Explanatory Memorandum

to the Agreement between Compensation Bodies and Guarantee Funds (2002)

incorporating the text of the Implementing Regulation to the Agreement (2006)

Introduction

The adoption of the **Agreement between Compensation Bodies and Guarantee Funds** (hereinafter: the Agreement) was triggered by Directive 2000/26/EC and more particularly Articles 6.3. and 10[1] thereof. It was adopted on 29th April 2002 under the auspices of the *Comité Européen des Assurances* (CEA) which was the European insurance and reinsurance federation at that time and also served as a secretariat for the bodies established by the Motor Insurance Directives of the European Union. The Agreement was notified to the European Commission by letter dated 29th July 2002. As a consequence, the European Commission adopted Decision 2003/20/EC[2], fixing the date of effect of Article 6 of the above mentioned Directive on 20th January 2003. By an agreement dating from 2006, the responsibility for the secretarial services of the Guarantee Funds was transferred to the Council of Bureaux.[3]

The first signatories of the Agreement were the Compensation Bodies and the Guarantee Funds of the following EEA countries: Austria, Belgium, Germany, Denmark, Finland, France, Great Britain, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxemburg, Norway, Portugal, Sweden, Spain, and The Netherlands.
With new waves of accession to the European Union, some further Compensation Bodies and Guarantee Funds joined the Agreement by way of Addenda:

Addendum Nº 1 (signed on 1st May 2004) brought about the adherence of the Compensation Bodies and Guarantee Funds of Cyprus, the Czech Republic, Estonia, Hungary, Lithuania, Latvia, Malta, Poland, Slovenia and Slovakia.

By **Addendum Nº 2** (signed on 1st January 2007), the Bulgarian and Romanian Compensation Body and Guarantee Fund joined the Agreement.

By **Addendum Nº 3** (signed on 24th June 2013), the Croatian Compensation Body and Guarantee Fund joined the Agreement.

On 14th November 2006, the signatories at the time adopted an **Implementing Regulation** to the Agreement which was modified on 6th November 2008 so as to include all the signatories who joined the Agreement by Addendum Nº 1 and Nº 2. The Croatian Compensation Body and Guarantee Fund signed the Implementing Regulation by an Addendum to it on 24th June 2013.

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 relevant parts of the

[1] Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (Fourth motor insurance Directive) OJ L 181, 20.7.2000, p. 65–74; see explanation below in the preamble of the Agreement.

The Fourth Motor Insurance Directive was incorporated into Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability; OJ L 263, 7.10.2009, p. 11–31 (the Codified Motor Insurance Directive).

[2] COMMISSION DECISION of 27 December 2002 on the application of Article 6 of the Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC.

[3]Transfer agreement between Le Comité Européen des Assurances (CEA) and the Conseil des Bureaux of 14 November 2006.

Implementing Regulation are incorporated in this Explanatory Memorandum (indicated in *grey italics*). However, its obsolete or redundant provisions will not continue to apply (see explanation below). *Furthermore, 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.*

The Implementing Regulation also provided for the creation of a committee, named Coordination Committee that is responsible for ensuring the smooth operation of the Agreement. The Compensation Bodies and Guarantee Funds wished to ensure a common understanding of the Agreement as well as its contemporary interpretation.

On 6th November 2008, the signatories to the Agreement adopted Working Arrangements. These rules provide for the meeting of the signatories and introduce some institutional background related to the functioning of the Agreement. Furthermore, the rules on the Coordination Committee introduced by the Implementing Regulation were mostly replaced and supplemented by the Working Arrangements. Since the Working Arrangements are not elaborating the Agreement and the functioning of the Coordination Committee is not closely linked to the Agreement itself, the Working Arrangements are not included in the Explanatory Memorandum.

The signatories, by their meetings and through the Coordination Committee, continued to adopt decisions, recommendations and interpretative resolutions over the years under the aegis of the Council of Bureaux. This Explanatory Memorandum was drafted with a view to integrate these documents in order to have a comprehensive work for the interpretation of the Agreement. Those parts of the above mentioned decisions and recommendations which were not incorporated into the Explanatory Memorandum, will cease to apply.

Finally, on some occasions the signatories sought guidance from the European Commission regarding the interpretation of the rules of the EU Motor Insurance Directives having an impact on the daily application of the Agreement. These interpretative clarifications are also included in the Explanatory Memorandum.

Preamble

The undersigned:

1. *Whereas the European Parliament and Council Directive 2000/26/EC on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (Fourth Motor Insurance Directive) imposes a requirement on Member States to set up or authorise a Compensation Body responsible for intervening on behalf of the injured parties covered by article 1 of the aforesaid directive under the circumstances set out in Articles 6 and 7[4];*

[4]Article 6 and 7 of the 4th MID were replaced by Article 24 and 25 of the Codified MID (see footnote 1 above).

2. *Whereas, in accordance with the provisions in Article 6, the Compensation Body of a Member State which has compensated an injured party residing in that state shall be entitled to claim reimbursement of this compensation from the Compensation Body of the Member State in which the establishment of the insurance undertaking which produced the contract is situated;*

3. *Whereas, in accordance with the provisions in Article 7, the Compensation Body of a Member State which compensated an injured party residing in that state shall have a claim, depending on the case, against the Guarantee Fund of the Member State in which the vehicle is normally based the use of which was the cause of the accident or against the Guarantee Fund of the Member State in which the accident occurred;*

4. *Whereas, by virtue of Article 10, the entry into force of some of the provisions of the directive is subject to the conclusion of an agreement between the Compensation Bodies, set up or authorised by Member States, intended to define their tasks, obligations and reimbursement procedures;*

5. *Whereas since some Member States have not authorised as a Compensation Body the Guarantee Fund envisaged in Article 1 of Directive 84/5/EEC[5], it seemed desirable to envisage in this agreement two separate parties, one for situations referred to in Article 6, only binding on the Compensation Bodies, the other for the situations referred to in Article 7, binding on the Compensation Bodies and the Guarantee Funds;*

Definitions

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[6];*

[5] Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles; OJ L 8, 11.1.1984, p. 17–20. This directive was replaced by the Codified MID (see footnote 1 above).

[6] First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance; OJ L 228, 16.8.1973, p. 3–19. (First Non-Life Directive).

b) *"establishment" means the head office, agency or branch of an insurance undertaking defined in Article 2, point c) of Directive 88/357/EEC[7];*

c) *"vehicle" is a vehicle as defined in Article 1.1 of Directive 72/166/EEC[8];*

d) *"injured party" means an injured party as defined in Article 1.2 of Directive 72/166/EEC[9];*

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[10];*

f) *"National Insurers' Bureau" means the Organisation as defined in Article 1.3 of Directive 72/166/EEC[11].*

In order to ensure a common understanding of the Agreement, the following terms which are also used in the Agreement shall be interpreted as follows:

"Paying Compensation 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.

The Paying Compensation Body may vary depending on whether an insurance undertaking is acting under Freedom to provide Services (FOS) or Freedom of Establishment (FOE).

If the insurer is acting under FOS, the Member State of establishment (according to Article 2(e) of Directive 88/357/EEC - the Second Non-Life Directive) is the home Member State of the insurance undertaking acting under FOS.

The situation is different for an insurance undertaking acting under FOE. According to the Articles 2c and 3 of the Second Non-Life Directive, the establishment or permanent presence used by the insurer in the host Member State is considered as an establishment. Therefore, the Member State of establishment will be the host Member State and the Compensation Body that must reimburse the "handling" Compensation Body in the sense of Article 24.2 MID should be the Compensation Body of the host Member State.[12]

"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

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[7] Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC; OJ L 172, 4.7.1988, p. 1–2 (Second Non-Life Directive).
[8] Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability; OJ L 103, 2.5.1972, p. 1–4 (First Motor Insurance Directive). This Directive was replaced by the Codified MID (see footnote 1 above).
[9] Currently Article 1.2. of the Codified MID (see footnote 8 above).
[10] Currently Article 1.4. of the Codified MID (see footnote 8 above).
[11] Currently Article 1.3 of the Codified MID (see footnote 8 above).
[12] Decision Nº 2 of the CoB Coordination Committee of 30th April 2014.

vehicle causing the accident is normally based. The definition concerns the relation between the Handling Compensation Body and the Guarantee Fund that has to pay under the terms of Clause 8. It does not influence the question whether a Guarantee Fund is the final debtor in relation to third parties.

"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. As this Body actively handles the claim, the term Handling Compensation Body is equally used.

"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. For further clarification of the definition of a "*pro forma"* file, see text under Clauses 4.8 and 8.8.

"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 (in accordance with Article 6[13] of Directive 2000/26/EC) 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 (the notion of vehicle is defined under c) above).

Additionally, some terms which are essential for a common understanding of this Agreement are defined or described under the following references:

"Reasoned reply" – Clause 2.1.

"Applicable law" – Clause 3.4 and Clause 7.2.

"Adequate documentation" – Clause 4.4 and Clause 8.4.

[13]Article 6 of the 4th Motor Insurance Directive was replaced by Article 24 of the Codified MID.

First part

Section I: Aim

Clause 1

The aim of the first part of this Agreement, within the framework of Article 6[14] of Directive 2000/26/EC, is to define the functions and obligations of the undersigned Compensation Bodies and the procedures for reimbursement.

Section II: Functions and obligations of the Compensation Bodies

Clause 2

Each signatory has the function, in its capacity as a Compensation Body authorised by the Member State in which it is established, of compensating the injured parties following an accident that comes within the scope of Directive 2000/26/EC as defined in Article 1[15] of that Directive, where one of the following situations arises:

2.1. if, within three months of the date when the injured party presented his claim for compensation to the insurance undertaking of the vehicle the use of which caused the accident or to its claims representative, the insurance undertaking or its claims representative has not provided a reasoned reply to the points made in the claim; or

2.2. if the insurance undertaking has failed to appoint a claims representative in the State of residence of the injured party in accordance with Article 4.1[16] of Directive 2000/26/EC.

The Handling Compensation Body has the autonomy to decide, in accordance with its national law whether it has to deal with a claim under the conditions of Clause 3. Clause 2 describes the basic preconditions for its decision.
If a Compensation Body does not lack the capacity to be sued, it should at least always argue that a claim must be submitted at first for an amicable settlement.[17]

The Directive does not preclude that parties subrogated in the rights of the injured party (e.g. social insurers) turn to the Compensation Body.[18] It is up to the Handling Compensation Body to decide whether it starts to deal with such a demand.

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[14] Idem.
[15] Article 1 of the 4th MID was replaced by Article 20 of the Codified MID.
[16] Article 4(1) of the 4th MID was replaced by Article 21(1) of the Codified MID.
[17] Paper regarding the passive legitimacy of a Compensation Body, presented by the Working Group on Compensation Bodies and Guarantee Funds, approved by the Coordination Committee 30th September 2014, and distributed for information and advice to the Compensation Bodies by the CoB Secretariat after the Annual Conference 2014 in CoB Circular Nº 142/2014.

[18] Letter of the European Commission dated 23rd September 2008, in the subject of "Subrogation rights and Article 6 of the 4th Motor Insurance Directive".

When the Compensation Body receives a claim from the injured party in application of Article 24.1(a) of the Codified MID[19], it asks for a written proof from the injured party that a request had already been sent to the insurer or its claims representative.[20] Such written proof can be for instance a copy of the request or a copy of any other correspondence received from the insurer or its claims representative (confirmation of the reception of the request, etc.).

In case the victim's country of residence changes between the date of the accident and the date of presenting the claim, the Handling Compensation Body of the victim's new country of residence may, based on equity, start dealing with the claim. The Compensation Body will take into consideration either correspondence between the victim and the insurer or between the victim and the claims representative of the insurer in the victim's new country of residence.

If, by the time the injured party presents a claim to the Compensation Body, the official authorisation of the insurance undertaking has been withdrawn (e.g. due to insolvency), the Compensation Body shall, as a main rule, reject the claim. It shall inform the injured party about the reason and redirect them to the Guarantee Fund of the country where the insurance undertaking received its official authorisation. If, however,

- both the Handling Compensation Body and the Guarantee Fund of the country of accident are parties to the Agreement between Compensation Bodies and Guarantee Funds in the event of the insolvency of an insurance undertaking providing civil liability motor insurance in the single market (2008), and
- the conditions of its applicability are provided,

the Handling Compensation Body shall start dealing with the claim in accordance with the 2008 Agreement.

The Handling Compensation Body shall start to deal with the claim if either[21]

a) *No response has been received by the claimant from the insurer or his representative for a period of three months from the claim;*

If there was no reaction on the claimant`s (several) demand(s), the question of cover is not clear either, as logically a cover-note is also missing. The Handling Compensation Body nevertheless shall start to deal with the claim as if the vehicle was insured as long as the claimant provided reliable documents concerning this point, e.g. (handwritten) information or copy of insurance details, information from the Information Centre, etc.

It is up to the Handling Compensation Body to decide whether the provided information is reliable or not. If not, the Handling Compensation Body can alternatively decide to start to deal with the

[19] Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (Text with EEA relevance) OJ L 263, 7.10.2009, p. 11–31

[20] The Implementing Regulation defines a "request for compensation" as a request in writing or any other durable medium, sent to the Compensation Body of the Member State in which the injured party resides. The precondition that the insurer or the claims representative should have equally received a written claim seems inevitable and can be found in the non-obligatory Recommendation of the Coordination Committee of 2010 on Article 24.1 of the Codified Motor Insurance Directive.

[21] The specifications on the existence (or not) of a reasoned reply under points a)-c) find their origin in the non-obligatory Recommendation of the Coordination Committee of 2010 on Article 24.1 of the Codified Motor Insurance Directive.

claim under the conditions of Clause 6 which means the vehicle has to be considered as uninsured.

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;*

The question whether the response deals adequately with the issues raised by the claim or the response can be considered as satisfactory (= reasoned reply) has to be decided by the Handling Compensation Body on the basis of the following terms and conditions:

In general, a reasoned reply should give a final and complete reply on the claim compensation. It should come from the insurer of the liable vehicle or its claims representative (or a mandated representative/its lawyer if applicable) and should be given directly to the injured party (or a mandated representative/its lawyer if applicable).

When addressing the points made in the claim, the reasoned reply should be argued and justified. For instance:

- It expresses an effective position on the right to compensation (the injured person can or cannot be compensated for the accident);
- It gives the legal ground (e.g. it is based on the national legislation of the Member State of accident related to liability, compensation, etc.);
- It expresses the liability or gives the share of liability;
- It gives a clear answer on who will be compensated for what, how much and by whom;
- It gives a clear and understandable reply;
- It recalls the context of the accident;
- etc.

but there might be exceptions, for instance such as when the reply states that

- the Police/Expert/Medical report(s) is (are) not available;
- the Police/Expert/Medical report(s) is (are) not yet final;
- the final amount of compensation is not yet established;
- the final liability is not yet established;
- court case, criminal prosecution providing the answer to the question of liability, etc.

In these situations, and only if the reasons as such are explicitly mentioned in the reply, the Compensation Body will not be competent to handle the claim until these exceptions are resolved (since the reasoned reply will depend on the outcome of the investigations related to the exceptions).

A lack of reasoned reply occurs when there is for instance:

- No reply addressing the points made in the claim;
- A refusal to compensate with no justification;
- A dilatory/temporary response (awaiting confirmation, etc.);
- A partial reply;
- A reply not addressed to the injured party (or its mandated representative/lawyer);
- A reply not provided by the insurer/claims representative (or its mandated representative/lawyer);

- A reply not explaining why the liability is not determined;
- A reply not explaining why the damages are not quantified;
- No reply on the right to compensation;
- No reply on the cover of the identified insurer or its claims representative.

A lack of reasoned reply also occurs when the competent insurer refuses to handle the claim and refers the claimant to its claims representative instead.[22]

There is no lack of reasoned reply, when a reasoned offer has been made but the insurer or its claims representative has not made any payment. According to 22a of the Codified MID, a reasoned offer is an offer of compensation by the insurer or its claims representative in cases where liability is not contested and the damages have been quantified. Considering Recital (48) of the Codified MID, the Compensation Body has a role of settling the claim in respect of any loss or injury suffered by the injured party only in cases which are capable of objective determination and therefore the compensation body must limit its activity to verifying that an offer of compensation has been made in accordance with the time-limits and procedures laid down, without any assessment of the merits;

Compensation Bodies are encouraged to closely cooperate in order to remedy payment delays by claims representatives. If a Compensation Body is informed that a claims representative in its country does not proceed with the compensation of an injured party in due time, despite the fact that it had already made a reasoned offer for compensation or had signed a formal receipt of claim, it is – regardless of its formal jurisdiction – invited to contact the Compensation Body of the country of establishment of the insurance company on behalf of which the claims representative is acting. The latter Compensation Body would then get in touch with the insurance company in order to find out the reasons for the delay and to promote the claims settlement process.[23]

or

c) *In the event of the rejection of a claim, no reason is given for that rejection;*

The standards that apply to a reasoned reply have to be applied to a rejection as well. Generally speaking, the claimant should be able to understand why he won`t receive any compensation for his claim by naming the reasons.

A lack of reasoned rejection occurs when there is for instance:

- A refusal to compensate with no justification;
- A reply not explaining why the liability is not determined;
- A reply not explaining why the damages are not quantified;
- No reply on the cover of the identified insurer or its claims representative, etc.

or

[22] CoB Circular Nº 15/2013

[23] Decision Nº 4-1 of 2015 of the CoB Annual Conference

d) *If the insurance undertaking has not designated a representative.*

When the Compensation Body receives a claim from the injured party in application of Article 24.1(b) of the Codified MID, it asks for a written proof from the injured party that a request was already sent to the Information Centre. Such written proof can be for instance

- a copy of the request;
- or a copy of any other correspondence received from the Information Centre.

It can be assumed that no claims representative has been appointed if the Information Centre was not able to provide any information on their identity and if the Handling Compensation Body is not aware of the data of the nominated claims representative or if the named claims representative already denied its competence.

Acceptance of claims relating to despatched vehicles (Clause 2.2)

If a vehicle is despatched from one EEA state to another and an accident is caused by that vehicle in the country of origin within 30 days from the acceptance of delivery of the vehicle by the purchaser, the claims representative in that country of the insurer established in the country of destination is competent to deal with the claims of victims of such accident.[24] Acceptance of delivery is to be defined in accordance with the legal definition or interpretation in the country of origin (i.e. the country of purchase).

Clause 3

3.1. In either of the situations referred to in Clause 2 above, the Compensation Body which has received a claim for compensation must immediately inform:

3.1.1. the insurance undertaking of the vehicle the use of which caused the accident or the claims representative,
3.1.2. the Compensation Body in the Member State of the insurance undertaking's establishment which issued the policy,
3.1.3. if known, the person who caused the accident,
3.1.4. if the accident was caused by a vehicle normally based in a country other than that in which the accident occurred, the National Insurers' Bureau of the place of the accident,

that it has received a claim from the injured party and that it will take action in response to that claim within two months of the presentation of that claim.

[24]Based on a Joint statement of Insurance Europe and the Council of Bureaux, dated 12th September 2012

Before the Compensation Body informs any other body about the receiving of a claim, it checks that a period of 3 months between the date when the injured party presented its claim to either the insurer or its claims representative and the non-delivery of a reasoned reply to the points made in its claims has elapsed; Furthermore, the Compensation Body asks from the injured party whether the insurer or its claims representatives has already compensated their claim;

The Handling Compensation Body informs the parties preferably by e-mail, or by fax or possibly by mail. Any request to and reply from the Compensation Body can only be validly made if made in writing.

Among themselves, 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.

M**inimum mandatory information** to be included in all correspondence between the Signatories:

- date of accident;
- country of accident;
- name of claimant.

Additional mandatory information to be included by the Handling Compensation Body:

- registration number of the vehicle;
- insurer of party presumed to have caused the damage;
- claims representative.

If available, to be included by the Handling Compensation Body:

- make – type – colour of the vehicle;
- name and address of the party presumed to have caused the damage (keeper/driver of vehicle)

For the Paying Compensation Body, in case of advice to reject the claim or parts of it: the reasons and on request, the legal basis.

Mandatory documentation to be attached to the first communication:

- documentation on liability: accident report, police report, witness statement, etc.
- claim for damages: may vary depending on the kind of accident:

  - accident caused by a vehicle covered by insurance: first claim for damages sent to the insurance undertaking/claims representative (proof of having contacted the claims representative/insurer);

Optional information and documentation:

- all data that are useful for the processing of the claim, e.g. repair estimate or assessment of loss or information on whether it is about a recourse claim.

An additional question should be inserted on whether the Paying Compensation Body agrees that the handling entity settles the claim.

As in particular situations the identity of the Paying Compensation Body may not be clear, a specification whether an insurer is acting under FOS or FOE, should be part of the information exchange between Compensation Bodies.

If the Handling Compensation Body fails to inform the insurer or the claims representative and/or the Paying Compensation Body, it won`t have the right to ask for full reimbursement (cf. Clause 4.3).

Given the particular circumstances of Clause 3.1.4., it is important to give a more detailed explanation of the circumstances of the request. Especially non-EEA Green Card Bureaux may not be familiar with the mechanism implemented by the 4th MID. The main objective of Clause 3.1.4 is to avoid a double compensation; therefore, the contacted Green Card Bureau is not asked to open a file. It is sufficient to check whether the accident was already notified by the same claimant.

Only if deemed necessary, the Handling Compensation Body should ask for further assistance, e.g. provide the police report or legal advice. In these cases, the contacted Green Card Bureau may not only ask for costs but – depending on its work flow – also for handling fees. If yes, the Handling Compensation Body is entitled to ask for reimbursement of those fees under the terms of Clause 4.1.2. Furthermore, the Handling Compensation Body is strongly advised to consider whether it also informs the Compensation Body in the country of the accident, especially with regard to any request for information about the applicable law.

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).

> *3.2. The Compensation Body shall take action within two months of the date when the injured party presents a claim for compensation to it but shall terminate its action if, within that period, the insurance undertaking, or its claims representative, makes a reasoned reply to the claim following the information which was communicated to it in accordance with Clause 3.1.*
>
> *Once this two-month period has expired, the competent compensation body shall proceed to handle the injured party's claim, notwithstanding any subsequent reply given by the insurance undertaking or its representative.*

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 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.

If, within the two-month period, the official authorisation of the insurance undertaking is withdrawn (e.g. due to insolvency), the Compensation Body has no obligation to proceed with the claim. In this case,

it shall inform the injured party about the reason and redirect them to the Guarantee Fund of the country where the insurance undertaking received its official authorisation. If, however,

- both the Handling Compensation Body and the Guarantee Fund of the country of accident are parties to the Agreement between Compensation Bodies and Guarantee Funds in the event of the insolvency of an insurance undertaking providing civil liability motor insurance in the single market (2008), and
- the conditions of its applicability are provided,

the Handling Compensation Body shall start dealing with the claim in accordance with the 2008 Agreement.

If the official authorisation of the insurance undertaking is withdrawn after the expiry of the two-month period, and the 2008 Agreement is not applicable, the Handling Compensation Body shall proceed with the handling of the claim. However, before each payment, the Compensation Body shall await the authorisation to pay from the paying entity. If, despite the authorisation to pay, the Paying Compensation Body informs the Handling Compensation Body about the impossibility to reimburse them due to the withdrawal of the official authorisation of the insurance undertaking, the latter may still close the file if no payment has yet been made. In this case, the Handling Compensation Body shall inform the injured party and act as described in the previous paragraphs. If payments have already been made on the basis of the authorisation, the Paying Compensation Body is either asked to continue doing payments or to do everything in order to influence the competent paying entity to pay.

The Handling Compensation Body is entitled to ask the Compensation Body in the state of the accident and/or the Paying Compensation Body to provide those documents/information which are essential for the assessment of the claim (e.g. police report, medical documents, witness-statements, version of the driver, correct addresses, etc.). The contacted Compensation Body shall try to obtain the requested documents/information as soon as possible. As the claimant could not be free from all burden of proof, the Handling Compensation Body should also request the claimant to provide the essential documents as well as reliable information. If due to a lack of those documents/information the Handling Compensation Body is not in a position to assess the claim after the expiry of the two-months-period, it should inform the claimant about the reasons.

If the Handling Compensation Body is already in the possession of all essential documents/information it shall – if deemed necessary – ask the Compensation Body in the state of the accident and/or the Paying Compensation Body for legal advice. If due to a lack of advice the Handling Compensation Body is not in the position to assess the claim after the expiry of the two-months-period, it shall send a reminder to the Compensation Body/-ies it had contacted. If again there is no response, the Handling Compensation Body shall make an offer on the basis of information from other sources (e.g. literature, insurance companies, Green Card Bureaux, etc.) and send it to the Paying Compensation Body. Under the terms of Clause 4.2., the latter has to accept unless it contests the amount within the period of one month. Otherwise it should give qualified reasons for its disagreement.

In relation to the injured party, the Handling Compensation Body requests an explicit answer on whether the damages fall within the scope of any other insurance cover (drawing their attention to the fact that any wilful wrong answer might endanger its possible compensation by the Compensation Body).

In order to avoid double compensation, the Handling Compensation Body asks generally to the injured party whether it has chosen a specific option to claim compensation when more options could be applicable (e.g. via the Green Card Bureau of the country of accident, or legal proceeding, etc.).

It is also recommended to the Compensation Body

- to check systematically if the claim is being handled by the claims representative/insurer;
- to ask all interested parties according to the specific case (based on the Compensation Body's judgement) whether they are informed about the claims;
- to inform the Guarantee Fund of the country of accident or where the vehicle is normally based (depending on the case) when the situation concerns Article 25 of the Codified MID (uninsured or unidentified vehicle).
- to play a proactive role in terms of communication and research for information (with the insurer, its claims representative, etc.).

After the fruitless expiry of the two-month period, neither the insurer nor the claims representative has the right to influence the handling of the claim any longer. However, if after the expiry of the two-month period the Handling Compensation Body receives any new statement from the insurer/claims representative which provides basic information with a direct impact on the assessment of liability, this should not be ignored (e.g. new witness statements, qualified statement of the insured, etc.).

> *3.3. The competent Compensation Body shall refrain or cease from intervening in favour of injured parties who have taken legal action directly against the insurance undertaking and, in the situation referred to in Clause 2.2. of this agreement, when the injured party has presented a claim for compensation directly to the insurance undertaking of the vehicle which caused the accident and he has received a reasoned reply within a period of three months from the presentation of the claim.*

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. This applies at any processing stage, be it within or after the expiry of the two-month period (Clause 3.2.).

> *3.4. Save as herein provided, the Compensation Body shall be the sole body responsible for compensating the injured party or his/her legal beneficiaries. It shall however:*
>
> - *answer requests for information sent to it by the Compensation Body responsible for reimbursement to enable inter alia the claim to be assessed;*
> - *apply, when determining liability and assessing compensation, the applicable law of the country in which the accident occurred;*

The Handling Compensation Body has the authority to decide, in accordance with its national law, if it starts to deal with a claim, on the basis of which documents/information it makes an assessment, if it rejects or compensates a claim and if yes, how much it pays. However, it is not free to choose the applicable law or to ignore the consequences which may arise from the applicable law.

If the Handling Compensation Body also decided to deal with claims of parties subrogated in the rights of the injured party (e.g. social insurers) it has to reject the claim if this party has no right for compensation under the applicable law.

The references to "the applicable law of the country in which the accident occurred" is to be interpreted as a rule of conflict of systems, referring not only to the material law of the country in which the accident occurred, but also to the rules of Private International Law of that country.[25] Consequently the question of whether the applicable law is determined by Regulation Rome II[26], the Hague Convention[27] or the applicable national law on the conflict of laws shall be decided on the basis of the law in the country of accident. Nevertheless, if the claimant insists on the application of the rules of his home country, the Compensation Bodies involved are asked to cooperate in order to find the best solution not only for their own market but for the whole system.

The Handling Compensation Body is invited to pay attention to the correctness of the documentation provided to the Paying Compensation Body.

The Paying Compensation Body and the Compensation Body in the country of the accident, where applicable are also invited to try to provide information to the Handling Compensation Body (e.g. limitation period, law applicable, etc.) as detailed as possible to ensure a smooth recourse right or court proceedings when applicable, etc.

3.5. The Compensation Body of the Member State in which the accident took place, even though it is not responsible for the reimbursement described in Section III below, shall provide, upon request, to the Compensation Body to which a claim for compensation has been made, all necessary advice assistance and information - in particular on the content of the applicable law - and all documents it has available relating to the accident which this body wishes to obtain.

In most cases, the Paying Compensation Body and the Compensation Body in the country of the accident are identical. In those constellations it is in their own interests to provide all necessary advice, assistance and information.

If the Paying Compensation Body is different from the Compensation Body in the country of the accident, the latter has no risk of financial burden at all. It is nevertheless obliged to support the Handling Compensation Body in any form and by any means as otherwise the correct handling of the claim cannot be assured.

The assistance and/or information shall be addressed to the requesting body without any delay and in consideration of the time limit of 30 days as mentioned under Clause 3.1.4. above. If after that period the requested documents are (still) not available or the requested information depends on missing data/documents, the requesting body shall be informed about the current stage.

Section III: Reimbursement periods

Clause 4

4.1. The Compensation Body which pays compensation to an injured party shall be reimbursed upon request by the Compensation Body of the Member State in which is situated

[25] Decision N° 5-1 of 2013 of the CoB Annual Conference
[26] Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), OJ L 199, 31.7.2007, p. 40–49
[27] The Hague Convention on the law applicable to traffic accidents (Concluded on 4 May 1971)

the establishment of the insurance undertaking which produced the contract. The reimbursement includes, to the exclusion of everything else, the following:

4.1.1. the amount paid in compensation to the injured party or his/her beneficiaries, specifying the amounts paid as material damage and as bodily injury;
4.1.2. the sums paid for external services - such as, for example, experts', lawyers' or doctors' fees - inherent in the instruction and the in or out-of-court settlement of the claim;
4.1.3. the handling fees covering all other costs as defined by Clause 4.3. hereof.

The question whether particular elements of a claim (e.g. expert`s fee) are deemed to be compensation or external costs has to be decided on the basis of the applicable law. If the expenses were paid by the injured party, they will most probably be considered as part of the compensation. Otherwise these sums paid for external services are to be regarded as external costs.

Costs for in- or out-of-court settlement concern pure costs like lawyer`s fee, court costs, etc.

In case of court proceedings, the Handling Compensation Body shall take all possible steps to involve the insurer of the liable vehicle in the court proceedings.

If a Handling Compensation Body is obliged to pay compensation due to a court decision, as a basic principle these amounts shall be reimbursed by the Paying Compensation Body as well. This principle does not apply if the Handling Compensation Body ignored legal advice or any other support given by the Paying Compensation Body.

If the Paying Compensation Body is prevented from payment due to its national legislation, e.g. if the applicable limits of cover will be exceeded, it shall take all necessary steps to convince the insurer of the liable vehicle to compensate the Handling Compensation Body.

4.2. The amount to be reimbursed may only be disputed by the final paying body if the Compensation Body which settled the injured party's claim has ignored objective material information given to it or has not observed the rules of applicable law.

This possible redress may not however be exercised by the paying body which has not provided the information asked of it vis-a-vis sums referred to in Clause 4.1.1.; or if the final paying body has not responded to a request for agreement on compensation, made by the competent body for dealing with the injured party's claim, within one month after presentation of this request; or if it agreed to such a settlement.

Upon receipt of the reimbursement demand, the Paying Compensation Body has one month to dispute the demand if the Handling Compensation Body has not adhered to the information provided to it by the Paying Compensation Body/Compensation Body in the country of accident (if applicable) or if the Handling Compensation Body has failed to observe the applicable law in the calculation of compensation.

The Paying Compensation Body may however not refuse to pay the reimbursement demand in the following situations:

- the Paying Compensation Body has not replied to requests from the Handling Compensation Body in relation to the calculation of compensation to the victim (cf. Clause 4.1.1).
- the Paying Compensation Body has not responded within 30 days to an agreement for compensation sent by the Handling Compensation Body
- the Paying Compensation Body has agreed to an offer of compensation sent by the Handling Compensation Body.

> *4.3. The handling fees referred to under Clause 4.1.3. cover all other costs regardless of the number of injured parties compensated following the same accident. They shall be calculated at the rate of 15% of the total of the sums mentioned in Clause 4.1.1. subject to a minimum and maximum amount the level of which is determined by the decision of the Compensation Bodies based on a proposal sent to the Secretary General of the CEA by at least five Compensation Bodies. This proposal shall be binding on all Compensation Bodies once it has been approved by three-quarters of them.*
>
> *If the body which received the claim for compensation from the victim has not provided the information envisaged in Clauses 3.1.1. and 3.1.2., it shall only be entitled to half the amount which it may justifiably seek under Clause 4.1.*

The handling fees are calculated at a rate of 15% of the sums paid subject to minimum and maximum amounts of €200 and €3500 respectively.

If the Handling Compensation Body failed to inform either the insurer/claims representative and/or the Paying Compensation Body about the receipt of the claim (Clause 3.1.1. and 3.1.2.) it prevents those bodies from taking further steps in order to ensure that the claimant will receive a reasoned reply within the following two months. Therefore, the justified demands of the Handling Compensation Body can be reduced by 50%.

If the lack of receipt depends on technical problems only, meaning that the information has been sent by either e-mail or fax but has obviously not been transmitted due to technical reasons, the Paying Compensation Body shall abstain from reducing the demands.

> *4.4. The request for reimbursement shall be sent by fax or e-mail. Adequate documentary evidence shall be sent by any means. A request for additional documentation shall not justify a delay in reimbursement.*

The request for reimbursement must be sent within one year from the latest payment made in favour of the injured party.[28]

Adequate documentation enables the Paying Compensation Body to distinguish between compensation, costs and handling fee as otherwise it cannot examine the correctness of the request for reimbursement. The individual items of the request for reimbursement shall be documented by providing the corresponding accounts (e.g. invoice for expert fees, repair, car-hiring, etc.).

If not already transmitted to the Paying Compensation Body before, documents concerning questions of liability shall be added to the request for reimbursement as well.

4.5. Claims for interim reimbursement may be sent when compensation has been paid to an injured party or his/her legal beneficiaries of an amount equivalent to EUR five thousand at least, it being agreed that handling fees may not be claimed before the final settlement of any claims relating to the same accident, unless otherwise agreed between the Compensation Bodies concerned.

If the Handling Compensation Body asks for interim reimbursement it is also entitled to ask for the costs that have already been incurred. The Paying Compensation Body must be able to distinguish between compensation and costs. Otherwise it cannot examine the correctness of the final request for reimbursement as the handling fees will be calculated on the basis of the complete compensation later on. The individual invoice items shall be documented by providing the corresponding accounts (e.g. invoice for expert fees, repair, car-hiring, etc).

If not already transmitted to the Paying Compensation Body before, documents concerning questions of liability shall be added to the request for reimbursement as well.

4.6. The request for interim or final reimbursement shall state that the amounts due are payable in the country and the currency of the handling Compensation Body, net of all charges, within thirty days of the request and that thereafter interest on arrears calculated at a rate of 12% per year on the amount claimed from the date of the request till that of the receipt of the outstanding sums due by the beneficiary's bank shall be due ipso jure.

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

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

[28] Decision Nº 3 of the CoB Coordination Committee of 18th April 2013

4.7. When, following the payment of the claim for reimbursement, a file relating to a claim for compensation is re-opened, or when a new claim due to the same accident is presented, the outstanding balance for handling fees, if there is one, shall be calculated in accordance with the provisions in force when the request for reimbursement is presented in connection with the re-opened or new claim.

In case the Handling Compensation Body has to deal with the same event repeatedly as e.g. the claimant presented another claim, a second claimant asked for reimbursement, new facts were revealed, etc., the re-opening does not influence the minimum and maximum amount of the handling fees.

The sums that have been classified as compensation will be added. Calculation of handling fees will be based on the total sum of compensation (former and further compensation). If e.g. the Handling Compensation Body already received the maximum amount of the handling fee, it is not entitled to ask for more.

4.8. Minimum handling fees determined by Compensation Bodies in compliance with the procedure described in Clause 4.3. above, may be claimed when the claim for compensation after a genuine act of handling has not resulted in a payment to the victim.

Merely opening a «pro forma» file cannot justify the demand for a minimum handling fee. On the other hand, the costs mentioned in point 4.1.2 incurred during the two-month period referred to in point 3.2 may be the subject of a claim for reimbursement.

If the activity of the Handling Compensation Body

- is limited to its designated tasks specified in Clause 3.1
- and/or is only for the purpose of compiling the necessary information from the claimant and
- is terminated within a period of two months after the receipt of the claim.

the file has to be considered as a "*pro forma"* file.

This may also apply if the file can be closed due to an answer given by the insurer/claims representative immediately after the expiry of the two months and without any further intervention of the Handling Compensation Body.

A minimum handling fee may be claimed when the claim for compensation after a genuine act of handling as defined on page 6 *has not resulted in a payment to the benefit of the injured party.*

Second part

Section I: Aim

Clause 5

The aim of the second part of this Agreement is to define the tasks and obligations of the undersigned Compensation Bodies and Guarantee Funds within the framework of Article

7 of Directive 2000/26/EC[29] as well as the reimbursement procedures.

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.

Article 7 of the 4th MID[30] was originally only meant to apply to accidents within the EEA territory. Hence, Article 7 also applies to accidents taking place on the EEA territory but involving non-EEA drivers/vehicles. However, since there is no obligation for non-EEA countries to establish Guarantee Funds, the European Commission did not see the reason to extend the scope of *ex* Article 7 beyond that. Consequently, neither the MID, nor the Agreement applies to accidents occurring in third countries involving non-insured vehicles normally based on EEA territory.[31]

Section II: Functions and obligations of Compensation Bodies and Guarantee Funds

Clause 6

The function of each signatory Compensation Body, in its capacity as the Compensation Body recognised by the Member State where it is established, is to compensate injured parties following an accident which comes within the scope of Directive 2000/26/EC as defined in Article 1[32] of that Directive, where one of the following two situations arises:

6.1. where identification of the vehicle is not possible;

6.2. if, within a period of two months following the accident, it is impossible to identify the insurance undertaking.

The Handling Compensation Body has the authority to decide, in accordance with its national law whether it has to deal with a claim under the conditions of Clause 7. Clause 6 describes the basic preconditions for its decision.

If a CB does not lack the capacity to be sued it should at least always argue that a claim must be submitted at first for an amicable settlement.[33]

[29] Article 7 of the 4th MID corresponds to Article 25(1) of the Codified MID.
[30] Article 7 of the 4th MID corresponds to Article 25(1) of the Codified MID.
[31] Position of the European Commission in letter of 30th July 2007
[32] Article 1 of the 4th MID corresponds to Article 20 of the Codified MID.
[33] Paper regarding the passive legitimacy of a Compensation Body, presented by the Working Group on Compensation Bodies and Guarantee Funds, approved by the Coordination Committee 30th September 2014, and distributed for information and advice to the Compensation Bodies by the CoBx Secretariat after the Annual Conference 2014 in CoB Circular Nº 142/2014.

The Directive does not preclude that parties subrogated in the rights of the injured party (e.g. social insurers) turn to the Compensation Body.[34] It is up to the Handling Compensation Body to decide whether it starts to deal with such a demand.

Before it initiates the claims handling, the Handling Compensation Body is entitled to request that the victim provides it with the elements which prove this impossibility to identify either the liable vehicle (e.g. claimant`s statement, copy of the police report, etc.) or the insurance undertaking (e.g. reply from the Information Centre, copy of the letter from the insurer/claims representative specifying the lack of cover, copy of the letter implicating the liable person, etc.).[35] In that respect it is not conditional that the period of two months following the accident has already been expired.

Clause 7

7.1. In either of the situations referred to in Clause 6 above, the Compensation Body which has received a claim must immediately inform, depending on the circumstances, either the Guarantee Fund defined in Article 1 of Directive 84/5/EEC of the Member State in which the accident took place or the Guarantee Fund of the Member State in which the road traffic vehicle which caused the accident is normally based.

The Handling Compensation Body informs the Guarantee Fund(s) preferably by e-mail, or by fax but it is also possible to communicate by ordinary mail.

In cases of unidentified vehicles, the Handling 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.

M**inimum mandatory information** to be included in all correspondence between the signatories:

- date of accident;
- country of accident;
- name of claimant.

Additional mandatory information to be included by the Handling Compensation Body:

- registration number of the vehicle (if the vehicle was identified);

If available, to be included by the Handling Compensation Body:

- make – type – colour of the vehicle;
- name and address of the party presumed to have caused the damage (keeper/driver of vehicle)

[34] Letter from the European Commission, dated 23rd September 2008

[35] These provisions were adopted as Annex 1 to the Implementing Regulation for the Agreement, during the Annual Conference of Compensation Bodies and Guarantee Funds, in Athens on 4 November 2010, in accordance with Article 2 of the Working Arrangements for the Signatories to the Agreement.

For the Final Paying Guarantee Fund, in case of advice to reject the claim or parts of it: the reasons and on request, the legal basis.

Mandatory documentation to be attached to the first communication:

- documentation on liability: accident report, police report, witness statement, etc.
- claim for damages: may vary depending on the kind of accident:
  - accident caused by an uninsured vehicle: documentation demonstrating that the insurer could not be identified (IC's enquiry, note by the undertaking attesting the lack of cover with their own company, police report affirming the absence of MTPL cover, etc.);
  - accident caused by an unidentified vehicle: note which specifies the kind of damage (material damage and/or personal injuries) and information on having been in contact with the police and references of the Police authority if available.

Optional information and documentation:

- all data that are useful for the processing of the claim, e.g. repair estimate or assessment of loss or information on whether it is about a recourse claim.

An additional question should be inserted on whether the Final Paying Guarantee Fund agrees that the handling entity settles the claim.

Furthermore, the Handling Compensation Body shall ask for any documents/information that could lead to an identification of the liable vehicle (e.g. witness statements, police report, etc). Depending on the circumstances described below, the request has to be addressed either to Guarantee Fund(s) or to the Green Card Bureau in the country of the accident.

If the Handling Compensation Body receives (either from a Guarantee Fund or a Green Card Bureau, within a reasonable time frame of maximum two months) information concerning the registration number of the liable vehicle and its insurer, it shall stop its intervention. In those cases, it refers the claimant to the insurer/claims representative.

If the information concerns the registration number only, the Handling Compensation Body shall treat the claim as if it concerned an uninsured vehicle. Depending on the circumstances, it can decide whether the reasonable time frame of maximum two months shall continue to run or whether it starts again (e.g. because the vehicle was registered in another member state so the Paying Guarantee Funds was not aware of the claim before).

In cases of uninsured vehicles, the Handling 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 if the vehicle is normally based in the country where the accident occurred. It would also seem legitimate that the Handling Compensation Body referred to should be able to check the information which has been conveyed by directly contacting the Information Centre concerned, thus carrying out its own investigation on the insurance.

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 Handling 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. Furthermore, it shall 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.

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 Handling Compensation Body.

The Handling Compensation Body should compensate the victim under Clause 7.2 and 7.3 without waiting to find out who the Final Paying Guarantee Fund is. It is thus necessary, in order for its appeal to be registered within a reasonable timeframe, that the establishing of where the vehicle is normally based is registered within the allotted time. The reasonable timeframe should not exceed a period of two months after the Handling Compensation Body decided to launch the handling of the claim.

The time needed to carry out the steps required to determine where the vehicle is normally based shall not be invoked against the victim. The Compensation Body should proceed with the compensation once the impossibility of identifying the insurance undertaking has been established.[36]

Among themselves, 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.

7.2. When it makes a compensation payment to an injured party, the Compensation Body shall:

- *reply to requests for information enabling the claim to be assessed, which it receives from the final paying body for reimbursement (Guarantee Fund),*
- *apply, in evaluating liability and assessing compensation, the law of the country in which the accident occurred,*

[36] Idem.

- *comply with the provisions of Article 1 of Directive 84/5/EEC.*

In relation to the Final Paying Guarantee Fund, the Handling Compensation Body shall provide the elements on which it based itself to establish the impossibility to identify either the vehicle or the insurance undertaking (reply from the Information Centre, a copy of the letter of the insurer/representative specifying the absence of cover, copy of the letter calling the person liable into question, etc.) resulting from the elements communicated by the victim and from the investigation led by the Handling Compensation Body, if any.[37]

The Handling Compensation has the autonomy to decide if it starts to deal with a claim, on the basis of which documents/information it makes an assessment, if it rejects or compensates a claim and if yes, how much it pays. However, it is not free to choose the applicable law or to ignore the consequences which may arise from the applicable law.

In case the victim's country of residence changes between the date of the accident and the date of presenting the claim, the Handling Compensation Body of the victim's new country of residence may, based on equity, start dealing with the claim, based on the information received from the domestic Information Centre.

If the Handling Compensation Body also decided to deal with claims of parties subrogated in the rights of the injured party (e.g. social insurers) it has to reject the claim if this party has no right for compensation under the applicable law.

The references to "the applicable law of the country in which the accident occurred" is to be interpreted as a rule of conflict of systems, referring not only to the material law of the country in which the accident occurred, but also to the rules of Private International Law of that country.[38] Consequently, the question if the applicable law is determined by the Rome II Regulation[39], the Hague Convention[40] or by a national law on the conflict of laws shall be decided on the basis of the law in the country of the accident. Nevertheless, if the claimant insists on the application of the rules of his home country, the involved parties are asked to cooperate in order to find the best solution not only for their own market but for the whole system.

In cases of uninsured vehicles, the Handling Compensation Body shall initiate the procedure for the victim's compensation subject to the impossibility to identify the insurance undertaking at the expiry of the 2-month period as from the date of the accident.

The Guarantee Fund to which a request has been referred to – be it the Paying Guarantee Fund, be it the Guarantee Fund in the state of the accident – shall as quickly as possible, and at least, within a period that does not exceed 2 months as from the date when the Compensation Body's request was received,

- *either identify the insurance undertaking which covers validly the vehicle at the time of the accident;*

[37] Idem.
[38] Decision N° 5-1 of 2013 of the CoB Annual Conference
[39] Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), OJ L 199, 31.7.2007, p. 40–49.
[40] Convention of 4 May 1971 on the Law Applicable to Traffic Accidents

- *or, if it fails to do so, either establish that the vehicle is normally based on its territory;*
- *or, establish that the vehicle is not normally based on its territory.*

When the Guarantee Fund communicates the identity of the insurance undertaking which covers validly the vehicle at the time of the accident within the 2 months of its referral, the Guarantee Fund may no longer be considered as the final debtor of the compensation and it belongs to the Handling Compensation Body to decide if it shall terminate the handling of the file or contact the claims representative of the insurance undertaking. In case of termination, the Handling Compensation Body informs the claimant about the identity of the insurer as well as its claims representative.

In case the competent insurer did not nominate a claims representative, the Handling Compensation Body shall continue to deal with the claim under the terms of Clause 2.2.

If at the expiry of the 2-month period as from the receipt of the request, the Guarantee Fund has not been able to establish one of the three situations mentioned above (identify the insurance undertaking, whether the vehicle is normally based or not normally based on its territory) and to inform the Handling Compensation Body accordingly, the vehicle shall then be considered as non-insured and normally based on the Guarantee Fund's territory.

The reimbursement made by the Paying Guarantee Fund falls within the framework of the relations described by this Agreement, but does not constitute its acceptance of being the final paying entity of the compensation.

The Paying Guarantee Fund shall keep its recourse right against any final debtor if new elements appear after the 2-month period mentioned above or after the reimbursement made by the Guarantee Fund to the Compensation Body. [41]

If new elements appear while the claim is not finally settled, it is up to the Handling Compensation Body to decide how to continue to deal with the claim. *It can either continue to indemnify the victim on the basis of uninsured driving or refer the claimant to the insurer /claims representative.*

In relation to the Handling Compensation Body, the Guarantee Fund is not allowed to refuse a request for compensation only because the vehicle was - from an *ex post* point of view - insured.

7.3. The Guarantee Fund of the Member State in which the accident took place, even though it is not responsible for the reimbursement described in Section III below, shall provide, upon request, to the Compensation Body to which a claim for compensation has been made, all necessary advice assistance and information - in particular on the content of the applicable law - and all documents it has available relating to the accident which this body wishes to obtain.

If the Paying Guarantee Fund is different from the Guarantee Fund in the state of the accident, the latter has no risk of financial burden at all. It is nevertheless obliged to support the Handling

[41] See footnote 35 above.

Compensation Body in any form and by any means as otherwise the correct handling of the claim cannot be assured.

The assistance and/or information shall be addressed to the requesting body without any delay and in consideration of the limits of two months. If after the period of two months the requested documents are (still) not available or the requested information depends on missing data/documents, the requesting body shall be informed about the current stage.

If the contacted Guarantee Fund fails to give a qualified answer to the Handling Compensation Body, the latter shall send a reminder. If again there is no response within a reasonable time, the Handling Compensation Body shall make an offer on the basis of other sources (e.g. literature, insurance companies, Green Card Bureaux, etc.) and send it to the Paying Guarantee Fund. The latter has to accept under the terms of Clause 8.2 unless it protests within the period of one month. Otherwise it should give qualified reasons for its disagreement.

Section III: Reimbursement procedures

Clause 8

8.1. When a Compensation Body has compensated upon request an injured party, it is entitled to receive, depending on the circumstances of the accident, either from the Guarantee Fund of the Member State in which the accident took place or from the Guarantee Fund of the Member State in which the road traffic vehicle which caused the accident is normally based, reimbursement containing, to the exclusion of everything else, the following:

8.1.1. the amount paid in compensation to the injured party or his/her beneficiaries; specifying the amounts paid as material damage and as bodily injury;
8.1.2. the sums paid for external services - such as, for example, experts', lawyers' or doctors' fees - inherent in the instruction and the in or out-of-court settlement of the claim;
8.1.3. the handling fees covering all other costs as defined by Clause 8.3. hereof.

The question whether particular positions of a claim (e.g. expert's fee) are deemed to be compensation or external costs should be decided on the basis of the applicable law. As a main rule, if the expenses were paid by the injured party, they will be considered as part of the compensation. Otherwise these sums paid for external services are to be regarded as external costs.

Costs for in -or out-of-court settlement concern pure costs like lawyer`s fee, court costs, etc.

If a Handling Compensation Body is obliged to pay compensation due to a court decision, as a basic principle these amounts shall be reimbursed by the Paying Guarantee Fund. This principle does not apply if the Handling Compensation Body ignored legal advice or any other support given by the Paying Guarantee Fund and/or, the Guarantee Fund of the member state where the accident occurred.

If the Paying Guarantee Fund is prevented from payment due to its national legislation, e.g. if the applicable limits of cover will be exceeded, it shall take all necessary steps to convince any other party that might be a potential debtor to compensate the Handling Compensation Body.

8.2. The amount to be reimbursed may only be disputed by the final paying Guarantee Fund if the Compensation Body which settled the injured party's claim has ignored objective material information given to it or has not observed the rules of applicable law.

This possible redress may not however be exercised by the paying Guarantee Fund which has not provided the information asked of it vis-a-vis sums referred to in Clause 8.1.1.; or if the final paying Guarantee Fund has not responded to a request for agreement on compensation, made by the competent body for dealing with the injured party's claim, within one month after presentation of this request; or if it agreed to such a settlement.

Upon receipt of the reimbursement demand, the Paying Guarantee Funds has one month to dispute the demand if the Handling Compensation Body has not adhered to the information provided to it by the paying Guarantee Fund/Guarantee Fund in the country of accident (if applicable) or if the Handling Compensation Body has failed to observe the applicable law in the calculation of compensation (Clause 7.2).

The Paying Guarantee Fund may however not refuse to pay the reimbursement demand in the following situations:

- the Paying Guarantee Fund has not replied to requests from the Handling Compensation Body in relation to the calculation of compensation to the victim (cf. Clause 8.1.1)
- the Paying Guarantee Fund has not responded within 30 days to an agreement for compensation sent by the Handling Compensation Body
- the Paying Guarantee Fund has agreed to an offer of compensation sent by the Handling Compensation Body.

In respect with dispatched vehicles it was decided that the final paying Guarantee Fund does not have the right to oppose its subsidiarity what concerns the recourse provided in Article 15.2 of the Codified MID.[42]

8.3. The handling fees referred to under Clause 8.1.3. cover all other costs regardless of the number of injured parties compensated following the same accident. They shall be calculated at the rate of 15% of the total of the sums mentioned in Clause 8.1.1. subject to a minimum and maximum amount the level of which is determined by a decision of the

[42] Decision Nº 1 of 2011 CoB Annual Conference 2011

Compensation Bodies based on a proposal sent to the Secretary General of the CEA[43] by at least five Compensation Bodies. This proposal becomes effective when it has received the agreement of three-quarters of the signatory Compensation Bodies and Guarantee Funds.

If the body which received the claim for compensation from the victim has not provided the information envisaged in Clause 7.1., it shall only be entitled to half the amount which it may justifiably seek under Clause 8.1.

The handling fees are calculated at the rate of 15% of the compensation paid subject to minimum and maximum amounts of €200 and €3500 respectively.

If the Handling Compensation Body failed to inform either the Guarantee Fund as defined in Article 10 of the codified MID of the Member State in which the accident took place or the Guarantee Fund of the Member State in which the road traffic vehicle which caused the accident is normally based it prevents those bodies to take further steps in order to identify either the vehicle or/and the competent insurer/claims representative. Therefore, the justified demands of the Handling Compensation Body can be reduced by 50%.

If the lack of receipt depends on technical problems only, which means the information has been sent by either e-mail or fax but has obviously not been transmitted due to technical reasons, the Paying Guarantee Fund shall abstain from reducing the demands.

8.4. The request for reimbursement shall be sent by fax or e-mail. Adequate documentary evidence shall be sent by any means. A request for additional documentation shall not justify a delay in reimbursement.

The request for reimbursement must be sent within one year from the latest payment made in favour of the injured party.[44]

Adequate documentation enables the Paying Guarantee Fund to distinguish between compensation, costs and handling fee as otherwise it cannot examine the correctness of the request for reimbursement. The individual invoice items shall be documented by providing the corresponding accounts (e.g. invoice for expert fees, repair, car-hiring, etc.).

If not already transmitted to the Paying Guarantee Fund before, documents concerning questions of liability shall be added to the request for reimbursement as well.

8.5. Claim for interim reimbursement may be sent when compensation has been paid to an injured party or his/her legal beneficiaries of an amount equivalent to EUR five thousand at least, it being agreed that handling fees may not be claimed

[43] In accordance with the CEA-CoB transfer Agreement (1996) this proposal has to be sent to the Secretary General of the Council of Bureaux.

[44] Decision N° 3 of the CoB Coordination Committee of 18th April 2013

before the final settlement of any claims relating to the same accident unless otherwise agreed between the bodies concerned.

If the Handling Compensation Body asks for interim reimbursement it is also entitled to ask for the costs that have already been incurred. The Paying Guarantee Fund must be able to distinguish between compensation and costs. Otherwise it cannot examine the correctness of the final request for reimbursement as the handling fees will be calculated on the basis of the whole compensation later on.

The individual invoice items shall be documented by providing the corresponding accounts (e.g. invoice for expert fees, repair, car-hiring, etc.).

If not already transmitted to the Paying Guarantee Fund before, documents concerning questions of liability shall be added to the request for reimbursement as well.

8.6. The request for interim or final reimbursement shall state that the amounts due are payable in the country and the currency of the handling Compensation Body, net of all charges, within thirty days of the request and that thereafter interest on arrears calculated at a rate of 12% per year on the amount claimed from the date of the request till that of the receipt of the outstanding sums due by the beneficiary's bank shall be due ipso jure.

The reimbursement, either by the Guarantee Fund of the Member State of the accident (in case of an unidentified vehicle) or by the Guarantee Fund of the Member State in which the vehicle is normally based (in case of an uninsured vehicle), 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 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. Settlement must be made by inter-bank transfer in the currency of the receiving party, and not by bank cheque.

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

8.7. When, following the payment of the claim for reimbursement, a file relating to a claim is re-opened, or when a new claim due to the same accident is presented, the outstanding balance for handling fees, if there is one, shall be calculated in accordance with the provisions in force when the request for reimbursement is presented in connection with the re-opened or new claim.

In case the Handling Compensation Body has to deal with the same event repeatedly as e.g. the claimant presented another claim, a second claimant asked for reimbursement, new facts were revealed, etc., the re-opening does not influence the minimum and maximum amount of the handling fees.
The sums that have been classified as compensation will be added. Calculation of handling fees will be based on the total sum of compensation (former and further compensation). If e.g. the Handling

Compensation Body already received the maximum amount of handling fees it is not entitled to ask for more.

8.8. Minimum handling fees determined by Compensation Bodies and Guarantee Funds in compliance with the procedure described in Clause 8.3. above, may be claimed when the claim for compensation after a genuine act of handling has not resulted in a payment to the victim.

Merely opening a «pro forma» file cannot justify the demand for a minimum handling fee. On the other hand, the costs mentioned in point 8.1.2. may be the subject of a claim for reimbursement.

If the activity of the Handling Compensation Body

- is limited to its designated tasks specified in Clause 7.1
- and/or is only for the purpose of compiling the necessary information from the claimant and
- is finalised within a period of two months after the receipt of the claim due to the identification of the competent insurer and without any further intervention of the Handling Compensation Body,

the file has to be considered as a *"pro forma"* file. In case the file can be closed without any further intervention of the Handling Compensation Body due to an answer given by the Guarantee Fund within or immediately after the expiry of the two months and in which the lack of liability of the driver of the uninsured/unidentified vehicle has been proven, the Handling Compensation Body is asked to carefully check whether it is already appropriate to ask for a handling fee.

A minimum handling fee may be claimed when the claim for compensation after a genuine act of handling as defined on page 6 *has not resulted in a payment to the benefit of the injured party.*

Joint provisions

Section I: Arbitration

Clause 9

Any dispute, controversy or claim arising from this agreement or linked to this agreement or to an infringement of this agreement, its resolution or its nullity, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Regulations (United Nations Commission on International Trade Law) currently in force.

The appointing authority shall be the President or failing that one of the Vice Presidents of the "Motor Insurance" Committee of the Comité Européen des Assurances.[45]

[45]The successor of the CEA is the CoB under the transfer agreement referred to in the introduction. As a consequence, and since the Working Arrangements to the Agreement have established the Coordination Committee, the Appointing Authority should be the President of the latter, who is at the same time the President of the Council of Bureaux.

The appointing authority shall issue a schedule of fees for arbitrators or failing that and on request from the parties furnish a statement setting forth the basis for establishing fees which is customarily followed in similar international cases.

The arbitral tribunal shall take into account that schedule of fees or this statement on applicable fees.

The number of arbitrators is fixed at three.

The languages to be used for arbitration are English, French or German.

Recourse to arbitration shall not affect the obligation to reimburse compensation paid or to settle the handling fees referred to in Clauses 4 and 8.

The decision arising out of arbitration shall cover the assumption of the cost of the arbitration procedure.

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 scale below. 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.

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	*450EUR*
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*

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

Section II: Term of the agreement

Clause 10

This agreement shall be concluded for an indefinite period.

If a signatory ceases to be authorised as the Compensation Body or Guarantee Fund in the Member State which appointed it for this purpose or finds itself unable to carry out

this role, it shall immediately notify the Secretary General of the Comité Européen des Assurances[46] accordingly which shall inform the European Commission and the other Signatories without delay.

The CEA Secretariat shall then take all the necessary measures, in consultation with the European Commission, with a view to ensuring the smooth operation of this agreement. In any event, the Compensation Body or the Guarantee Fund designated to replace the one which has ceased to function shall assume vis-a-vis the other signatories of this Agreement all financial debts and commitments of its predecessor.

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.[47]

Section III: Entry into force of the agreement

Clause 11

This Agreement is concluded between the Signatories mentioned in Section IV below, in the form of two original copies in English and French on 29 April 2002 in Brussels.

The date of its entry into force shall be fixed by the European Commission and communicated to the Signatories by the CEA Secretariat.

The CEA Secretariat shall issue certified copies of this Agreement to the Signatories and anyone justifying a legitimate interest.

[46] Due to the CEA-CoB transfer agreement, this role was taken over by the Secretary General of the Council of Bureaux.
[47] i.e. the Secretariat of the Council of Bureaux.