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COUNCIL OF EUROPE
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Draft European Convention on compulsory motor insurance

Report
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Hans von MERKATZ, Germany

A. Draft Recommendation

The Assembly,

Considering that, in their Special Message of 20th May 1954, the Committee of Ministers announced that they intended to study the possibilities of unifying and harmonising the laws of Member States and that they would welcome the Assembly's proposals in this matter (Doc. 238, paragraph 87);

Considering that the Assembly has already expressed the view that compulsory motor insurance is a suitable subject for an attempt to be made at introducing identical provisions in the domestic laws of Member States;

Having given careful consideration to the preparatory work on this question done by the International Institute for the Unification of Private Law at Rome;

Having regard to the Treaty on compulsory third-party insurance for motor vehicles signed on 7th January 1955 by the Governments of Belgium, Luxembourg and the Netherlands;

Considering that it is essential, at a time when motoring is becoming more and more widespread, that in all countries victims of accidents caused by motor vehicles should receive proper compensation and that motorists should be protected against their liability to third parties arising out of accidents caused by the use of their motor vehicles on the road;

Recalling its Recommendation 59 (1954) and Resolution (55) 8 of the Committee of Ministers, which recommended that member countries where insurance against third-party risks is not at present compulsory should give consideration to the possibility of making it so ;

Considering that a number of projects have been prepared in certain Member States where compulsory insurance though contemplated is not yet compulsory and that it is all the more necessary and urgent that action should be taken to ensure that the same system of compulsory motor insurance is introduced by such countries,

Approves the draft European Convention on compulsory motor insurance put forward in the report of the Committee on Legal and Administrative Questions1[1], which is based on the Treaty of 7th January 1955, between the Benelux countries;

Recommends to the Committee of Ministers :

1. that they should appoint a Committee of Government Experts to examine the draft European Convention on compulsory motor insurance as approved by the Assembly and that the Governments of Member States should proceed to the signature of the Convention at an early date;

2. that, by virtue of the resolution adopted by the Committee of Ministers during their ninth session in August 1951, for the signature of partial agreements, the Committee of Experts should be set up at least among those States which have not yet adopted compulsory motor insurance and those which are prepared to harmonise their laws on this subject;

3. that, should the Committee of Experts find it necessary to make important changes in the Convention adopted by the Assembly, an exchange of views should take place between the appropriate Sub-committee of the Assembly Committee on Legal and Administrative Questions, on the one hand, and the Committee of Government Experts or a Sub-committee thereof, on the other hand;

4. that the final draft of the proposed European Convention should be communicated to the Assembly for an opinion before being finally approved by the Committee of Ministers.

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1. See Doc. 560..

B. Report

1. INTRODUCTION

1. In paragraph 87 of its Special Message of 20th May 1954 (Doc. 238), the Committee of Ministers announced its intention of instituting a study of the possibilities of unifying or harmonising the laws of Member States and added that it would welcome the Assembly's proposals in this matter. In reply, the Assembly stated in paragraphs 29 to 33 of Opinion No. 12 that it did not believe it practicable to lay clown a general and systematic plan to this end but that the method most likely to lead to satisfactory results was for the Council to take as a basis the needs encountered in practical life and to make use of such preparatory work as might have been done elsewhere. The Assembly went on to express the opinion that three draft uniform laws prepared by the Rome Institute for the Unification of Private Law were of sufficient interest for a study to be undertaken to determine whether the relevant laws of the Members of the Council of Europe could be unified. One of the three draft laws concerns compulsory motor insurance. In accordance with what it believed to be the wishes of the Committee of Ministers, the Assembly requested its Committee on Legal and Administrative Questions to undertake a study of the three draft uniform laws

2. The Committee set up Sub-committees on each of the subjects. Sub-committee No. 5 on compulsory insurance for motorists held its first meeting on 15th April 1955, at the Rome Institute. At that meeting, which was attended by the Secretary-General of the Ins-titute, M. Matteucci, and Professor Baldi, an expert from the Institute in this field, the Sub-committee elected M. Azara as its Chairman and M. von Merkatz as its Rapporteur.

3. TOn 7th January 1955, three months before the meeting of the Sub-committee, Belgium, Luxembourg and the Netherlands signed in Brussels a Treaty on compulsory third party insurance for motor vehicles (Doc. AS/JA V (6) 5) to which are attached common provisions on the subject. These provisions are based on the draft prepared by the Rome Institute (AS/JA V (6) 2). As the Treaty and its Annexe have already been signed by three Member Governments of the Council of Europe and represent a certain amount of progress as compared with the original draft of the Rome Institute, the Sub-committee decided to take them as a basis for its work. After a first reading of the common provisions embodied in the Annexe to the Treaty, the Sub-committee instructed its Rapporteur to study the Treaty, to consider, in the light of the views expressed at the meeting, whether it needed amending to make it acceptable to other Member States, and to prepare for submission to the Sub-committee a report containing any other proposal he might deem useful.

4. This report (Doc. AS/JA V (7) 2) was examined by Sub-committee No. 5 at a second meeting, held at the headquarters of the Rome International Institute for the Unification of Private Law on 26th and 27th March 1956. MM. Matteucci and Baldi were again present. The Sub-committee approved the report subject to a few amendments. It was then submitted to the full Committee, which gave it a first reading at a meeting in Paris on 27th and 28th September 1956, and a second reading in Strasbourg on 16th October 1956. The Committee made several amendments. This report was unanimously adopted.

2. GENERAL CONSIDERATIONS

5. The ever-growing use of motor vehicles has resulted in a considerable increase in the number of accidents, and it appears necessary to protect the victims of such accidents and to ensure that they receive proper compensation in the event of injury or damage. This is a social problem whose importance should not be underestimated. Difficulty in obtaining fair and equitable compensation is most often experienced by persons of limited means. It is sometimes impossible to overcome this difficulty in the case of damage or injury caused by motorists from abroad.

6. Furthermore, in many countries the number of victims of road accidents greatly exceeds that of victims of industrial accidents. It is not therefore surprising that insistent demands of a social nature are being raised everywhere for the compulsory insurance of the civil liability of motorists, since there is no doubt that mechanically-propelled motor vehicles represent one of the greatest dangers to society of our time. Age or invalidity precludes from working— and, consequently, from incurring occupational risks—all those persons, who for various reasons, do not belong to the so-called working population. But very few persons are immune from the risk of road accidents.

7. Then, again, motorists responsible for injury or damage sometimes are required to meet claims beyond their means and which may lead to their financial ruin. Motorists responsible for causing damage abroad are sometimes liable to have their car and personal effects seized by the Court.

8. IIn order to remedy this state of affairs, it would be desirable for all countries to introduce compulsory insurance of motorists against third-party risks. Taking the view that such a measure would also facilitate motor tourist travel between European countries, the Assembly recommended to the Committee of Ministers that Member States in which insurance against third-party risks was not already compulsory should consider making it so. [Section D (2) of Recommendation 59 (1954)]. In paragraph No. 8 of its Resolution (55) 8, the Committee of Ministers endorsed this recommendation by the Assembly.

9. According to information received, the present position in member countries of the Council of Europe is as follows :

Belgium

Insurance is compulsory for several categories of national and foreign motor vehi-cles, such as taxis, buses and most lorries. Generally speaking, private cars and motorcycles are exempt from compulsory insurance; the question of making them liable to compulsory insurance is, however, under consideration.

Denmark

Insurance is compulsory for all motor vehicles, whether national of foreign, and for persons and goods carried for reward.

France

Insurance is compulsory for taxis and vehicles belonging to public carriers, and for civil servants using their own vehicles in the performance of their duties. It is also compulsory for vehicles taking part in automobile competitions. A Government bill for making insurance compulsory for all motor vehicles was recently tabled in the National Assembly.

Federal Republic of Germany

Insurance is compulsory for motor vehicles registered in the Federal Republic. A law has now been passed in the Federal Republic of Germany extending the obligation for compulsory insurance to motor vehicles registered abroad. The law provides that motor vehicles not habitually located in the Federal Republic of Germany shall not be allowed to be used there unless insured against the risk of injury or damage caused to persons and property. The necessary insurance must be taken out with an insurer authorised to do business in the Federal Republic. It may, however, be taken out with an insurer not so authorised if an insurer or insurance company authorised to do business in the Federal Republic directly assumes the obligations incurred by the insurer with whom the insurance is taken out. The driver of the vehicle must be in possession of a certificate from the insurer to the effect that such insurance has been taken out. This law will come into force on 1st January 1957.

Ireland

Insurance is compulsory for all national and foreign motor vehicles. It must also cover passengers carried by buses for reward.

Italy

Insurance is not compulsory. A bill has, however, been prepared to make it so.

Luxembourg

Insurance is compulsory for all motor vehicles, whether national or foreign; passengers must also be covered. The deposit of a surety may, however, be made which is equivalent to the amount fixed for compulsory insurance.

Norway

Insurance is compulsory for all national and foreign motor vehicles; it may, however, be replaced by a deposit or declaration of surety.

Saar

Insurance is compulsory only for vehicles registered in the Saar.

Sweden

Insurance is compulsory for both national and foreign motor vehicles in respect of bodily injuries alone. This, however, includes injuries sustained by passengers.

United Kingdom

Insurance is compulsory for all national and foreign motor vehicles in respect of personal injury only, including that of passengers carried for reward. The insurance may be replaced by a deposit or deed of surety.

10. Having regard to the increasing use of motor vehicles and the proximity of the countries of Europe to one other, compulsory insurance raises problems beyond the limits of national legislation. To avoid having different laws on the matter in different countries, national legislation should be standardised. This might also strengthen the links between Members of the Council. The example of the Benelux countries shows that such harmonisation is possible.

11. The International Institute for the Unification of Private Law has concerned itself with this problem since 1934. The results of its work were examined by a Working Party of the Road Transport Sub-committee of the Economic Commission for Europe, which did not, however, take the matter any further. On the other hand, it recommended the introduction of a uniform insurance card, called a " green card ". Under this scheme a network of offices has been set up in the participating countries and the offices in the country visited assume, with regard to the use of the vehicle described on the " green card ", the responsibilities of insurer under the terms of domestic legislation on compulsory insurance. The scheme has been adopted by all Member States of the Council of Europe, except Greece, Iceland and Turkey. In its Recommendation 59 (1954) the Consultative Assembly recommended that these countries, too, adopt the " green card " system; this part of the Assembly's Recommendation was not included by the Committee of Ministers in its Resolution (55) 8.

12. Although the introduction of the " green card" must be considered a very great advantage, it appears that the system is not wholly satisfactory in some countries, particularly France, Italy and the Federal Republic of Germany. The reason why the " green card" system does not work satisfactorily in those countries is that France and Italy have not yet agreed to compulsory insurance, and the law introducing such insurance in the Federal Republic for vehicles registered abroad has not yet come into force.

13. The " green card " enables foreign motorists to be suitably insured against third-party risks when they enter a country in which such insurance is compulsory. In such cases, whatever the general or particular conditions of the insurance policy taken out by a foreign motorist in his country of origin, the " green card " held by him is intended to meet fully the legislative requirements concerning compulsory insurance in force in the country visited. Moreover, the central office of the country visited (called the " administrative office ") possesses wide powers for dealing with accidents, being empowered to effect settlement in accordance with the requirements of local law. Where, on the other hand, the country visited has not yet introduced compulsory insurance, the " green card " held by the foreign motorist merely shows that he has taken out an insurance policy; in such cases, the " green card" does not provide any guarantee in addition to those already laid down in the original policy; experience has further shown that such guarantees may be inadequate to cover third-party claims in the country visited. In that event, the central office in the country visited (called the " examining office") can undertake settlement of accident claims only after the office which issued the " green card " has agreed to the examination and settlement procedure. In short, it may be said that in countries which have not introduced compulsory insurance of third-party risks (civil liability) in connection with the use of motor vehicles, the " green card " system is likely to provide only an inadequate guarantee and to give rise to difficulties in the settlement of liability.

14. The " green card " system has several other drawbacks. Owing to differences in national laws, neither the insurer nor the insured person knows in advance precisely what the scope of the insurance is, since the conditions laid down in the policy are no longer decisive. This introduces a degree of uncertainty which may be reflected in the terms granted to the insured person, almost invariably to his disadvantage. Where the legal amount of insured liability is higher in a country in which the " green card " is valid than the amount stated in the insurance policy, some insurers avail themselves of this to demand an additional premium, even if the insured person does not, in fact, proceed to that country.

15. Difficulties may also arise where an injured party makes a claim against the person responsible for the accident. As a general rule, the injured party cannot take direct proceedings against the insurer. He cannot, therefore, sue the office responsible for issuing the " green card ". He must take action against the driver,

owner or détenteur of the vehicle which caused the accident. The injured party may take such proceedings in a Court at the place of residence of the above-mentioned persons or at the place at which the accident occurred. In the latter case, it will be very difficult for the plaintiff to ensure that any judgment in his favour is duly executed in the foreign country in which the defendant is domiciled. The plaintiff must apply for an exequatur to the Court at the insured person's place of residence. Since the office which issued the " green card " is, except in the case of the introduction of third parties, only required to protect the insured person against compulsory enforcement of a judgment, it may refuse payment of compensation as long as the injured party has not obtained a writ of execution in the country in which the insured person is domiciled. In that event, in order to secure enforcement of a judgment of the Court at the place where the accident occurred, the injured party will be obliged to take new proceedings in the foreign Court. He may also directly sue the insured person in that Court. Considerable difficulties will be met with in safeguarding his rights in foreign Courts, not only because of differences in language and legal systems, but also in establishing proof. The injured party will therefore be more or less compelled to accept any settlement which the office may propose to him, even though he may think it unfair.

16. The Governments of the Benelux countries, while acknowledging the usefulness of the " green card " system, of which they duly took account in paragraph 2 of Article 2 of the Common Provisions attached to the Treaty of 7th January 1956, did not consider that there was sufficient grounds for not concluding the Treaty. They took the view that the Treaty definitely went a step further than existing legislation and that uniform rules of compulsory insurance would be of real help to the victims of road accidents abroad.

17. The general adoption of compulsory insurance based on uniform principles would not only provide considerable additional protection for motor vehicles travelling abroad but would also and more especially give protection against such vehicles. This is of the greatest importance, since some of the countries in which the flow of tourist traffic in heaviest, such as France and Italy, do not give effective protection to victims of road accidents in the form of compulsory insurance. The result is that nationals of a country in which insurance is compulsory are exposed, when travelling by road in a country in which insurance is not compulsory, to the risk of being unable to obtain any compensation if the person responsible for the damage or injury is insolvent. This is the case of United Kingdom nationals travelling in France or Italy. It seems obvious that a country which has adopted compulsory insurance as a means of protecting road users, including aliens, should wish to ensure that the same protection is granted to its own nationals in other countries.

18. Although the unification or harmonisation of the rules relating to the compulsory insurance of motor vehicles would undoubtedly be an immense improvement upon present conditions, it should be borne in mind that some countries might have difficulty in adopting such procedure, either because they were satisfied with their national laws as they stood, or because they did not accept the principle of compulsory insurance. In that event the conclusion of a partial agreement might be considered among those Members of the Council prepared to follow the example of the Benelux countries.

19. The purpose of the Benelux Treaty is not that the Contracting Parties shall introduce uniform legislation, but only that they shall adopt certain common regulations considered as adequate. All vehicles entering a Benelux country from abroad are required to be covered by insurance in accordance with the laws of that country. This fundamental idea is expressed in two places in the Benelux Treaty (at the end of Article 2 of the Treaty and in paragraphs 1 and 2 of Article 2 of the Annexe to the Treaty). The Contracting Parties undertake to introduce a law governing compulsory third-party insurance for motor vehicles, which would comply with the provisions of the Annexe to the Treaty (paragraph 1 of Article 1 of the Treaty). They retain, however, the right to replace any of the provisions by others affording greater protection to injured parties (paragraph 2 of Article 1 of the Treaty). If stricter legislation is introduced in the territory of a Contracting Party, motorists from the other States would be governed by it, under the rule that their insurance must comply with the requirements of the law of the Contracting Party through [whose territory the journey is made. The ; Contracting Parties retain the right to waive to some extent the Common Provisions contained in the Treaty (Article 2 of the Treaty); nevertheless, derogations by way of laws or regulations promulgated by a Contracting Party by virtue of this option shall be valid only in the territory of that Party. As a result, a number of reservations have been made in connection with the amounts insured, exemptions granted and similar matters.

3. TEXT OF THE COMMON PROVISIONS ATTACHED TO THE BENELUX TREATY AND COMMENTARY

20. As the Treaty has already been signed by three Member Governments of the Council of Europe, the Committee on Legal and Administrative Questions only proposes amendments when they are considered essential.

ARTICLE 1

" For the purposes of this law :

the term " motor vehicles " shall mean : vehicles which can be mechanically propelled otherwise than on rails; trailers, whether coupled to the vehicle or not, are deemed to be a part of the vehicle;

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

the term " injured parties " shall mean: persons who have suffered damage giving rise to the enforcement of this law, likewise their beneficiaries ;

the term " insurer " shall mean: the insurance undertaking approved by the Government in accordance with Article 2, paragraph 1, or, in the case of Article 2, paragraph 2, the Bureau entrusted with the settlement of damages caused in Belgium (the Netherlands, Luxembourg) by vehicles normally used abroad. »

This article contains the definitions.

a. The term " motor vehicle " is taken in a wide sense, having in view the possible development of the production and transmission of mechanical energy without the use of a motor or without the exercise of traction or propulsion. The only means of propulsion it excludes is muscular efforts; it does comprise pedal-assisted vehicles (motorised bicycles), which are thus subject to compulsory insurance. In common with the draft of the Rome Institute and the greater part of national legislation on the subject, the text excludes vehicles travelling on rails. With this sole exception, all motor vehicles are normally subject to compulsory insurance, including those limited to low speeds. The only vehicles not subject to compulsory insurance (see Article 2 below) are those which are not intended for use on the public highway or on ground open to the public. It should be noted that, in certain countries as, for example, Germany, the law allows exemption from compulsory insurance on grounds of the low maximum speed or the nature of the vehicle or both. Such exceptions are allowed under Article 2, paragraphs 2 and 3, of the Treaty in the case of vehicles not considered to be dangerous or vehicles owned by public authorities or by certain public utilities. Article 1 of the Common Provisions states that trailers are deemed to be part of the vehicle. If this were not the case it would be necessary in every accident to determine whether the damage was caused by the vehicle as such or by the trailer. The text rules out this complication. The object insured will be the vehicle as denned in the text, i. e. with trailer, if any, and responsibility arising from the use of the trailer shall compulsorily be covered by insurance.

b. The definition of the term " assured " includes any person whose liability is covered in whatever capacity, Avhether owner, person in charge or driver.

c. The term " injured party" is understood to mean any person who has suffered bodily injury or damage to property. According to Article 3, paragraph 2, of the Joint Provisions, the scope of the insurance must include damage to persons or property. Taking one text with the other, it follows that a person whose property has been damaged is considered to be an injured party. The definition includes not only the person directly affected by the accident, but all persons who under the applicable law may bring a claim on their own behalf or on behalf of the victim.

d. The definition of the insurer makes reference to Article 2 and includes two alternatives :

1. (i) an insurance company approved by the Government of the country in which circul-tion of the vehicle has been authorised. This definition implies not only the country where the vehicle is registered but any other contracting country in which it is used; or
2. (ii) an office for the issue of international insurance certificates (" green card ", see paragraph 11 above) if approved by the Government of the country in which the foreign vehicle is used.

In order to adapt the last paragraph of Article 1 for application by other member countries of the Council, the words " in Belg-gium (the Netherlands, Luxembourg) " in this text should be replaced by " on the territory of a High Contracting Party ".

ARTICLE 2

21. " No motor vehicles may be used on the public highway, in grounds open to the public and in private grounds to which certain persons have right of access, unless civil liability to which it may give rise is covered by an insurance policy complying with the provisions of this law.s. The obligation to effect the insurance rests with the owner of the vehicle. If another person has effected such insurance, the obligation of the owner is suspended for the duration of the contract entered into by that other person. Insurance must be effected with an insurer duly approved by the Government.

22. Notwithstanding the foregoing, motor vehicles normally stationed abroad may be used in Belgium (the Netherlands, Luxembourg) upon presentation of a certificate delivered by a Bureau established for the issue of international insurance certificates, provided that the Bureau for the settlement of damages caused by such vehicles in Belgium (the Netherlands, Luxembourg) assumes direct responsibility towards injured parties for damages in accordance with the provisions of this law and has been approved for this purpose by the Government. "

According to the first sub-paragraph of paragraph 1 of the above Article, vehicles used on the public highway, on ground open to the public and on private ground to which certain persons have right of access, are subject to compulsory insurance. As stated in the report accompanying the Rome draft, protection of the public must extend to accidents occurring in such places as harbours, goods stations, inner yards of factories or shops or other places to which certain members of the public have access.

According to the second sub-paragraph of paragraph 1, the obligation to effect insurance falls solely upon the owner of the vehicle. Here the text differs from the Rome draft, in which the owner or person in charge is under obligation to effect an insurance. The term détenteur, Halter (person in charge) is derived from German and Swiss legislation and denotes a person who has the power, de facto and de jure, of disposing of the vehicle. The drafters of the Treaty found this notion insufficiently precise and introduced a more complicated system, whereby the obligation to effect an insurance lies with the owner, but he is exempt if some other person has done so. They saw no major objection to this system since the insurance must cover the liability of everyone concerned (Article 3), the injured party has a claim against the insurer (Article 6) and the latter may not hold against him any point of invalidity or avoidance (Article 11).

Yet the arrangement is not entirely satisfactory. The legal owner of the vehicle has not necessarily the power to dispose of it and control its use. For example, when the vendor of a motor car retains ownership until the purchase price has been paid in full, he should not be under the obligation to insure. The same applies if the vehicle is hired or loaned. In such a case, the owner may of course ask the person who has the use of the vehicle to contract an insurance. But, if that person fails to do so, the owner remains responsible and liable to prosecution under penal law (Article 8, paragraphe 1 of the Treaty). Moreover, if the vehicle is not insured, the injured party will have difficulty in obtaining compensation.

For the above reasons, it would seem proper to amend the second sub-paragraph of paragraph 1 as follows :

" The obligation to effect the insurance rests with the owner of the vehicle, or in default with the person who is normally entitled to use it. "[2]. »

This formula would be on all fours with German law and also the English common law, under which the person considered to have control of the vehicle is the person who has the disposal of it and the power to say where and how it shall be used.

The third sub-paragraph stipulates that, in order to satisfy the requirements of the first paragraph, insurance must be effected with an insurer approved by the Government of the country in which use of the vehicle has been authorised.

If a vehicle is discovered to be uninsured, it will be ordered off the road and the driver (and if different, the owner or other person having lawful possession of the vehicle) will be liable to prosecution (Article 8 of the Treaty). However, the owner or other person responsible for the vehicle is exonerated if a motor car which there was no intention to use on the roads has been taken from him without his knowledge; he cannot then be charged with neglect to insure.

The second paragraph of Article 2 is concerned with the " green card " arrangements (see paragraph 11 above).

Generally speaking, foreign-registered vehicles must satisfy the same legal requirement as vehicles registered in the visited country. They must be insured by an insurer approved by the Government of that country, or be covered by an international insurance certificate issued by an approved office which is legally liable for damages. However, such vehicles can be admitted to the country visited on production of the certificate delivered by one of the Bureaux authorised to issue international insurance certificates, subject to the following two conditions: first, that the Bureau itseif assumes responsibility for any damage caused, in accordance with the laws of the country visited, and, secondly, that the Bureau is is approved by the Government of that country.

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2. The amendment is indicated in italics.

It follows that the injured party is guaranteed compensation either by an insurance company established in the country and approved by its Government, or by an office established in the country and approved by its Government.

Under Article 6 of the Treaty, the Contracting Parties are required to make whatever common arrangements may be expedient for the enforcement of compulsory in-surance and the recovery of damages, in particular, by promoting the establishment of offices for the issue of international insurance certificates

The words " in Belgium (the Netherlands, Luxembourg) " in paragraph 2 of Article 2 should be replaced by " on the territory of a High Contracting Party ".

ARTICLE 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 acquiring the vehicle by theft or violence.

The scope of the insurance must include damage suffered by persons or property as a result of accidents occurring in Belgium (the Netherlands, Luxembourg). It must also include damage or injury caused by the vehicle responsible for the damage to passengers travelling in whatever capacity. Goods and property carried by the vehicle need not be insured.

The insurance must cover such civil liability for damage caused by the motor vehicle as arises from the applicable law. "

This Article deals with the extent of the cover provided by the insurance.

According to the first paragraph, the insurance policy must cover the liability not only of the owner but of any other person in charge of the vehicle (e. g. hirer, borrower or bailee). It must cover the liability of all drivers even if the vehicle is being used for unauthorised purposes. The only liability excluded is that of a person who has acquired a vehicle by theft or violence. In the Committee's view, the term " theft " should be taken in a wide sense. It should cover not only ordinary theft but also unauthorised borrowing, i. e. taking away a vehicle with no intention of retaining possession of it (for example stealing a car for a short run). The Committee therefore proposes that the word " theft" should be followed by the words " of property or through usage ".

The question has been raised whether possession by fraud should be included, but this would narrow the field of protection for injured parties, and, since fraud is sometimes difficult to establish, disputes might arise which would have to be settled in court. It has therefore been thought preferable to keep the present text.

Under the terms of this Article, the insurance must meet claims by the assured, whether or not he is at fault. But it is understood that the policy may stipulate that the insurer may take proceedings against the assured if he is at fault (Article 11). Furthermore, the assured, the driver and all those whose civil liability is covered by the policy, their spouses, parents and close relatives may be excluded from benefit under the policy (Article 4, paragraph 1). This provision has been included as a precaution against fraud on the part of the assured. Goods and property transported by the vehicle causing the damage may also be excluded from the insurance policy.

In view of the fact that, in several countries, particularly the United Kingdom and Sweden, insurance is not compulsory against liability for damage to property, it might be considered whether the text of the Treaty should allow Contracting States to make a reservation in this respect.

In the second paragraph, the words " on the territory of the High Contracting Parties in which the insured vehicle is used " should be substituted for the words " in Belgium, the Netherlands and Luxembourg. "

The third paragraph specifies that the insurance must cover such civil liability for damage caused by the motor vehicle " as arises from the applicable law. " Risks in regard to civil liability vary from country to country both as regards the principle accepted and compensation for damage. This being so, the insurance must cover the liability of the insured under the law which applies. This will generally be the law in force in the place where the accident occurs but cases may occur where, in accordance with the rules of private international law, the law of another country might be applicable. The expression " applicable law" is therefore not sufficiently clear. To avoid all doubt, the Sub-committee thought it advisable to state in this clause that the law in force in the place where the accident occurs should apply. It is suggested that the words " applicable law " be replaced by the words " law in force at the place where the accident occurs. "

ARTICLE 4

" Paragraph 1. The following may be excluded from the benefits of the insurance :

1. the driver of the vehicle causing the damage, the holder of the policy and all persons whose civil liability is covered by the policy
2. spouses of the persons mentioned above and their relations including relations by marriage, provided that they reside with them and are dependent on them for their maintenance;
3. beneficiaries of special laws concerning damages arising from employment injury, except insofar as such persons retain the right to sue the assured for civil liability.

Paragraph 2. The following may be excluded from the insurance : damages resulting from the participation of the vehicle in authorised races or competitions, whether for speed, reliability or skill. "

The text follows the practice of certain countries in specifying the risks which may be excluded from the insurance.

Paragraph 1 specified persons who may be excluded from benefit. The object of the first two sub-paragraphs is to prevent collusion between the injured party and the insured; they entitle the insurer to insert a clause in the policy to protect himself in a case where damages caused by another agency are fraudulently represented as being caused by the vehicle.

Sub-paragraph (3) is concerned with persons benefiting under special laws on compensation for industrial injury and is designed to prevent such persons from benefiting under two insurances : the compulsory insurance stipulated by the Treaty as well as a social insurance scheme. But it is understood that such exclusion shall be without prejudice to the insured, who can claim protection under his policy insofar as such persons still have the right, under the rules governing civil liability, to sue him for damages; it is precisely this protection which is the object of compulsory insurance

Paragraph 2 enables damages caused during races or trials of speed, regularity or skill, to be excluded from the insurance.

Nevertheless, it is stipulated in Article 3 of the Treaty that such races and trials shall be subject to official authorisation, which is granted only if the promoters and the persons referred to in Article 3 of the Common Provisions are covered against third party risks by a special insurance complying with the conditions laid down in the Treaty and Annexe.

Article 3 of the Treaty therefore reintroduces, and even tightens up, compulsory j insurance for races and competitions. It does j not therefore seem necessary to require the j owner of the vehicle or the person who is authorised normally to use it to effect a second insurance covering the same risks. Hence Article 4, para. 2 can stand. The Committee proposes, however, that the words " the insurance " in the first line of this paragraph should be replaced by the words " ordinary insurance policies " so as to avoid any confusion between the special insurance provided for in Article 3 of the Treaty and the ordinary insurance referred to in Article 3 of the Common Provisions.

ARTICLE 5

" Shoul d it be stipulated in the policy that the assured shall himself make a contribution towards settlement of the damages, the insurer shall nevertheless remain liable to the injured party for such part-settlement. "

This Article deals with the question of personal part-liability. It presupposes that the injured party has a personal claim against the insurer in consequence of Article 6. In some countries the law relating to compulsory insurance makes it obligatory to include in the policy a clause stipulating that the insured shall make a certain contribution to the settlement of the damages. In other countries the claim for damages must be met in full; the law even prohibits personal part-liability in whole or in part. The Treaty has not fallen in line with the laws which oblige the insured person to make a personal contribution, but it goes so far as to authorise the persons concerned to insert a clause to this effect in their policy. The insurer cannot plead " personal part-liability" against the injured party, to whom he is liable for the whole sum assured. This clause is necessary in order to safeguard the position of the injured party.

To make matters clearer, the Com-mittee proposes that after the words " injured party " the words " for the whole of such clam-ages " should be inserted instead of " for such part-settlement. "

In view of the fact that the provisions of Article 5 are based on the personal claim against the insurer conferred by Article 6 upon the injured party, the question has been raised whether the order of these Articles should not be inverted. The Committee, however, has preferred not to propose such a change, which would result in an unnecessary discrepancy between the text already adopted by the Benelux countries and the text proposed for the member countries of the Council of Europe.

ARTICLE 6

" The insurance shall confer upon the injured party a personal claim against the insurer.

Should there be more than one injured party and should the total damages 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 his proper share shall be accountable to the other injured parties only for the remainder of the sum insured. "

The first paragraph of this Article lays down the principle that the insurance gives the injured party a personal claim against the insurer. This is an innovation derived from the draft of the Rome Institute, and departs entirely from the traditional conception of insurance against third-party risks. It corresponds, at least to a certain extent with the actual situation. When an accident occurs, negotiations concerning damages generally take place between the injured party and the insurer. Compulsory insurance of the motorist against liability is not primarily intended to protect the assured against financial loss; it is, first and foremost, a means of protecting the injured party. It should be noted that Swedish and Swiss law expressly provide that the injured party may sue the insurer direct.

In other countries the law has created a privilege for victims of accidents in general. These provisions are considered inadequate both as regards the substance of the law and procedure. The system adopted in the Treaty presents certain advantages as against any other system of legal privilege for the victim in respect of the damages payable by the in-surer to the assured. It is simpler and ensures prompt reparation. The insurer becomes the debtor of the injured party. A payment made by the insurer to the assured cannot be considered as discharging all liability towards the injured person, as payment must legally be made direct to the creditor.

The system adopted in the Treaty is that a direct action lies by the injured party against the insurer; it is a way of recognising in procedure the personal right of the injured party.

It should not be overlooked, however, that certain countries might hesitate to introduce in their legislation provision for direct claims by the injured party against the insurer. Such a change might seem revolutionary, particularly in countries which have not yet adopted the principle of compulsory insurance. It would be wise, therefore, to provide for the possibility of excluding direct responsibility of the insurer vis-a-vis the injured party in the case of damage caused by motor cars registered in the country where the accident took place..

Adopting the principle of No. 1 of the General Provisions of the preliminary draft by the Rome Institute on compulsory insurance for motorists (see Doc. AS/JA V (6) 2), it is proposed to insert in the draft Convention an Article 8 (a) under which the Contracting Parties would be allowed to limit the application of the clauses governing the right of the injured party against the insurer to cases of an international character, which would be determined by the place of registration of the vehicle. Contracting Parties will have the right to restrict the application of Articles 5, 6, 7, 9 (3rd paragraph), 10, 11 and 13 of the Common Provisions to cases where a vehicle registered in one country is involved in an accident in another..

Thus, the direct liability of the insurer could be limited to damages caused by foreign vehicles. In such cases, the injured party would not need to bring proceedings before the courts of another country but could sue directly the insurer approved by the Government of the country where the accident took place. Generally speaking, the action would be brought against the office set up for the issue of international insurance certificates (cartes vertes). The optional clauses of the proposed Article 8 (a) would therefore corres-pond with Article 2, paragraph 2, of the Common Provisions.

It is clearly understood that the personal claim against the insurer conferred on the injured party by Article 6 does not nullify the latter's claim against the person incurring civil liability for the damage caused. This follows naturally from Article 9 of the Common Provisions, which pre-supposes proceedings by the injured party against the assured, namely the owner, driver or person in charge of the vehicle (Art. 3 of these provisions). The injured party therefore has a choice between proceedings against the insurer or the assured. He may also sue them jointly, but he may not twice demand payment of the same compensation.

The second paragraph of Article 6 assumes that the sum insured will be limited. It may be that the amount of the damages caused will exceed this sum. If there is only one injured party no difficulty will arise, since his claim will be limited by the amount payable under the policy. But it will be a different matter if there are several victims, or several persons entitled to claim damages on their own or the victim's account. In such a case, the insurer will proportionately reduce the share of each claimant in the total sum insured. He shall, however, be deemed to have discharged his liability in regard to injured parties of whose claims he was not aware, insofar as he has in good faith discharged his liability to the others.

ARTICLE 7

" When invoking the terms of this law, the injured party may institute proceedings against the insurer in Belgium (the Netherlands, Luxembourg) either before the court of the place where the accident occurred, or before the court of his own place of domicile or before the court of the place at which the insurer has his headquarters. "

The purpose of this Article is to help the injured party to secure his rights by giving him a choice of three courts : that of the place where the accident occured, that of his own place of domicile and that of the place at which the insurer has his headquarters. The Treaty is only concerned with accidents in Belgium, Netherlands and Luxembourg. This follows from the general structure of the Treaty and from Article 3 of the Common Provisions, which defines the scope of the compulsory insurance scheme.

As regards the competence of the judge of the place of domicile of the injured party, it has been pointed out that this clause would cause no difficulty in the Benelux countries, which are immediate neighbours, but might cause difficulty in the other member countries of the Council of Europe. For instance, a person domiciled in London might be the victim of an accident in Athens, in which case under the system of this treaty, the injured party could bring an action against the Greek insurer in a British court at London. This would seem to be neither equitable nor practical. It would suffice if the injured party could choose between the court of the scene of the accident or the court of the place in which the insurer has his headquarters. Furthermore, the words " in Belgium (the Netherlands, Luxembourg) " seem superfluous as the Treaty and its Annexe apply only to the territories of the High Contracting Parties. It is therefore proposed that Article 7 be worded as follows :

" When invoking the terms of this law, the injured party may institute proceedings against the insurer either before the court of the place where the accident occured or before the court of the place where the insurer has his headquarters. "

ARTICLE 8

" The assured persons must report to the insurer all accidents of which they have knowledge. The holder of the policy must supply the insurer with all information and documents prescribed by the policy. Assured persons other than the holder of the policy must supply all information and documents required by the insurer, at the request of the latter.'"

When conducting his defence against the injured party, the insurer must be able to rely on the assistance not only of the holder of the policy, but also of all the other assured persons.

The Committee considers this provision useful but not essential. Indeed, the relevant laws or the insurance policies already contain detailed clauses concerning the obligation- of the assured person or the holder of the policy to supply the insurer with all the necessary particulars as soon as possible. The policies also prescribe penalties for non-fulfilment of this obligation, including loss of benefits under the insurance. However, in such cases the insurer, by virtue of Article 11 of the Common Provisions, remains liable for the payment of damages to the injured party; all he may do is to take action against the holder of the policy.

ARTICLE 9

" A judgment pronounced in a dispute arising from damage caused by a motor vehicle may be cited against the insurer, the insured or the injured party only if they attended or were summoned to the proceedings.

Nevertheless a judgment pronounced in a suit between the injured party and the assured may be cited against the insurer, if it is clear that the proceedings were, in fact, conducted by him.

The insurer may implead the assured in proceedings instituted against him by the injured party.

The action brought against the assured by the injured party must not lend itself to fraud against the insurer. Similarly, a judgment pronounced in a suit between the injured party and the insurer must not be cited against an assured person not implicated in the proceedings.

Paragraph 1 of this Article is a simple application of ordinary law : res judicata cannot apply to a person who was not present at the proceedings.

Paragraph 2 refers to a generally accepted practice whereby third-party insurance covers the costs of the assured person's defence against the injured party—the insurer takes charge of the defence and may even conduct the proceedings although, in law, he is not a party. It would not be fair, in these circumstances, that the insurers should be able to maintain that he was not a party to the proceedings and that the judgment could not be cited against him.

The final paragraph explains that the insurer may implicate the assured in the proceedings. This gives the insurer a means of preventing fraud

ARTICLE 10

Any action by the injured party against the insurer, arising from this law, shall be barred after three years have elapsed since the time of the accident.

Any action which interrupts the period of limitation governing proceedings by the injured party against the assured shall likewise interrupt the period of limitation governing his proceedings against the insurer. Any action which interrupts the period of limitation governing proceedings by the injured party against the insurer shall likewise interrupt the period of limitation governing his proceedings against the assured.

The period of limitation shall be interrupted in respect of the insurer by any negotiations between the insurer and the injured party. A further period of three years shall take effect immediately one of the parties has informed the other, by writ or by registered letter, that he has broken off the negotiations. "

This Article deals with the period of limitation governing proceedings by the injured party against the insurer. The latter must not be exposed to legal action too long after the accident has occurred. The three year time-limit laid down in paragraph 1 of Article 10, may be regarded as adequate. In Germany, action by the injured party against the driver or the person in charge of the motor car is barred when two years have elapsed since the person entitled to compensation is informed of the damage and of the identity of the liable person. However, the difference between the two time-limits is not great enough to justify an amendment of Article 10.

According to paragraph 2, any action which interrupts the period of limitation governing proceedings by the injured party against the assured likewise interrupts the period of limitation governing his proceedings against the insurer, and any action which interrupts the period of limitation governing proceedings against the insurer likewise interrupts proceedings against the assured.

If he so desires, the person who has suffered loss or injury may in fact institute proceedings against the person who caused the accident or, in Germany, against the person in charge of the vehicle, who is the person liable in the first instance. During this period the liability of the insurer may not be barred by limitation. This also applies to interruption of the proceedings against assured persons, if the injured party first takes action against the insurer

Paragraph 3 meets a practical need. The term " negotiations " should be taken in a broad sense. It includes all correspondence and verbal negotiations concerning the rights of the injured party. The same principle is embodied in paragraph 14 of the German Road Traffic Law. However, the Committee felt that the term - pourparlers in the French text was ambiguous in this context, and therefore proposed the substitution of the term nego-ciations which has a more precise meaning. This also corresponds to the word onderhandel-ing, which appears in the Dutch text of this paragraph, and the word Verhandlungen in paragraph 14 of the German Road Traffic Law (Strassenverhehrsgesetz).

ARTICLE 11

" No point of invalidity, avoidance of forfeiture arising from the law or the insurance policy may be held by the insurer against the injured party. The insurer may reserve the right to take action against the holder of the policy and, if necessary, against an assured person other than the holder of the policy, insofar as the law or the policy gives him authority to refuse or reduce his benefits. "

The safeguards afforded to victims of road accidents under a compulsory insurance law would not be fully effective if exceptions which the insurer may hold against the assured could also be held against them. Article 11 is based on the principle of the protection of injured third parties. This principle is laid down in paragraph 158 (c) of the German law on insurance contracts. The claim of the injured party may not be invalidated on the grounds that the insured has failed to observe the terms of the insurance policy. It follows that the insurer must pay the injured party the insurance coverage even if the policy holder was in arrears with his premium, if the insured vehicle was used for other purposes than those prescribed in the policy, if the accident was due to the drunkenness of the driver, or if it was caused by a driver not authorised to drive. Likewise, the insurer must compensate the injured party in cases of non-disclosure or false declaration or when the risk has increased during the period of insurance. The injured party is therefore entitled to receive compensation so long as the event in respect of which damages are claimable comes within the scope of the policy. The insurer may only disclaim liability if the event is not covered by the insured risk : if, for instance, the assured caused the accident with a non-insured vehicle, or the injured party is excluded from the benefits of the insurance under the terms of Article 4.

It is formally stated that the insurer may reserve the right to take action against the holder of the policy, in cases where he is obliged to pay damages although able to disclaim liability under the law or the insurance policy. In spite of this clause, however, it must be recognised that Article 11 lays heavy obligations on the insurer. That is why the Contracting Parties have reserved the right, under Article 2, paragraph 5 of the Treaty, to depart from the provisions of Article 11 of the Common Provisions in matters of invalidity, avoidance and expiration. Such derogations will only apply to the territory of the State which has published them.

ARTICLE 12

" Should the ownership of the vehicle be transferred, the holder of the policy or his beneficiaries must inform the insurer of this fact within eight days. "

If the ownership of the vehicle is transferred, the rights and obligations under the insurance do not ipso facto pass to the new owner. However, the holder of the policy has only to notify the insurer of the transfer of ownership.

This provision is concerned only with relations between the insurer and the policy holder. It settles a point of detail which could have been left to the national legislations or the terms of the insurance policy. However, the Committee does not propose to delete this Article.

ARTICLE 13

" Expiration, annulment, termination or suspension of the policy or the guaranty, whatever their cause, may be invoked by the insurer against the injured party only in respect of accidents occurring at least sixteen days after the insurer has notified the authorities of the above-mentioned facts. Such notification must be sent by registered letter to the administrative authority competent to receive notifications concerning insurance covered by this law.

The time-limit shall be calculated from the day following the deposit of the registered letter with the postal authorities.

Notification may not be given earlier than :

1. the day on which the guaranty covering the assured ceases to have effect, if it is a question of suspension;
2. the day on which one of the parties notifies the other of the cancellation, termination or annulment of the policy;
3. the day on which the policy expires, in all cases not covered by paragraph (ii) above.

The insurer may not object to the injured party that the guaranty has been transferred, until sixteen days have elapsed from the day on which the competent authority has been notified by registered letter.

This Article was discussed in the Committee at length. It gave rise to some misgivings. According to this text, the insurance does not automatically expire when the ownership of the vehicle is transferred; in such cases the insurer must first notify the expiry to the competent authority and he is bound to settle any claims by the injured party for 16 days as from the date of notification. Such a legal extension of the insurance seems contrary to Article 2, paragraph 1, sub-paragraph 2 of the Common Provisions, according to which the obligation to take out insurance falls upon the new owner. The latter might take advantage of Article 13 to

postpone having to take out an insurance policy. The Article in question therefore seems to be outside the scope of the Common Provisions. Furthermore, in the United Kingdom there are no competent authorities to whom the notification it mentions could be sent.

Yet it has been pointed out that the Article fulfils the practical purpose of protecting injured parties who have otherwise no redress. Bearing in mind that Article 13 has already been adopted by the Benelux countries and that its application in the member countries of the Council of Europe might be confined, in accordance with Article 8 (a) of the proposed European draft Convention, to damage caused by foreign-registered vehicles, the Committee decided not to drop the Article in question.

ARTICLE 14

" No departures, by way of special conventions, may be made from the provisions of this law, unless the right to do so follows from the provision itself. "

The Common Provisions are binding upon the parties, the only exceptions allowed being those provided for in the text itself. Clauses in an insurance policy which restrict the rights of injured parties may not be cited against such parties.

4. TEXT AND COMMENTARY ON THE ARTICLES OF THE BENELUX TREATY

ARTICLE 1

" Paragrap h 1. The High Contracting Parties undertake, within six months of the entry into force of this Treaty, to introduce a law governing compulsory third-party insurance for motor vehicles, which shall comply with the provisions of the Annexe to this Treaty.

Paragraph 2. Each High Contracting Party shall retain the right to replace any of the provisions annexed to this Treaty by others affording greater protection for injured parties. "

The effect of this Article is that the Common Provisions do not assume force of law at the time of the entry into force of the Treaty. The Contracting Parties merely undertake within six months to introduce legislation in accordance with these provisions. They also reserve the right to enact more stringent legislation (see paragraph 19 above).

ARTICLE 2

" Each High Contracting Party shall retain the right :

1. to require the deposit of a security in lieu of insurance, in respect of such persons as it shall determine;
2. to exempt from compulsory insurance certain motor vehicles which are not considered to be dangerous;
3. to exempt from compulsory insurance motor vehicles owned by public authorities or by such public utilities as.it shall determine;
4. to determine the amount of insurance coverage;
5. to depart from the provisions of Article 11 of the Annexe in matters of invalidity, avoidance and expiration.

Nevertheless, derogations by way of laws or regulations published by a Contracting Party in conformity with the reservations listed in this Article shall be valid only in the territory of that Party and may in no wise hinder the full enforcement of the compulsory insurance law of the other Contracting Parties, through whose territories journeys are made. "

This Article specifies in what ways the States may depart from the Common Provisions,

It is proposed that the word " right " in the first sentence of this Article should be replaced by option, which is the term normally used in international treaties: the amendment does not in any way affect the substance of the provision.

The derogation mentioned in subparagraph 1 hardly seems essential. It is difficult to see why compulsory insurance should be replaced by a security in particular cases.

So far as international traffic is concerned, a security can never ensure the same mobility as an insurance document. In view of the close relations existing between insurance companies and of the facilities offered by the " green card " system, the deposit of security does not offer the same advantages as compulsory insurance either to the owner, driver or person in charge of the vehicle, or to the injured party.

Yet certain Representatives, in particular from the United Kingdom, insisted that this exception be maintained. As it is purely optional and, according to paragraph 2, would only apply on the territory of States agreeing to it, the Committee does not propose to drop No. 1.

Sub-paragraphs 2 and 3 exempt vehicles not considered to be dangerous or owned by public authorities or public utilities. Such exemptions are already a feature of certain legislations, appearing, for instance, in Article 1 of the German law of 7th November 1939 and Article 1 of the decree for the enforcement of this law (see comments on Article 1 of the Common Provisions under (a)). It seems doubtful whether there is any such thing as a " motor vehicle" not considered to be dangerous. Moreover, the exemption allowed under paragraph 2 meets a practical need and should therefore be upheld.

There arc certain disadvantages in exempting motor cars belonging to a foreign State (see comments on Article 4 of the Treaty).

With regard to sub-paragraph 4, it should also be noted that the legislation of certain countries stipulates the amount of the insurance coverage required.

As explained in the comments on Article 11 of. the Common Provisions, this Article, whereby the insurer may hold no point of invalidity, avoidance or expiration againts the injured party, severely restricts the rights of the insurer. It therefore seems justifiable that States should be allowed to depart from this rule by virtue of sub-paragraph 5.

According to paragraph 2, any departures which a State may make from the Common Provisions can only hold good in the territory of that State. Thus, a motor car registered in that State which enters the territory of another Signatory must be insured in accordance with the law of the latter State. Such insurance may be effected at the Office mentioned in Article 2, paragraph 2 of the Common Provisions (" green card " system, see paragraph 11 above).

ARTICLE 3

" I n order that the right to withhold surety authorised in Article 4, paragraph 2 of the Annexe may not cause prejudice to injured parties, thé High Contracting Parties undertake to make the holding of motor races or competitions, whether for speed, reliability or skill, subject to the authorisation of an administrative authority, which shall grant such authorisation only if the civil liability of the organisers and the persons referred to in Article 3 of the Annexe is covered by an insurance policy complying with the conditions laid down in the Annexe. "

This Article is connected with Article 4, paragraph 2 of the Common Provisions.

The words " motor races or competitions, whether for speed, reliability of skill " are understood to include rallies.

If the insurers refuse to issue a policy because the risks are too great, no administrative authorisation should be granted and the race or competition should not take place.

When a race or competition takes place on the territory of several States, a special authorisation is required from the competent authorities of each of these States. These authorisations can, however, be grante

For the sake of clarity the Committee proposes a slight emendation to Article 3, which should read as follows :

" In order that exclusion from the guarantee authorised under Article 4, para-graph 2 of the Annexe to this Convention may not cause prejudice to injured parties, the High Contracting Parties undertake to make the holding of motor races or competitions, whether for speed, reliability or skill subject to the authorisation of an administrative authority in each of the States on whose territory the race or competition takes place, which shall grant such authorisation only if the civil liability of the organisers and the persons referred to in Article 3 of the Provisions annexed to this Convention is covered by a special insurance policy complying with the conditions in those Provisions.

ARTICLE 4

" The High Contracting Parties undertake to admit to their territories, without insurance coverage, motor vehicles which carry a declaration by any of their Governments certifying that the vehicle is owned by the State. "

This Article follows up the exemption provided for in Article 2, paragraph 1, subparagraph 3 of the Treaty and is based on a widespread practice.

However, this exemption is open to certain objections. If a motor car owned by a State is used for official purposes in another State and there causes an accident, the injured party may have difficulty in securing damages. The State owning the vehicle would probably invoke immunity from jurisdiction in the courts of the country where the accident took place, whereupon the injured party would have to institute proceedings in the courts of the foreign State owning the vehicle. In several States, as for example France, the ordinary courts would not normally be competent to settle disputes of this type between individuals and the State. Thus, the injured party would be obliged to pursue the matter through administrative channels.

To remedy this situation, the State owning the vehicle should waive its immunity and submit in such cases to judgments pronounced by the courts of another State, or at any rate allow the injured party to sue it in its own courts. Although the first of these alternatives offers greater safeguards for the injured party, the States might find it difficult to accept. The Committee felt it wiser, therefore, to adopt the second alternative. In addition, it took into account the fact that according to the legislation of some States, civil liability is incurred not by the owner but by the party at fault. The Committee accordingly proposes _ that Article 4 should be re-worded as follows :

" The High Contracting Parties undertake to admit to their territories, without insurance coverage, motor vehicles carrying a certificate issued by the Government of one of the Contracting Parties to the effect that the vehicle is owned by the State concerned and that the latter accepts civil liability arising from any accident which may be caused by the vehicle; the certificate shall name the authority against whom the injured party may take proceedings. "

" In cases where the Contracting Party owning the vehicle does not incur civil liability under its own laws, it shall afford all assistance necessary to the injured party in pressing his claim against the person responsible for the accident and shall guarantee payment of any damages awarded in final recovery to the injured party by the competent court. "

ARTICLE 5

" The High Contracting Parties hereby recognise the competence of their respective courts to hear cases referred to them in accordance with Article 7 of the provisions annexed to this Treaty. "

This Article must be taken in conjunction with Article 7 of the Common Provisions, which would be too limited in scope if the States did not recognise the competence of the courts referred to therein. Should it be contrary to the rules of the other Contracting Parties to allow such competence to these courts, this circumstance may not be cited in such States as a ground for refusing res judicata or an exequatur when judgment has been pronounced in accordance with Article 7 of the Common Provisions, even though, according to their laws, the national courts would have jurisdiction in the matter

However, this Article is not entirely satisfactory, for it does not make it compulsory to enforce judgments rendered by the courts of one of the Contracting Parties in proceedings instituted by the injured party against the insurer. Failing such a clause, the injured party, having secured damages from the insurer in the court of the scene of the accident, must still obtain an exequatur from the court having jurisdiction at the place at which the insurer has his headquarters. During this second lawsuit, the insurer cannot claim that the court of the scene of the accident was not competent to judge the case, but he may raise other objections based on the law of the country in which his headquarters are situated.

In order to rule out the possibility of a second law-suit, the Convention might well stipulate that legal judgments rendered in accordance with Article 7 of the Common Provisions shall be enforced in all the contracting States. Here it is worth recalling that Article 7, paragraph 2, of the Preliminary Draft of a Uniform Law on the Civil Liability of Motorists prepared by the International Institute for the Unification of Private Law reads as follows :

" A final judgment given in pursuance of the present law shall be recognised in all the countries where the uniform law has been adopted. " (Doc. AS/JA V (6) 2, page 19)..

The Committee shared this view. It proposes that Article 5 be completed by a second paragraph, worded as follows :

" Judgments which have become enforceable in the territory of one of the High Contracting Parties pursuant to Article 7 of the Provisions annexed to this Convention, shall become enforceable on the territory of any of the other High Contracting Parties as soon as the formalities required in the State concerned have been complied with. The merits of the case shall not be the subject of further proceedings. "

This formula is based on the first sentence of paragraph 1 of Article 65 of the Berne International Convention concerning the Carriage of Passengers and Luggage by Rail, dated 25th October 1952. The Sub-committee did not think fit to prescribe that the decision of the competent judge must have become irrevocable or final before it may be made enforceable in the other Contracting States, since this requirement might cause considerable delay in obtaining an exequatur. For this reason, sub-paragraph 2 of the above paragraph of the Berne Convention was not adopted. It should also be noted that the enforcement of foreign judgments is also dealt with in Article 20 of the Rome Convention on injuries to third parties caused by foreign aircraft on the ground, dated 7th October 1952[3]How ever, the Committee preferred the wording of Article 55 of the Berne Convention.

Although the above proposal could usefully be adopted, it must be admitted that its practical application is likely to be very limited, for, under Article 2 of the Common Provisions, the insurance must be effected with an insurer or an office duly authorised for the purpose by the Government, before the motor car is allowed to take the road in the country concerned. As a general rule, the Government will only grant these facilities to insurance companies with a registered office in the country, and which can therefore be summonsed on the spot. Since the court of the scene of the accident and that of the headquarters of the insurer will then be situated in the same country, cases will seldom arise where a judgment given by the court of the scene of the accident must be enforced against an insurer abroad.

ARTICLE 6

" The High Contracting Parties shall together make whatever arrangements may be expedient for the enforcement of compulsory insurance and the recovery of damages, in particular by facilitating the establishment of the Bureaux referred to in Article 2, paragraph 2 of the Annexe.

This Article calls for no comment.

ARTICLE 7

" The High Contracting Parties undertake, each in its own territory, to establish or facilitate the establishment of a guarantee fund for the protection of injured parties, designed to make good the total or partial default of persons incurring civil liability or their insurers. "

This Article must be regarded as a very useful innovation, for it is most desirable that such funds be set up in every country. Even after the adoption of the system of compulsory insurance described in the Treaty and its Annexe, there would still be cases where victims of an accident could not obtain fair and proper compensation. That is where the guarantee fund would come in.

The same result may, however, be achieved by different means, as, for example, by an agreement between all approved insurers to accept liability for damages caused by uninsured or untraceable motorists. Each Contracting State must choose what it considers the most suitable means of protecting the interests of road accident victims. The Committee accordingly proposes to add to Article 7, after the word " insurers", the words " or to take any other equivalent measure. "

ARTICLE 8

" The High Contracting Parties undertake to take all appropriate steps to enforce the obligations resulting from the Annexe.

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3. Unofficial translation of the title of this Convention.

They undertake to introduce penal legislation covering:

1. lthe owner of a motor vehicle who drives or allows his vehicle to be driven on the public highway, in grounds open to the public or in private grounds to which certain persons have right of access, without insurance having been taken out in accordance with the provisions of the Annexe or after the insurance surety has lapsed;
2. the driver of a motor vehicle who drives or allows it to be driven in the circumstances described in paragraph 1 above;
3. the driver of a motor vehicle who is unable to produce the prescribed insurance certificate or the international certificate referred to in Article 2, paragraph 2, of the Annexe, or who fails to return a lapsed insurance certificate or international certificate although requested by the competent authority or given notice by the insurer to do so. "

This Article is mainly concerned with coercive measures that the States undertake to apply in order to make the Common Provisions more effective.

In view of the proposed amendment to Article 2, paragraph 1, sub-paragraph 2 of the Common Provisions (see Comments), it would be necessary to expand the first line of Article 8, paragraph 1 of the Treaty, as follows : " The owner of a motor vehicle or in default the person who is normally etitttled to use it... ."

If this amendment were accepted, it would be possible to delete paragraph 2 concerning drivers of motor vehicles not covered by insurance who drive such vehicles or allow them to be driven in the circumstances described in paragraph 1. This provision seems to be extremely harsh, considering that the driver of a non-insured motor vehicle may be penalised under the terms of paragraph 3.

ARTICLE 8 (a)

For the reasons given in the comment on Article 6 of the Joint Provisions it is proposed to insert in the draft Convention a new Article worded as follows :

" Any High Contracting Party may, when signing this Convention or when depositing its instrument of ratification or accession, reserve the right to limit the application of Article 5 of this Convention and of Articles 5, 6, 7, 9 (paragraph 3), 10, 11 and 13 of the provisions annexed thereto in cases where civil liability is incurred on the territory of a High Contracting Party by a motor vehicle registered in the territory of another Party. "

ARTICLES 9 TO 12

Since the Treaty is limited to the three Benelux countries, Articles 9 to 12 containing the final clauses would require slight adjustment before they could be accepted by other member countries of the Council of Europe. The proposed amendments will be found at the end of this report.

It should be noted that the term " agreement " used in paragraph 2 of Article 9 is to be understood in a broad sense. It may, for instance, refer to an informal agreement between Governments.

5. EXTENSION OF THE BENELUX TREATY TO THE OTHER MEMBERS OF THE COUNCIL OF EUROPE

The report of the Commission which prepared the draft Treaty contains the following passage

" The signatories to this Treaty believe that they have done useful work in settling this matter as between their three countries. It may not be too much to hope that other Western European countries with similar motoring risks and legal problems will one day join them. "

Moreover, in the 1955 budget debate in the First Chamber, the Netherlands Minister of Justice stated that his Government would welcome the accession of other Western European countries to this Treaty..

Probably, therefore, the Signatory Governments would agree to the extension of the treaty to other Members of the Council of Europe. However, this instrument is only intended for the Benelux States and contains no clause providing for the accession of other countries. Since a few amendments have already been proposed, moreover, it is doubtful whether the other Governments will be able to accept the Treaty and its Annexe unchanged.

To avoid this difficulty, countries might consider the conclusion of an amending protocol, providing for the accession of all Member States of the Council of Europe, and containing any amendments agreed between the Benelux Governments and the other Members of the Council. Once such a protocol had been signed and ratified by the Benelux States, the way would be open for the member countries of the Council to accede to the Treaty.

Another possibility would be the preparation of a new European Convention based on the Benelux Treaty. In this case the Benelux Governements could either abrogate this Treaty, which has not yet entered into force, or reserve the right to apply it as between themselves. It will be for the Governments to decide upon a solution to this question.

The Sub-committee would prefer the conclusion of a new convention between the Member States of the Council of Europe, since the preparation and putting into effect of a protocol to the Benelux Treaty would give rise to certain difficulties and probably cause greater delay than the adoption of a European convention. First, negotiations for the amendment of the Treaty would have to be opened between the Member States of the Council, including the Benelux countries. Then the ensuing amendments would have to be embodied in a Protocol which, having been signed by the Governments of Belgium, Luxembourg and the Netherlands, would undergo the normal procedure of ratification in those countries. It would be necessary to await ratification of the original Treaty and the Protocol by the three Benelux countries before member countries of the Council could seek parliamentary approval for their accession thereto. This would therefore constitute an extremely long and complicated procedure, which could be curtailed by signature and ratification of a new convention. Needless to say, it would be for the Committee of Ministers to decide by what method the Treaty should be amended and extended to other Members of the Council. In any case, the agreement of the Benelux countries would be essential.

A preliminary draft European Convention on compulsory third-party insurance for motor vehicles, based on the Benelux Treaty, is attached to this report.

5.1. Draft European Convention on Compulsory Motor Insurance [4]

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;

Holding it advisable to protect the rights of victims of motor accidents in their territories, by the introduction of a system of compulsory insurance;

Holding 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 regulations affording greater protection to injured parties;

Deeming it advisable, moreover, to promote, in their respective countries, the organisation of an office for the issue of international insurance certificates and the creation of a guarantee fund to make good the default of persons incurring liability or of their insurers; Have agreed as follows :

ARTICLE 1

23. The High Contracting Parties undertake to introduce, within six months of the entry into of this Convention, a law governing compulsory third-party insurance for motor vehicles, which shall comply with the provisions annexed to this Convention.

24. Each High Contracting Party shall retain the right to replace any of the provisions annexed to this Convention by others affording greater protection for injured parties.

ARTICLE 2

Each High Contracting Party shall retain the option :

1. to require the deposit of a security, in lieu of insurance, in respect of such persons as it shall determine;

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4. The amendments are printed in italics.

2. to exempt from compulsory insurance certain motor vehicles which are not considered to be dangerous;

3. to exempt from compulsory insurance motor vehicles owned by public authorities or by such public utilities as it shall determine;

4. to determine the amount of insurance coverage necessary;

5. to depart from the provisions of Article 11 of the Annexe to this Convention in matters of invalidity, avoidance and expiration.

Nevertheless, derogations by way of laws or regulations published by a Contracting Party in conformity with the reservations listed in this Article shall be valid only in the territory of that Party and may in no wise hinder the full enforcement of the compulsory insurance law of the other Contracting Parties, through whose territories journeys are made.

ARTICLE 3

In order that exclusion from the guarantee authorised under Article 4, paragraph 2, of the Annexe to this Convention may not cause prejudice to injured parties, the High Contracting Parties undertake to make the holding of motor races or competitions, whether for speed, reliability or skill, subject to the authorisation of an administrative authority in each of the Slates on whose territory the race or competition takes place, which shall grant such authorisation only if the civil liability of the organisers and the persons referred to in Article 3 of the Provisions annexed to this Convention is covered by a special insurance policy complying with the conditions in those provisions.

ARTICLE 4

The High Contracting Parties undertake to admit to their territories, without insurance coverage, motor vehicles carrying a certificate issued by the Government of one of the Contracting Parties to the effect that the vehicle is owned by the State concerned and that the latter accepts civil liability arising from any accident which may be caused by the vehicle; the certificate shall name the authority against whom the injured party may take proceedings.

In cases where the Contracting Parly owning the vehicle does not incur civil liability under its own laws, it shall afford all assistance necessary to the injured party in pressing his claim against the person responsible for the accident and shall guarantee payment of any damages awarded in final recovery to the injured party by the competent court

ARTICLE 5

The High Contracting Parties hereby recognise the competence of their respective courts to hear cases referred to them in accordance with Article 7 of the provisions annexed to this Convention.

Judgements which have become enforceable in the territory of one of the High Contracting Parties pursuant to Article 7 of the Provisions annexed to this Convention, shall become enforceable on the territory of any of the other High Contracting Parties as soon as the formalities required in the State concerned have been complied with. The merits of the case shall not be the subject of further proceedings.

ARTICLE 6

The High Contracting Parties shall together make whatever arrangements may be expedient for the enforcement of compulsory insurance and the recovery of damages, in particular by facilitating the establishment of the Bureaux referred to in Article 2, paragraph 2, of the provisions annexed to this Convention.

ARTICLE 7

The High Contracting Parties undertake, each in its own territory, to establish or facilitate the establishment of a guarantee fund for the protection of injured parties, designed to make good the total or partial default of persons incurring civil liability or their insurers, or to take any other equivalent measures.

ARTICLE 8

The High Contracting Parties undertake to take all appropriates steps to enforce the obligations resulting from the provisions annexed to this Convention.

They undertake to introduce penal legislation against :

1. the owner of a motor vehicle or in default the person who is normally entitled to use it who drives or allows his vehicle to be driven on the public highway, in grounds open to the public or in private grounds to which certain persons have right of access, without insurance having been taken out in accordance with the provisions annexed to this Convention or after the insurance surety has lapsed;
2. the driver of a motor vehicle who is unable to produce the prescribed insurance certificate or the international certificate referred to in Article 2, paragraph 2, of the provisions annexed to this Convention, or who fails to return an insurance certificate or international certificate which has become invalid, although requested by the competent authority or the insurer to do so.

ARTICLE 8 (a)

Any High Contracting Parly may, when signing this Convention or depositing its instrument of ratification or accession, reserve the right to limit the application of Article 6 of this Convention, and of Articles 5, 6, 7, 9 (para. 3), 10, 11 and 13 of the provisions annexed thereto, in cases where civil liability is incurred on the territory of a High Contracting Parly by a motor vehicle registered in the territory of another Party.

ARTICLE 9

25. Except in a case of emergency, a High Contracting Party may denounce this Convention only after the expiry of two years from the date on which it became a Party to it. Notice of termination shall be given in writing and addressed to the Secretary-General of the Council of Europe, who shall inform the other Contracting Parties; it shall take effect on the first of January following the expiry of a period of three months from the date on which notification was given by the Secretary- General.

26. Each High Contracting Party may, as an alternative to denunciation of the Convention, put forward a specific proposal for the amendment of one or more Articles of the Convention or of the provisions annexed thereto; in that case, the other Contracting Parties shall be informed in the manner described for notice of termination. The Contracting Parties shall then try to reach an agreement. Should no agreement be reached by the first of January, following the expiry of a period of three months from the date on which the Secretary-General was informed of the proposal, the Contracting Party making the proposal may amend its legislation on the lines proposed. Such amendment shall be brought to the notice of the other Contracting Parties in the same manner as the proposal. //, however, one or more of the other Contracting Parties informs the Secretary-General, within three months of the date of the notification given by him, of objections to such amendment, the Contracting Party which has amended its legislation shall cease to be a Party to this Convention.

ARTICLE 10

Ratification of this Convention shall not entail any obligation on the part of the High Contracting Parties to introduce in their overseas territories legislation complying with the provisions annexed to the Convention.

ARTICLE 11

Subject to the terms of Article 9, paragraph 2, the High Contracting Parties undertake not to conclude hereafter any treaty containing derogatory clauses.

ARTICLE 11 (a)

The Committee of Ministers of the Council of Europe may invite any non-Member State of the Council to accede to this Convention. Any State receiving such an invitation may accede to this convention by depositing its instrument of accession with the Secretary-General of the Council, who will notify all the Contracting Parties of such deposit. The State concerned shall become a Party to this Convention on the date on which it deposits its instrument of accession.

ARTICLE 12

This Convention shall be open to 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

This Convention shall come into force on the date of deposit of the fourth instrument of ratification.

Any signatory ratifying subsequently shall become a Party to the Convention on the date of deposit of its instrument of ratification.

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

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.

5.2. Common Provisions annexed to the draft Convention[5]

ARTICLE 1

For the purposes of this law;

the term " motor vehicles " shall mean : vehicles which can be mechanically propelled otherwise than on rails; trailers, whether coupled to the vehicle or not, are deemed to be a part of the vehicle;

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

the term " injured parties " shall mean : persons who have suffered damage giving rise to the enforcement of this law, likewise their beneficiaries;

the term " insurer" shall mean : the insurance undertaking approved by the Government in accordance with Article 2, paragraph 1, or, in the case of Article 2, paragraph 2, the Bureau entrusted with the settlement of damages caused on the territory of a High Contracting Party by vehicles normally used abroad.

ARTICLE 2

Paragraph 1. No motor vehicles may be used on the public highway, in grounds open to the public and in private grounds to which certain persons have right of access, unless civil liability to which it may give rise is covered by an insurance policy complying with the provisions of this law.

The obligation to effect the insurance rests with the owner of the vehicle or in default with the person who is normally entitled to use it. If another person has effected such insurance, the obligation of the owner is suspended for the duration of the contract entered into by that other person..

Insurance must be effected with an insurer duly approved by the Government.

Paragraph 2. Notwithstanding the foregoing, motor vehicles normally stationed abroad may be used on the territory of a High Contracting Parly upon presentation of a certificate delivered by a Bureau established for the issue of international insurance certificates, provided that the Bureau for the settlement of damages caused by such vehicles on the territory of a High Contracting Party assumes direct responsibility towards injured parties for damages in accordance with the provisions of this law and has been approved for this purpose by the Government.

ARTICLE 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 acquiring the vehicle by theft of property or through usage or violence..

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5. The amendments are printed in italics.

The scope of the insurance must include damage suffered by persons or property as a result of accidents occurring on the territory of the High Contracting Parties in which the insured vehicle is used. It must also include damage or injury caused by the vehicle responsible for the damage to passengers travelling in whatever capacity. Goods and property carried by the vehicle need not be insured.

The insurance must cover such civil liability for damage caused by the motor vehicle as arises from the law in force at the place where the accident occurs.

ARTICLE 4

Paragraph 1. The following may be excluded from the benefits of the insurance :

1. the driver of the vehicle causing the damage, the holder of the policy and all persons whose civil liability is covered by the policy;
2. spouses of the persons mentioned above and their relations including relations by marriage, provided that they reside with them and are dependent on them for their maintenance;
3. beneficiaries of special laws concerning damages arising from employment injury, except insofar as such persons retain the right to sue the assured for civil liability.

Paragraph 2. The following may be excluded from ordinary insurance policies : damages resulting from the participation of the vehicle in authorised races or competitions, whether for speed, reliability or skill.

ARTICLE 5

Should it be stipulated in the contract that the assured shall make a part contribution towards settlement of the damages, the insurer shall nevertheless be bound to pay the injured party for the whole of such damages..

ARTICLE 6

The insurance shall confer upon the injured party a personal right against the insurer.

Should there be more than one injured party and should the total damages 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 his proper share shall be accountable to the other injured parties only for the remainder of the sum insured.

ARTICLE 7

When invoking the terms of this law, the injured party may institute proceedings against the insurer either before the court of the place where the accident occurred or before the court of the place where the insurer has his headquarters.

ARTICLE 8

The assured must report to the insurer all accidents of which they have knowledge. The holder of the policy must supply the insurer with all information and documents prescribed by the policy. Assured persons other than the holder of the policy must supply all information and documents required by the insurer, at the request of the latter.

ARTICLE 9

A judgment pronounced in a dispute arising from damage caused by a motor vehicle may be cited against the insurer, the insured or the injured party only if they attended or were summoned to the proceedings.

Nevertheless, a judgment pronounced in a suit between the injured party and the assured may be cited against the insurer, if it is clear that the proceedings were, in fact, conducted by him.

The insurer may implead the assured in proceedings instituted against him by the injured party.

ARTICLE 10

Any action by the injured party against the insurer, arising from this law, shall be barred after three years have elapsed since the time of the accident.

Any action which interrupts the period of limitation governing proceedings by the injured party against the assured shall likewise interrupt the period of limitation governing his proceedings against the insurer. Any action which interrupts the period of limitation governing proceedings by the injured party against the insurer shall likewise interrupt the period of limitation governing his proceedings against the assured.

The period of limitation shall be interrupted in respect of the insurer by any negotiations between the insurer and the injured party. A further period of three years shall take effect immediately one of the parties has informed the other, by writ or by registered letter, that he has broken off the negotiations.

ARTICLE 11

No point of invalidity, avoidance or forfeiture arising from the law or the insurance policy may be held by the insurer against the injured party. The insurer may reserve the right to take action against the holder of the policy and, if necessary, against an assured person other than the holder of the policy, insofar as the law or the policy gives him authority to refuse or reduce his benefits.

ARTICLE 12

Should the ownership of the vehicle be transferred, the holder of the policy or his beneficiaries must inform the insurer of this fact within eight days.

ARTICLE 13

Expiration, annulment, termination or suspension of the policy or the guaranty, whatever their cause, maybe invoked by the insurer against the injured party, only in respect of accidents occurring at least sixteen days after the insurer has notified the authorities of the above-mentioned facts. Such notification must be sent by registered letter to the administrative authority competent to receive notifications concerning insurance covered by this law.

The time-limit shall be calculated from the day following the deposit of the registered letter with the postal authorities.

Notification may not be given earlier than

1. the day on which the guaranty covering the assured ceases to have effect, if it is a question of suspension;
2. the day on which one of the parties notifies the other of the cancellation, termination or annulment of the policy
3. the day on which the policy expires, in all cases not covered by paragraph (2) above.

ARTICLE 14

No departures, by way of special conventions, may be made from the provisions of this law, unless the right to do so follows from the provision itself. ,