



Implementing regulation for the Agreement between Compensation Bodies and between them and Guarantee Funds

DEFINITIONS

Agreement:

For the purposes of this agreement:

- a) “insurance undertaking”: means an undertaking which has received its official authorisation in accordance with Article 6 or Article 23 (2) of Directive 73/239/EEC;
- b) “establishment”: means the head office, agency or branch of an insurance undertaking defined in Article 2, (c) of Directive 88/357/EEC;
- c) “vehicle”: is a vehicle as defined in Article 1 (l) of Directive 72/166/EEC;
- d) “injured party”: means an injured party as defined in Article 1 (2) of Directive 72/166/EEC;
- e) “the Member State in which the vehicle is normally based”: means the territory where the vehicle is normally based as defined in Article 1 (4) of Directive 72/166/EEC;
- f) “National Insurers’ Bureau”: means the National Insurers’ Bureau as defined in Article 1 (3) of Directive 72/166/EEC.

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“**The agreement**”: the agreement between Compensation Bodies and between Compensation Bodies and Guarantee Funds of 29 April 2002.

“**Final paying body**”: the Compensation Body of the Member State in which is situated the establishment of the insurance undertaking which produced the motor Liability contract for the vehicle the use of which caused the accident, 1/25

“**Final paying Guarantee Fund**” (in accordance with Article 1(4) of Directive 84/5/EEC), i.e. the Fund of the Member State in which the accident occurred, or the Fund of the Member State in which the vehicle causing the accident is normally based.

“**Body responsible for payment**”: The Compensation Body established in the Member State of residence of the injured party who has sent it a request for compensation and which is responsible for compensating the injured party in accordance with the conditions laid down in Clauses 2 and 6

of the Agreement.

“Member state of residence of the injured party”: Member State in which the injured party has his habitual residence at the date of the accident.

“Opening a pro forma file”: file opened only as a result of enquiries which may result in a claim by the claimant. These are sent to the insurer of the person responsible without further enquiry. In all cases, steps not requiring active handling and therefore not justifying a claim for a handling fee on the part of the Compensation Body to which the claim was referred.

“Genuine act of handling”: any justified measure other than the opening of a pro forma file.

“Request for information”: any request for relevant, material and objective information sent to another Compensation Body or to a Guarantee Fund relating to the accident and allowing a correct assessment of the claim to be made; any demand for relevant information to assess the material law applicable and make it possible to establish correctly the heads of liability.

“Request for compensation”: request in writing or on any other durable medium, from the injured party and sent to the Compensation Body of the Member State in which the injured party resides, so that it may take action *(1)* in Lieu and place of the insurance undertaking which produced the compulsory motor Liability contract or his representative or a Guarantee Fund.

“Accident”: any incident having caused damage or injury which, according to the law of the country in which it occurs, may give rise to the application of compulsory liability insurance resulting from the use of any vehicle.

(1) According to the provisions of Article 6 of Directive 2000/26/EEC.

FIRST PART

SECTION I: AIM

Clause 1

The aim of the first part of this Agreement, within the framework of Article 6 of Directive 2000/26/EEC, is to define the functions and obligations of the undersigned Compensation Bodies and the procedures for reimbursement.

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The Implementing Regulation has an **interpretative value**. Any contradiction between the Implementing Regulation and the Agreement shall be interpreted in favour of the latter.

The implementing regulation is **exclusive in nature**: the Compensation Bodies and Guarantee Funds may not undertake recovery in accordance with rules differing from those laid down in the Agreement and its implementing regulation.

A- Coordination Committee is responsible for ensuring the smooth operation of the Agreement.

It shall intervene where difficulties of interpretation or loopholes arise in the application of the Agreement or IR and, in more specific cases where the latter are subject to revision made necessary because of serious practical difficulties of application which have been referred to the Committee.

It shall comprise 11 members including:

5 members appointed on a rotating basis with one member each year not being represented in the Committee from F, D, I, E, PL and UK;

1 member appointed for three years by DK, EST, FIN, IS, LT, LV, N and S;

2 members appointed for three years by B, IRL, NL, L, M and P;

2 members appointed for three years by A, CZ, H, SK, SLO and CH;

1 member appointed for three years by BG, CY, GR and RO.

Each delegation has a maximum of 2 representatives.

The chairmanship of the Committee shall be carried out by the Chairman of the Council of Bureaux if he comes from an EEA country. If this is not the case, the Chairman will be elected by the signatories of the Agreement. The Chairman will not have voting rights.

The Committee meets at the request of the Chairman, if necessary and taking into account requests expressed by members.

The Committee Secretariat shall be provided by the Secretary General of the Council of Bureaux. The costs of the Secretariat shall be shared by the signatories of the Agreement according to an agreement between them and the Council of Bureaux.

In accordance with the Chairman's instructions, the Secretariat will prepare summonses, agendas, and the minutes of Committee meetings.

SECTION II: FUNCTIONS AND OBLIGATIONS OF THE COMPENSATION BODIES

Clause 2: Functions and obligations of the Compensation Bodies

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The requests for compensation taken into consideration by a Compensation Body **must be in response** to one of the following circumstances:

- a) No response has been received by the claimant from the insurer or his representatives for a period of three months from the claim;
- b) The response to the claimant from the insurer or his representative fails to deal adequately with or fails to provide a satisfactory response to the issues raised by the claim;
- c) In the event of the rejection of a claim, no reason is given for that rejection;
- d) If the insurance undertaking has not designated a representative.

And provided that when contacted by the injured party or his representative (agent, lawyer, legal expenses company...) the claim specifies the circumstances under which the insurance undertaking of the person responsible is invited to intervene.

Clause 3 Functions and obligations of the Compensation Bodies

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- 1) The Compensation Body informs the parties specified in Clause 3.1 of the Agreement preferably by e-mail, or by fax or possibly by mail.
- 2) Within a period of two months from the date of receipt of the claim and without prejudice to the measures it might deem to be necessary in the interest of the victim(s) with a view to settling the claim and in accordance with the rules of law applicable to it, **the Compensation Body shall confine itself to investigating the request** in order to:
 - identify the insurer and to allow the latter to compensate the victim in accordance with the applicable rules.
 - or, in the event of the insurer not responding, to be able to compensate the injured party at the end of this two-month period.

Investigation of the request by the Compensation Body must take account of the **cost of measures** it deems necessary to take.

- 3) Where the claimant takes legal action against the insurance undertaking of the vehicle which gave rise to the accident, the Compensation Body will immediately refuse to intervene, or withdraw, so that the claim can be pursued by the court to which the case has been referred.
- 4) The Compensation Body responsible for final reimbursement may request all relevant information concerning the claim so that it can advise the Compensation Body handling the claim both as regards levels of compensation and the law applicable to the claim.

Similarly, the Compensation Body responsible for final reimbursement will provide every assistance to the Compensation Body handling the claim and all relevant documentation.

The obligation to assist among Compensation Bodies which are responsible for intervening is subject to prior request by the recipient of the required information. It will take place within a reasonable period (30 days maximum).

The Compensation Bodies must communicate in one of the languages specified in the Agreement in case of arbitration (English, French, German), unless otherwise agreed by the parties. This provision does not apply to appended documents.

A Compensation Body is not required to take into consideration a declaration made in another language.

Clause 4: Reimbursement procedures

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The **reimbursement** by the Compensation Body of the Member State in which is situated the

establishment of the insurance undertaking which produced the contract, of sums paid in accordance with Clause 4.1 of the Agreement to the injured party by the Compensation Body to which the claim was made, must take place within a **period of 30 calendar days of the request** (Clause 4.6) provided that the claim has been sent in by e-mail or fax and the handling fees must be paid upon final conclusion of the claim unless otherwise agreed between Compensation Bodies concerned. These are calculated at a rate of 15% of the sums paid subject to **minimum and maximum amounts of €200 and €3500 respectively**.

A **minimum handling fee** may be claimed when the claim for compensation after a **genuine act of handling** as defined by the JR has not resulted in a payment to the benefit of the injured party. A dispute over the amount or right of reimbursement does not interrupt the period of 30 calendar days.

Settlement must be made by inter-bank transfer in the currency of the receiving party, and not by bank cheque.

SECOND PART

Clause 5: Aim

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The second part of the Agreement deals with the relationship between Compensation Bodies and Guarantee Funds, where the vehicle or insurer cannot be identified.

A Compensation Body must therefore intervene:

- a) where, within the two months following the accident, it proves impossible to identify the insurer;
- b) where the vehicle that allegedly caused the accident cannot be identified.

In this context, the Compensation Body should reasonably request the claimant to produce evidence of all the means already employed to establish the identity of the insurer or the vehicle supposedly involved.

Clauses 6 and 7: Functions and obligations of Compensation Bodies and Guarantee Funds

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- **1st scenario:** In the case of an unidentified vehicle, the Compensation Body will immediately enquire of the Guarantee Fund of the Member State where the accident occurred as to the procedures to be adopted and whether a request for compensation has already been submitted directly.

- **2nd scenario:** Where the insurance undertaking could not be identified and the vehicle is normally based in the country where the accident occurred, the Compensation Body will immediately inform the Guarantee Fund of the Member State where the accident occurred to

enquire as to the procedures to be adopted and to determine whether a request for compensation has already been submitted directly.

- **3rd scenario:** Where the insurance undertaking could not be identified and the vehicle is normally based in a Member State which is different from the State where the accident occurred, the Compensation Body will inform the Green Card Bureau of the country of the accident to determine whether a request for compensation has already been submitted directly and will immediately inform the Guarantee Fund of the Member State where the vehicle is normally based.

- **4th scenario:** Where the insurance undertaking could not be identified and the vehicle is normally based in a third country and where this country is a signatory of the Multilateral Agreement, the Compensation Body will inform the Green Card Bureau to determine whether a request for compensation has already been submitted directly and will immediately contact the Guarantee Fund of the Member State where the accident occurred to enquire as to the procedures to be adopted.

Where the vehicle is identifiable, but the insurance information cannot be obtained, the Compensation Body will make enquiries of the Information Centre of its Member State or the State where the vehicle is registered in order to obtain information about the insurance.

The Guarantee Fund of the country in which the accident occurred shall provide all necessary assistance **at the request of the Compensation Body** handling the claim.

The Compensation Bodies and Guarantee Funds must communicate in one of the languages specified in the Agreement in case of arbitration (English, French or German) unless otherwise agreed by the parties. This provision does not apply to appended documents.

The Compensation Bodies and Guarantee Funds are not required to take into consideration a declaration made in another language.

Clause 8: Reimbursement procedures

IR

The **reimbursement**, either by the Guarantee Fund of the Member State of the accident or by the Guarantee Fund of the Member State in which the vehicle is normally based, of sums paid to the injured party by the Compensation Body to which the claim was made, must take place within a **period of 30 calendar days of the request** (Clause 8.6) provided that the claim has been sent in by e-mail or fax and the handling fees must be paid upon final conclusion of the claim unless otherwise agreed between the parties concerned. These are calculated at the rate of 15% of the compensation paid subject to **minimum and maximum amounts of €200 and €3500 respectively**.

A **minimum handling fee** may be claimed when the claim for compensation after a **genuine act of handling** as defined by the IR has not resulted in a payment to the benefit of the injured party.

A dispute over the amount or right of reimbursement does not interrupt the period of 30 calendar days.

Settlement must be made by inter-bank transfer in the currency of the receiving party, and not by bank cheque.

Clause 9: Arbitration

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Any disputes arising under the operation of this Agreement, where agreement by mediation has failed, shall be resolved by arbitration, adopting the **UNCITRAL arbitration regulations**.

The arbitrator's expenses and fees *are* laid down in accordance with the **appended scale**.

They are due within a period of 30 calendar days from the date of the judgment and once this period has elapsed, they will incur interest on arrears at a rate of **12% per annum**.

Clause 10: Term of the Agreement

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The Secretariat of the Coordination Committee shall inform its members of any resignation by one of its members and of cases referred to in Clause 10 of the Agreement.

Withdrawal from the agreement must be indicated by no later than 3 months before the end of each calendar year to take effect from 1 January following.

It must be accompanied by reasons.

Withdrawal must be made by registered mail with acknowledgement of receipt to the Coordination Committee Secretariat.

Arbitration Scale

1. Arbitrators expenses and fees are laid down by the Arbitration Committee in line with the amount involved in the dispute within the following limits:

From 0 to 3 000 EUR	450 EUR
From 3 000 to 7 500 EUR	15%
From 7 500 to 12 500 EUR	10% with a minimum of 1 125 EUR
From 12 500 to 25 000 EUR	7.5% with a minimum of 1 250 EUR
From 25 000 to 75 000 EUR	3% with a minimum of 1 875 EUR
From 75 000 to 125 000 EUR	2.5% with a minimum of 2 250 EUR
From 125 000 to 250 000 EUR	2.25% with a minimum of 3 125 EUR
From 250 000 to 500 000 EUR	2% with a minimum of 5 625 EUR
Over 500 000 EUR	10 000 EUR

2. These amounts include administrative costs which may be a maximum of 10% of total arbitration costs.

The following Compensation Bodies and Guarantee Funds signatories of the Agreement of 29 April 2002 are signatories of the Implementing Regulation signed in Rotterdam on 14th November 2006 et modified in Rome on 6th November 2008: