Traffic Accident Preventive Preliminary Action Fund – 0.6% of the insurance premium;
- The maintenance of the Traffic Bureau – 3% from the Motor TPL Insurance premium.
- The maintenance of the Commission of Finance and Capital Market – 0.2% from Motor TPL Insurance premium.

**The Insurance Contract and Its Legal Mutability.**

The Insurance Contract is laid down by the Law and Provisions of the Cabinet of Ministers with uniform models ap-

plying to all companies. The policy conditions cannot be objected against an injured third party, the insurance contract is terminated as soon as the vehicle is reregistered on the name of new owner, while the transfer of contracts from a vehicle to another is not possible. Particular conditions or extra coverage (fire, theft, kasko) can be added to voluntary TPL Motor Insurance contract, but not to compulsory Motor TPL Insurance contract.

The evidence of Motor TPL Insurance accepted by the authorities is the Insurance policy (original).

**Loss Ratio and Claims Settlement.**

| YEAR | VEHICLES REG. | CLAIMS | %    |
|------|---------------|--------|------|
| 1997 | 715,121       | 2,684  | 0.38 |
| 1998 | 772,455       | 13,109 | 1.7  |
| 1999 | 825,980       | 17,257 | 2.1  |
| 2000 | 865,112       | 16,672 | 1.9  |
| 2001 | 878,648       | 8,909  | 1.0  |

**Claims handling**

The insurance indemnity is paid by the Guarantee Fund to cover the loss caused by the vehicle being out of the possession of the owner, preserver or user without their fault and due to the illegal activities performed by other persons.

The special commission of the motor experts and of the research on the conditions of the road traffic accident is set up by the Traffic Bureau in order to examine the cases of fraudulent claims. The victim suffered in the accident is entitled to claim for the indemnification of the loss incurred during the accident in accordance with this law if at least one of the persons involved in the accident has immediately (as soon as it became possible) reported it to the Road Police.

The persons involved in the accident shall immediately report on such accident to the Road Police and the Insurer who has insured the compulsory third party liability of the motor vehicle that has caused the accident as well as all the possible measurer shall be performed to reduce or avoid any future losses.

The insurance indemnity is calculated and paid within one month since the receipt of all the respective documentation. Upon the request made by the victim until complete evaluation of the loss the Insurer is entitled to pay the advance. According to the Law the request for the indemnification of the loss shall be considered if it is submitted not later than within one year since the day the victim acquired the rights to such indemnity.



The calculation shall be made following the receipt of the application submitted by the person liable to the insurance indemnity. The application shall be accompanied by:

- 1) the reference issued by the Road Police;
- 2) the documents on the respective accident issued by the investigation or legal institutions (if any);
- 3) any other documents acknowledging the value of the loss.

There are 2 commissions established by the Traffic Bureau to solve the controversies between claimants and insurers. These are: already mentioned commission of the motor experts and of the research on the conditions of the road traffic accident and the commission of technical experts.

Commission of Finance and Capital Market and the Traffic Bureau are the offices that guarantee the rights of

claimants. In Motor TPL Insurance if the suffered party is not satisfied with the decision made by the Insurer he/she can make the complaint to the Traffic Bureau.

**Prevention Measures.**

There are some cases when the sum of indemnity is reduced due to the fact that the suffered party has failed to wear helmet or to use safety belts. The same could be related to the failure to use safety belts for back-seat passengers.

According to the Clause 46 of the Law the road traffic safety program is co-ordinated by the Council of the Road Traffic Security Service set up by the Cabinet of Ministers. For the road accident prevention purposes the Insurers make the quarterly payments of 0.6 percent of the insurance premium. The money collected is managed by Road Traffic Safety Council.

**THE BONUS MALUS SYSTEM**

After the draft of the Law is accepted and the new Law is implemented in 2002 the tariffs will be set free and each insurance company will be able to calculate its own tariffs (possibly taking into consideration age and sex). The same refers to bonus, malus system. Each insurance company will be able to create their own system taking into consideration the main conditions of the new Law.

There are no special conditions for the system of excess.

The reduction of the insurance premium depending on the number of the years within the period of which the vehicle has been driven without causing accidents.

| Number years | The reduction of the insurance premium % | Discount code |
|--------------|--|---------------|
| 1            | 2  | A1            |
| 2            | 3  | A2            |
| 3            | 4  | A3            |
| 4            | 5  | A4            |
| 5            | 6  | A5            |
| 6            | 7  | A6            |
| 7            | 15                                       | A7            |
| 8            | 20                                       | A8            |
| 9            | 25                                       | A9            |
| 10           | 30                                       | A10           |
| 11           | 40                                       | A11           |
| 12           | 50                                       | A12           |

The increase of the insurance premium depending on the number of the road traffic accidents (RTA)

| The number of RTA | The increase of the insurance premium* % | Extra charge code |
|-------------------|--|-------------------|
| 1                 | 15                                       | P1                |
| 2                 | 30                                       | P2                |
| 3                 | 50                                       | P3                |
| 4                 | 75                                       | P4                |
| 5 and more        | 100                                      | P5                |

\*not depending on the number of RTA if in the case of RTA there are victims the insurance premium is increased for 100%, not taking into consideration the value of the increase of the insurance premium stated in this chart. (Extra charge code – "P9".)

The increase of the insurance premium depending on the number of cases when the vehicle has been driven under the influence of alcohol or other toxic matters

| The number of cases when the vehicle has been driven under the influence of alcohol or other toxic substances | The increase Insurance premium % | Extra charge code |
|---|----------------------------------|-------------------|
| 1   | 50                               | P6                |
| 2 and more  | 100                              | P7                |

## News from the world

### ARGENTINA

#### 8,500 DIE IN ROAD ACCIDENTS IN 2000

The Institute of Traffic Safety (ISEV) has released figures regarding serious accidents occurred in Argentina in 2000. The number of accidents has gone down with respect to the previous year. The data though should consider that there has been a 30% fall in the rate of car usage following the implementation of fuel rationing.

|                                 | YEAR 2000      | YEAR 2001      |
|---------------------------------|----------------|----------------|
| <b>DEATHS (TOTAL)</b>           | <b>8781</b>    | <b>8536</b>    |
|                                 | <i>AVERAGE</i> | <i>AVERAGE</i> |
| DAILY DEATHS                    | 24             | 23             |
| MONTHLY DEATHS                  | 732            | 711            |
| DAILY INJURIES                  | 43             | 43             |
| <b>DEATHS BY AREA</b>           |                |                |
| RURAL                           | 59%            | 63.3%          |
| URBAN                           | 41%            | 36.7%          |
| <b>ACCIDENT RATE BY AREA</b>    |                |                |
| URBAN                           | 58%            | 54.9%          |
| RURAL                           | 42%            | 45.1%          |
| <b>DEATHS BY GENDER</b>         |                |                |
| MALE                            | 68%            | 67.7%          |
| FEMALE                          | 32%            | 32.3%          |
| <b>DRIVERS ACCORDING TO AGE</b> |                |                |
| 17 to 30                        | 45%            | 41.8%          |
| 31 to 45                        | 30%            | 32.8%          |
| 46 to 60                        | 18%            | 17.4%          |
| OVER 60                         | 7%             | 8.0%           |
| <b>TYPES OF VEHICLES</b>        |                |                |
| CARS                            | 58%            | 56.7%          |
| CARGO                           | 14%            | 15.7%          |
| PASSENGER VEHICLES              | 11%            | 9.8%           |
| TWO-WHEELERS                    | 7%             | 8.2%           |
| BYCICLES                        | 5%             | 4.8%           |
| VEHICLE ON RAILS                | 5%             | 4.8%           |
| <b>TIME</b>                     |                |                |
| 00:01 to 06:00                  | 28%            | 28.2%          |
| 06:01 to 12:00                  | 32%            | 34.6%          |
| 12:01 to 18:00                  | 14%            | 14.8%          |
| 18:01 to 00:00                  | 26%            | 22.4%          |
| <b>DAY OF THE WEEK</b>          |                |                |
| MONDAYS                         | 19%            | 19.0%          |
| TUESDAYS                        | 13%            | 13.7%          |
| WEDNESDAYS                      | 12%            | 15.8%          |
| THURSDAYS                       | 11%            | 13.1%          |
| FRIDAYS                         | 13%            | 12.7%          |
| SATURDAYS                       | 9%             | 7.3%           |
| SUNDAYS                         | 24%            | 18.5%          |

### HUNGARY

#### BONUS MALUS SYSTEM REVISED

As of the 1<sup>st</sup> of January 2001 the rules of the bonus-malus system have changed in as much as not all rules are obligatory. Beside the basic premium it is compulsory to use 10 bonus classes and 4 malus classes and a certain system between the classes. In case of no damage during a contract having existed for at least 9 months from the following 1<sup>st</sup> of January, the client has to be classed in the next higher bonus class. The measure of premium reduction in certain classes is decided by the companies themselves. At present – corresponding to the former fixed system – there is a difference of 5% between the single bonus classes, thus the largest premium reduction to be reached is 50%.

In case of causing a damage only the method of classification is prescribed by the law. In the categories of cars and motor bicycles one damage caused in the observation period means falling back two categories, two damages caused mean falling back four categories, three damages caused mean falling back six categories in the next year. After four damages caused the contracting party gets in the worst malus (M4) category.

If more than four damages were caused, the most the insurer may demand is to double the premium amount of the relating valid M4 category (400 per cent). In other vehicle categories each damage caused means a worsening by one category in the next year. There is no obligation for the degree of differentiating in the categories M1 – M4 either. The companies however apply the former multipliers:

|    |   |              |
|----|---|--------------|
| M1 | - | 115 per cent |
| M2 | - | 135 per cent |
| M3 | - | 160 per cent |
| M4 | - | 200 per cent |

A novelty of the new regulation is that the 1<sup>st</sup> of January 2001 the registration system includes not only the cars insured by individual contracts but also lorries, busses, motorcycles, trailers and agricultural trailers insured with individual contracts. The observation period lasts from the 1<sup>st</sup> July until the 30<sup>th</sup> June of the next year. The new bonus-malus classification starts from the 1<sup>st</sup> of January of the year following the observation period depending on the number of damages caused. Thus the contracting parties of the new vehicle categories meet the advantages of the bonus-malus system at first when the premiums effective from the 1<sup>st</sup> of January 2003 are announced.



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