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Draft European Convention on compulsory insurance against civil liability in respect of motor vehicles

Request for an opinion

Committee of Ministers

1. Letter to the President of the Consultative Assembly from the Secretary-General

Strasbourg, 25th June 1958

Sir,

In paragraph 4 of its Recommendation 100 (1956) on a draft European Convention on compulsory motor insurance against civil liability in respect of motor vehicles, the Assembly expressed the wish that the text of the proposed Convention should be communicated to it before being finally approved by the Committee of Ministers.

The Committee of Ministers, after preliminary study of the draft Convention drawn up by the Committee of Experts, has decided to communicate it to the Assembly for an opinion, and has instructed me to transmit to you the enclosed document containing the draft Convention in question, together with its annexes and other relevant papers.

The Committee of Ministers will reconsider these texts later in the light of the Assembly's observations.

The Committee of Ministers has also agreed that, if the Assembly so wishes, an exchange of views on this question may be held in the Joint Committee, in accordance with the arrangements made between the Ministers and the Assembly [Doc. CM/AS (57) PV 2].

I have the honour to remain,

Your obedient Servant,

Signed : Lodovico BENVENUTI

2. Draft European Convention on compulsory insurance against civil liability in respect of motor vehicles

The Governments signatory hereto, being Members of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity among its Members for the purpose, among others, of facilitating their economic and social progress by the conclusion of agreements and common action in economic, social, cultural, scientific, legal and administrative matters;

Considering it necessary to safeguard the rights of victims of motor accidents in their territories by the introduction of a system of compulsory insurance;

Considering that it would be difficult to secure the complete unification of their laws in this matter, and that it would suffice if such basic rules as are considered essential were standardised in the member countries of the Council of Europe, each country remaining free to apply in its territory provisions affording greater protection to injured parties;



Considering it necessary, moreover, to promote the establishment and operation of international insurance bureaux and guarantee funds, or to take equivalent measures,

Have agreed as follows:

ARTICLE 1

1. Each Contracting Party undertakes to ensure that, within six months of the date of entry into force of this Convention in respect of that Party, the rights of persons suffering damage in accidents caused by motor vehicles in its territory shall be protected through the introduction of a system of compulsory insurance complying with the provisions annexed to this Convention (Annex I).

2. Each Contracting Party shall, however, retain the option of adopting provisions affording greater protection for injured parties.

3. Each of the Contracting Parties shall communicate to the Secretary-General of the Council of Europe the official texts of the legislation and principal regulations establishing its system of compulsory motor insurance. The Secretary-General shall transmit these texts to the other Parties.

ARTICLE 2

Each Contracting Party shall retain the option:

1. to exempt from compulsory insurance certain motor vehicles, the use of which it considers to present little if any danger;
2. to exempt from compulsory insurance motor vehicles owned by its public authorities or those of other countries or by intergovernmental organisations;
3. to determine the minimum amounts of insurance cover necessary; in this case, the application of the annexed provisions may be limited to these amounts.

ARTICLE 3

1. Any Contracting Party may, when signing this Convention or on depositing its instrument of ratification or accession, declare that it avails itself of one or more of the reservations provided for in Annex II to the Convention.

2. Any Contracting Party may wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraph by means of a notification addressed to the Secretary-General of the Council of Europe which shall become effective as from the date of its receipt. The Secretary-General shall communicate the notification to the other Contracting Parties and to the other Members of the Council of Europe.

ARTICLE 4

1. Options exercised and reservations made by a Contracting Party in pursuance of Articles 2 and 3 of this Convention shall be valid only in its territory and shall not prejudice the full application of the compulsory insurance law of other Parties in whose territory the vehicle is used.

2. Each Contracting Party shall inform the Secretary-General of the Council of Europe of the content of its legal provisions relating to the options and reservations referred to in Articles 2 and 3 of this Convention. The said Party shall keep the Secretary-General informed of any changes made therein at a later date. The Secretary-General shall transmit all such information to the other Contracting Parties and to the other Members of the Council of Europe.

ARTICLE 5

When compensation for injury caused by a motor vehicle involves both compulsory motor insurance and social security schemes, the rights of the injured party and the arrangements to be made between the two systems shall be determined under municipal law.

ARTICLE 6

1. Should the option of exclusion from normal insurance referred to in paragraph 2 of Article 4 of the annexed provisions be provided for in its municipal law, each Contracting Party undertakes to make the holding in its territory of motor races or competitions, whether for speed, reliability or skill, subject to official authorisation. Such authorisation shall be granted only if the civil liability of the organisers and the persons referred to in Article 3 of the annexed provisions is covered by special insurance complying with those provisions.

2. Compensation for damage suffered by the occupants of vehicles taking part in races or competitions such as are referred to in the foregoing paragraph may, however, be excluded.

ARTICLE 7

1. Motor vehicles normally stationed outside the territory of a Contracting State shall be exempt in that territory from the application of Article 2 of the annexed provisions if they are provided with a certificate issued by the Government of another Contracting State stating that the vehicle belongs to that State, or, in the case of a Federal State, to the Federal State or one of its constituent members; in the latter case, the certificate shall be issued by the Federal Government.

2. The certificate shall indicate the authority or body responsible for paying compensation in accordance with the law of the country visited and which may be sued in the courts competent in such matters under that law. The State or constituent member to which the vehicle belongs shall guarantee such payment.

ARTICLE 8

The Contracting Parties shall promote the establishment and operation of Bureaux for the issue of international insurance certificates and for meeting claims for damages in the circumstances specified in paragraph 2 of Article 2 of the annexed provisions.

ARTICLE 9

1. Each of the Contracting Parties undertakes either to establish a guarantee fund or to make other equivalent arrangements in order to compensate injured parties for damage caused in such circumstances that a civil liability is incurred, where the obligation to be insured has not been complied with or the person liable has not been identified or the case is one excepted from insurance in accordance with the first sentence of paragraph 1 of Article 3 of the annexed provisions. The conditions for granting compensation and the extent of such right shall be determined by the Contracting Party concerned.

2. Nationals of any Contracting Party shall be entitled to bring the claim provided for in the foregoing paragraph in any other Contracting State on equal terms with the nationals of that State.

ARTICLE 10

1. The Contracting Parties undertake to determine in their municipal law the persons who shall be responsible for having the motor vehicle insured, and to take all appropriate measures, accompanied where necessary by penal or administrative sanctions, to enforce the obligations resulting from the annexed provisions.

2. With a view to the application of the annexed provisions, the Contracting Parties undertake to make appropriate provisions in their municipal law relating to the approval, and the expiry or withdrawal of the approval, of insurers and, if necessary, of the Guarantee Fund and Bureau, and also relating to control of their operations.

ARTICLE 11

1. Each Contracting Party shall determine, as may be necessary, the authority or person to whom the notification mentioned in Article 9 of the annexed provisions is to be made.

2. Each Contracting Party shall determine what effect the insurance contract shall have in the case of a change of ownership of the insured vehicle.

ARTICLE 12

Except in case of emergency, a Contracting Party may not denounce this Convention within less than two years from the date on which the Convention entered into force in respect of that Party. Denunciation shall be effected by written notification to the Secretary-General of the Council of Europe, who shall inform the other Contracting Parties thereof; it shall take effect three months after the date of notification to the Secretary-General.

ARTICLE 13

1. If, after the entry into force of the Convention in respect of a Contracting Party, that Party deems it necessary to make a reservation, either not provided for in Annex IT to this Convention or, if provided for in that Annex, a reservation which it has not made previously or has withdrawn, it shall inform the Secretary-General of the Council of Europe of its precise proposal, of which the Secretary-General shall then notify the other Contracting Parties.

2. If, within the six months following the notification by the Secretary-General, the Contracting Parties signify in writing their agreement to the proposal, the Contracting Party which has made the proposal may amend its legislation accordingly.

ARTICLE 14

1. This Convention shall be open to the signature of the Members of the Council of Europe. It shall be ratified. Instruments of ratification shall be deposited with the Secretary-General of the Council of Europe.

2. This Convention shall come into force 90 days after the date of deposit of the fourth instrument of ratification.

3. In respect of any signatory ratifying subsequently, the Convention shall come into force 90 days after the date of deposit of its instrument of ratification.

4. The Secretary-General shall notify all the Members of the Council of the entry into force of the Convention, the names of the Contracting Parties who have ratified it and the subsequent deposit of any instrument of ratification.

ARTICLE 16

After this Convention has come into force the Committee of Ministers of the Council of Europe may invite any State which is not a Member of the Council to accede to this Convention. Any State so invited may accede by depositing its instrument of accession with the Secretary-General of the Council, who shall notify all the Contracting Parties and the other Members of the Council of Europe of such deposit. The Convention shall come into force in respect of any State acceding thereto 90 days after the date of deposit of its instrument of accession.

Done at on in the English and French languages, both texts being equally authoritative, in a single copy which shall remain in the archives of the Council of Europe and of which the Secretary-General shall send certified copies to each of the signatories.

Appendix 1 ANNEX I TO THE CONVENTION

Provisions annexed to the European Convention

ARTICLE 1er

For the purpose of this law:

The term " motor vehicles " shall mean: mechanically-propelled vehicles intended to be driven on the ground other than vehicles running on rails, and shall include trailers when coupled and also in so far as the Government so decides, uncoupled trailers which are constructed or adapted to be towed by a motor vehicle and to carry persons or goods ;

The term " assured" shall mean: persons whose liability is covered in accordance with this law;

The term " injured parties" shall mean: persons entitled to compensation for damage caused by a motor vehicle;

The term " insurer" shall mean: the insurance undertaking approved by the Government in accordance with paragraph 1 of Article 2, and, in the case of paragraph 2 of Article 2, the Bureau responsible for the settlement of claims for damage caused on the national territory by vehicles normally stationed outside that territory.

ARTICLE 2

1. No motor vehicle may be driven on the public highway, in grounds open to the public or in private grounds to which certain persons have right of access, unless the civil liability to which it may give rise is covered by insurance in accordance with the provisions of this law. The insurance must be effected with an insurer approved by the Government for this purpose.

2. Nevertheless, motor vehicles normally stationed outside the national territory may be driven on that territory on condition that a Bureau recognised for this purpose by the Government assumes direct responsibility for compensating, in accordance with municipal law, injured parties for damage caused by such vehicles.

ARTICLE 3

3. The insurance must cover the civil liability of the owner and of any driver or person in charge of the insured vehicle, with the exception of persons who have taken control thereof either by theft or violence, or merely without the consent of the owner or person in charge. Nevertheless, in the latter case the insurance must cover the civil liability of the driver if he has been able to take control of the vehicle through the fault of the owner or person in charge, or if he is a person employed to drive the vehicle.

4. The insurance must include damage caused to persons and property in the national territory with the exception of damage to the insured vehicle and to property carried by it.

ARTICLE 4

5. The following may be excluded from the benefits of the insurance:

- a. the driver of the vehicle causing the damage, the policy-holder and all persons whose civil liability is covered by the policy;
- b. spouses of the persons mentioned above;
- c. members of the families of those persons provided either that they reside with them or are dependent on them for their maintenance, or that they are carried in the vehicle which caused the damage.

6. Damage caused by the vehicle during participation in authorised motor races or competitions, whether for speed, reliability or skill may be excluded from the normal insurance.

ARTICLE 5

Should it be stipulated in the policy that the assured shall himself make some contribution towards compensation for the damage, the insurer shall nevertheless remain liable to the injured party for payment of the contribution which the contract lays down as being due by the assured.

ARTICLE 6

7. The injured party has a direct claim against the insurer.

8. Should there be more than one injured party and the total compensation due exceed the sum- insured, the rightful claims of the injured parties against the insurer shall be reduced in proportion to that sum. Nevertheless, an insurer who, through ignorance of the existence of other claims, has in good faith paid an injured party more than that party's proper share, shall be accountable to the other injured parties only for the remainder of the sum insured.

ARTICLE 7

9. The assured must report to the insurer all accidents of which they have knowledge. The policy-holder must supply the insurer with any information or documents stipulated in the policy. Assured persons other than the policy-holder must supply any information or documents required by the insurer, at the latter's request.

10. The insurer may make the assured a party to an action brought against him by the injured party.

ARTICLE 8

11. Any action by the injured party against the insurer based on the former's direct claim against him shall be barred after two years have elapsed since the time of the accident.

12. A written request shall suspend the period of limitation in respect of the insurer until such time as he states in writing that he has broken off negotiations. The period of limitation shall not be suspended by subsequent requests.

ARTICLE 9

13. The insurer may not raise against an injured party the rights which he possesses *visa- vis* the assured, by virtue of the contract or of the provisions of the law relating to it, to withhold or reduce its benefits.

14. The invalidity or termination of the insurance contract, its suspension or that of the guarantee thereunder may be raised by the insurer against the injured party only in respect of accidents occurring after 16 days have elapsed since the insurer gave notice of the said invalidity, termination or suspension. In the case of consecutive insurances this provision shall apply only to the last insurer.

15. However, the provisions of the preceding paragraphs shall not be applicable insofar as the damage is effectively covered by another insurance.

16. The provisions of paragraphs 1 and 2 of the present Article shall in no wise prejudice the insurer's right to take action against the policyholder or an assured person other than the policyholder.

ARTICLE 10

No departure by way of agreement between individuals may be made from those provisions of this law which are designed to protect injured parties, unless the right to do so follows from those provisions.

Appendix 2 ANNEX II TO THE CONVENTION

Each Contracting Party may state its intention:

1. to exempt from compulsory insurance motor vehicles owned by corporate persons under public or private law able to provide sufficient financial guarantee to be their own insurer;
2. to allow the deposit of a security in lieu of insurance by such persons as it shall determine, provided, however, that such security offers injured parties safeguards equivalent to those afforded by the insurance;
3. to exclude from compulsory insurance wilful damage caused by the assured;
4. to exempt from compulsory insurance the cases specified in the second sentence of paragraph 1 of Article 3 of the annexed provisions;
5. to exempt from compulsory insurance the driving of a vehicle without the consent of the owner or person in charge or in contravention of their orders, provided that in such cases the injured party has a guarantee of compensation, at least in respect of damage to person;
6. to exempt from compulsory insurance damages for pain and suffering;
7. to exclude from benefit under the insurance, when the assured is a corporate person or a commercial company not possessing legal personality, the legal representatives of the assured, and the spouses of such representatives, and, under the terms of paragraph 1 (c) of Article 4 of the annexed provisions, members of the families of such representatives;
8. to exclude from benefit under the insurance of a motor vehicle any person who is carried with his consent in that vehicle although he knows or should have known that the vehicle was taken from the rightful possessor by an unlawful act or is being used in the perpetration of a crime.
9. to exempt from compulsory insurance damage to passengers in the vehicle that was the cause of such damage, if they were being carried free of charge or as a favour ;
10. to exempt from compulsory insurance motor vehicles while being driven in private grounds to which certain persons have right of access and also motor vehicles while taking part elsewhere than on the public highway in motor races or competitions, whether for speed, reliability or skill;
11. to depart, solely as between its own nationals, from the terms of Article 5 of the annexed provisions in regard to damage to property involving small sums;
12. to leave it to its courts to decide whether, in the case of damage caused in its territory, Article 6 of the annexed provisions shall apply, indication being given where necessary to the courts of the principles on which they should proceed;
13. to depart from the provisions of paragraph 2 of Article 6 of the annexed provisions with a view to providing an alternative method of apportioning the sum insured;
14. to depart from the provisions of paragraph 2 of Article 8 of the annexed provisions;
15. to depart from Article 9 of the annexed provisions where, in the cases mentioned in that Article, the injured party has a guarantee of compensation for damage to person and property; the amount of compensation to which the injured party will be entitled shall be the same in the case of personal injury as if there had been an insurance; in respect of damage to property the amount of compensation may be determined in some other manner.
16. to depart from paragraph 2 of Article 9 of the annexed provisions in respect of motor vehicles normally stationed outside its territory.

Protocol of signature

When signing the European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles the signatory Governments recognise that the term " motor vehicles" contained in the first paragraph of Article 1 of the provisions annexed to the said Convention shall be understood to include all mechanically-propelled vehicles which are intended to be driven on the ground other than vehicles running on rails, even if they are connected to electric conductors, and also cycles fitted with an auxiliary engine

Draft Recommendation

concerning cycles fitted with an auxiliary engine.

The experts unanimously proposed that at the time of signature of the European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles the Committee of Ministers should adopt the following draft Recommendation:

" The Committee of Ministers,

Having regard to paragraph 1 of Article 1 of the provisions annexed to the European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles;

Having regard to paragraph 1 of Article 2 of that Convention;

Considering that cycles with an auxiliary engine may be a cause of traffic accidents,

Recommends:

- a. that the Governments signatory to the Convention who have already introduced legislation requiring the compulsory insurance of motor vehicles with the exception of cycles fitted with an auxiliary engine should extend this compulsory insurance to such cycles or, where appropriate, make use in respect of such cycles of the option conferred by paragraph 1 of Article 2 of the Convention during a transitional period only;
- b. that the Governments signatory to the Convention who have not already introduced legislation requiring the compulsory insurance of motor vehicles should not make use of the option conferred by paragraph 1 of Article 2 of the Convention in respect of cycles fitted with an auxiliary engine or, in case of any exceptional circumstances, make use of this option in respect of such cycles during a transitional period only."

Draft Recommendation

The Experts unanimously proposed that at the time of signature of the European Convention on Compulsory Motor Insurance against Civil Liability in respect of Motor Vehicles the Committee of Ministers should also adopt the following draft Recommendation:

" The Committee of Ministers,

Having regard to Article 7 of the European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles;

Considering it necessary that with regard to the certificate provided for under Article 7 of the said Convention the Contracting Parties should agree to use a standard form of certificate,

Recommends that the signatory Governments adopt, with a view to giving effect to Article 7 of the Convention, the specimen certificate attached to this Recommendation and that they notify the Secretary-General of the 'Council of Europe, as soon as possible, of the name of the national authority authorised to issue such certificates."

Draft of a specimen certificate"

Colour: light green with dark green stripe 15 mm. wide on odd-numbered pages from top R.H. corner to bottom L.H. corner.

Dimensions: 21 cm. long by 15 mm. wide.

Text:

1. The certificate will be drawn up in the language (s) prescribed by the legislation of the issuing State.
2. The title of the document " Certificate referred to in Article 7 of the European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles signed at >on " will be written in the language (s) prescribed in (1) above and will be followed by the translation in French " Attestation visée à ,l'article 7 de la Convention européenne relative à l'assurance obligatoire de la responsabilité civile en matière de véhicules automoteurs signée à le "
3. The inscriptions shall be written (or at least repeated) in Latin characters or in so-called English script.

4. The distinguishing sign as described In Annex 4 to the Convention on Road Traffic signed at Geneva on September 19th 1949 shall be inscribed in the oval.
5. The coat-of-arms of the State may be added at the top of page 1.

Coat-of-arms Distinguishing sign (in an oval)

Certificate

referred to in Article 7 of the European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles

Signée à

on

ORIGINAL NOT TO BE DETACHED

1. Certificate referred to in Art. 7 of the European Convention on Compulsory Insurance against Civil Liability in respect of 3- Distinguishing sign and Motor Vehicles. 2. Issued by the Austrian Federal Government (*)

3- Distinguishing sign registration number A (*) "W 418 (*)

4. VALID day month.

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5. Category of vehicles(s)

6. Chassis number(s) (s)(a)

Category of vehicle (code) A: Motor car B: Motor cycle C: Lorry or tractor D: Cycle with auxiliary E: Motor coach or motor bus; F: Trailer

B
R
R

(Delete countries where certificate is invalid)

>(*) à titre d'exemple.

>The vehicle(s) described on page 3 belong(s) to the

The is responsible for paying compensation in accordance with the law of the country visited and may be sued in the courts competent in such matters under that law.

Issued on

Signature and stamp of the authority

In the following countries one of the duplicates must be left with the frontier authorities on first entering the country during the period of validity:

In the following countries one of the duplicates must be left with the frontier authorities on first entering the country during the period of validity:

5 and , as the case may be, 7, 9 (DUPLICATE) Arrival

1. Certificate referred to in Art. 7 of the European Convention on Compulsory Insurance against Civil Liability in respect of ———; — ; Motor Vehicles.

2. Issued by the Austrian Federal Government (*)

3- Distinguishing sign and registration number A (*) W 418 (*)

4. Valid to day month

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5. Category of vehicle(s)

6. Chassis number(s) (a)

5 and , as the case may be, 7, 9 (DUPLICATE) Arrival

Category of vehicle (code) A: Motor car B: Motor cycle C: A
Lorry or Tractor D: Cycle with auxiliary engine E: Motor
coach or motor bus F: Trailer

B
R
R
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