

COMMISSION OF THE EUROPEAN COMMUNITIES

**PROPOSAL FOR A DIRECTIVE AMENDING COUNCIL DIRECTIVES
72/166/EEC, 84/5/EEC, 88/357/EEC, 90/232/EEC AND DIRECTIVE 2000/26/EC
ON INSURANCE AGAINST CIVIL LIABILITY IN RESPECT OF THE USE OF
MOTOR VEHICLES**

SUBMISSIONS OF THE ASSOCIATION OF PERSONAL INJURY LAWYERS

AUGUST 2002

The Association of Personal Injury Lawyers (APIL) was formed in 1990 and is a membership organisation based in the United Kingdom. APIL represents around 5000 solicitors, barristers, legal executives and academics, both in the UK and abroad, whose interest in personal injury work is predominantly on behalf of injured victims. The aims of the association are:

- To promote full and prompt compensation for all types of personal injury;
- To improve access to our legal system by all means including education, the exchange of information and the enhancement of law reform;
- To promote health and safety;
- To alert the public to dangers in society such as harmful products and dangerous drugs;
- To provide a communication network exchanging views formally and informally.

Any enquiries in respect of these submissions should be addressed, in the first instance, to:

Annette Morris
Policy Research Officer
APIL
11 Castle Quay
Nottingham, UK
NG7 1FW

Tel: 0115 958 0585

Fax: 0115 958 0885

E-mail: Annette@apil.com

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1. APIL notes the proposed directive on insurance against civil liability in respect of the use of motor vehicles and broadly welcomes the Commission's initiative to update and improve the protection afforded to the victims of motor accidents. We would like to take this opportunity to make submissions on the following aspects of the proposed directive:

- The provisions in respect of pedestrians and cyclists;
- The review of the minimum amounts of cover;
- The elimination of the member states' option to limit compensation to damage to property in the case of accidents caused by unidentified vehicles;
- The right of direct action;
- Claims representatives and the reasoned offer procedure;
- Information centres.

The Provisions in Respect of Pedestrians and Cyclists

2. The Commission proposes that insurance should cover personal injuries suffered by pedestrians and cyclists as a consequence of an accident in which a motor vehicle is involved, irrespective of whether the driver is at fault. We understand that this article would introduce strict liability, so that where a driver was involved in an accident with a cyclist and/or pedestrian, his insurer would automatically be liable to pay compensation to that cyclist and/or pedestrian. To that extent, APIL supports fully the Commission's proposal. Both cyclists and pedestrians are vulnerable when compared with car drivers, as their chances of being seriously injured in a motor vehicle accident are extremely high. In addition, in claiming compensation against

the responsible driver, the injured victim has to prove his case against the well-resourced and highly experienced insurer of the driver. The introduction of strict liability in the proposed circumstances would remove this imbalance of power. This could also be achieved by reversing the burden of proof, so that the driver, or rather his insurer, would have to prove that he was not responsible for the accident and should not be required to pay compensation.

3. We are uncertain, however, as to whether we have understood the Commission's proposals correctly. In introducing strict liability in respect of motor accidents involving pedestrians and cyclists, our understanding is that this would change the liability regime within member states, as in the UK, for example, a fault-based liability regime is currently in operation. In describing article 4(2) of the proposed directive, the Commission states, however, that "[t]his cover under the compulsory motor insurance of the vehicle does not determine the civil liability of the pedestrian or cyclist in a specific accident or the level of any award for damages. This should be governed by the applicable national legislation and the national courts". This explanation suggests that the liability regime would not be affected by the proposed directive. We believe it would be helpful for the Commission to clarify its intentions on this issue.
4. APIL would also like to stress that the Commission's proposals should not affect the level or calculation of personal injury compensation in any way. These particular issues should continue to be determined in accordance with member states' national laws, either through the introduction of a cap or a tariff. We are concerned that insurance companies will seek to limit the compensation recoverable by cyclists or pedestrians. APIL believes it is imperative that injured victims receive full compensation to ensure that they are able to meet all of the losses and expenses resulting from their injuries. This principle of full compensation applies in the UK and the Commission's proposal should not lead, either directly or indirectly, to an erosion of that principle.

The Review of the Minimum Amounts of Cover

5. As the minimum amounts of cover have not been revised since Directive 84/5/EEC was adopted, APIL agrees that this issue needs urgent attention. We do not believe it is sufficient, however, to increase the minimum amounts of cover included within that directive in accordance with inflation. It is imperative that those who suffer serious injuries as a result of motor vehicle accidents can obtain the compensation they need to meet, for example, medical and nursing expenses. This should not be hampered by the retention of minimum amounts of cover. Whilst some Member States, including the UK, require unlimited insurance cover, APIL believes this principle should be extended to all Member States. At the very least, however, Member States should continue to be able to require unlimited cover through national legislation, so that injured victims in those countries where compensation awards tend to be higher, as in the UK, are not affected or disadvantaged in any way.

The Elimination of the Member States' Option to Limit Compensation to Damage to Property in the Case of Accidents Caused by Unidentified Vehicles

6. APIL supports fully the Commission's proposal to eliminate the Member States' option to limit compensation to damage to property in the case of accidents caused by unidentified vehicles.

The Right of Direct Action

7. We welcome the Commission's proposal to extend the right of direct action provided for in Article 3 of the Fourth Motor Directive to the victims of all motor vehicle accidents. All such victims deserve the same protection. It would not only create equality, but would also prevent the frustration and delay caused in certain cases from having to rely on the co-operation of the driver. In addition, it can sometimes be

difficult in the UK to locate the responsible driver for the purpose of serving proceedings. Whilst a legal representative may contact the driver shortly after he has been instructed by his injured client in accordance with the address given at the scene of the accident, this address may change some time later, without the representative's knowledge. Allowing a legal representative to serve proceedings directly on the relevant insurance company would avoid such problems in locating the driver. Direct action would further assist in avoiding convoluted enforcement proceedings. At the moment it is necessary to enforce the judgment against the driver, despite the fact that it is the insurance company that actually pays the compensation due.

Claims Representatives and the Reasoned Offer Procedure

8. In accordance with article 4(6)(b) of the Fourth Motor Directive, insurance undertakings/claims representatives will be required in certain circumstances to provide a reasoned reply to the points made in a claim within three months. Whilst APIL welcomes this provision, we have some concerns about the definition of the word 'reasoned', as it is not the same as being required to provide a "reasonable" reply. For example, a defendant may allege that the victim was wholly or partly to blame for the accident. This is reasoned, but it may not be reasonable on the facts of the case. The effect of this requirement would be much more productive if the word 'reasoned' were replaced or complimented by the word 'reasonable'. It would, alternatively, be useful for the legislation to define the word 'reasoned' to prevent future discussion, as it is not defined within either the Fourth Motor Directive or the proposed Fifth Motor Directive.

Information Centres

9. APIL welcomes the Commission's proposal that information centres, established as a result of the Fourth Motor Directive, should provide information in the case of any accident caused by a vehicle covered by compulsory insurance. The database should

be accessible by claimants and/or their legal representatives. The victims of road traffic accidents often have difficulties ascertaining whether the responsible driver was insured and, if so, obtaining the correct insurance details due to, for example, the provisions of false details at the scene of the accident. Much time and effort can be wasted in resolving those issues. Allowing claimants to search the database would greatly alleviate such burdens.

Conclusion

10. In summary, APIL is broadly supportive of the Commission's proposed directive on insurance against civil liability in respect of the use of motor vehicles, as it seeks to improve the protection afforded to the victims of motor vehicle accidents, especially those most vulnerable to injury, i.e. cyclists and pedestrians. We are concerned, however, that the proposed Directive should not lead to the recovery of limited compensation by such victims.