



Ulf Lemor
The Council of Bureaux of the International Motor
Insurance "Green card" system,
President d'honneur
Germany

Perspectives about the MTPL Insurance Legislation in the EU - 10 Years later ?

1. The harmonisation of compulsory motor insurance legislation in Europe has made great progress. The five MTPL - Directives have set universal European minimum standards for compulsory insurance with a view to enhancing the protection of road victims.

There is no doubt that the above aim was achieved at a high level.

Road victims now enjoy adequate protection following accidents both in their home country and in other EU countries. Especially for accidents abroad, the Fourth Motor Insurance Directive has accomplished considerable improvements in practical claims handling.

The Fifth Motor Insurance Directive will enter into force starting mid 2007, is another step towards Europe.

With this Directive the European legislator has basically done his homework. The Directive provides the required amendments and fills existing gaps.

2. With the compulsory insurance legislation yet only a small but essential part of the law governing motor vehicle third party liability insurance was harmonised. The situation for the law on liability and damages is quite a different one. This continues to be a mostly national domain. Harmonisation in this field has so far only concerned marginal areas, if any. We must bear in mind that a uniform European law on liability and damages is still in the far distance.

Within the next 10 years the following topics will be in the focus of the European Legislator:

- MTPL gaps
- Applicable law

- Harmonisation of the principles of liability
 - Better protection of vulnerable victims
 - Insolvency of MTPL-Insurers
 - Restriction of unlimited cover
3. The law applicable to international accidents is very important issue. Work in this field is prepared in the discussions of the „Rome II“ Draft Regulation. There are considerations to abolish the application of the law of the country where the accident occurred in favour of the law applicable in the injured party's home country.

The amendment of Commission's „Draft EU Regulation on the law applicable to non-contractual obligations“ suggested by the European Parliament could have an important practical impact.

The Commission's draft has provoked sharp criticism in the European Parliament. This mainly relates to international road accidents.

The European Parliament demands a special provision for calculating the compensation of personal damage caused in road accidents. This means to apply the law in the injured party's country of residence instead of the law of the country where the accident occurred, unless this would prove unreasonable for the injured party.

The overwhelming majority of European car insurers in the CEA have rejected this initiative of the European Parliament.

The issue will be back on the agenda no later than in 5 years, possibly with the result that law of the country of residence applies to both personal damage and property or financial damage.

4. The question is why so far no political initiative has been taken to harmonise the bases of liability. Scientists have repeatedly called for such measures and politicians have so far not reacted.

The high number of national liability concepts proves that considerable differences exist. Starting from fault liability through to strict liability of varying design to a more or less no-fault approach. Such standard terms hide a variety of overlapping intermediate stages, and a number of hybrid forms. Most states have adopted the principle of „strict liability“. This could be the basis for a European solution.

This would provide an opportunity for the European Parliament to keep a high profile. The aim should be to establish the principle of strict liability on a European basis. A relatively high standard in European compulsory insurance legislation is useless if it lacks an adequate liability basis.

Such basis is essential for modern consumer protection.

5. A number of states apply special provisions at national level regarding vulnerable road users such as children, senior citizens, pedestrians, cyclists, etc. The model is the familiar French „Loi Badinter“ dating back to 1985.

The Commission has announced its intention to take the matter up again. If this is done properly, there is little to be said against it.

The privileges for vulnerable road users should at any rate be limited to personal damage.

There is no reason to extend this solution to property or financial damage.

6. The law in some European and non-European countries provides unlimited cover for personal damage – in some exceptional cases even to material damage. This applies to the national market participant and all members of the Green Card System, since they are required to provide unlimited cover for the relevant countries.

Over the past years major reinsurers insisted that unlimited motor insurance cover must be abandoned as soon as possible.

The reasons are

- the negative claims development in view of a few spectacular large cases
- potential incident scenarios, especially in view of the risk of terrorism

and adverse developments in the financial markets having an impact on liquidity

What would be the consequences, if the reinsurance market had no capacity to cover such Illimité risks?

7. It is obvious that the European Legislator has still some work to do..... f.i. the cover of the driver who is responsible for the damage. Based on the traditional European liability systems in this case the driver has no insurance cover.

Another important issue would be the harmonisation of the insurance terminology at the European level. The European Council has adopted a recommendation in 1975 – why not continue this topic ?

There is still a lot to do. Car insurers should try to play a more active role. We should not content ourselves to simply reacting. Own initiative is required, if we want regulations that consider the interest of the insurance industry.