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MOTOR INSURANCE:

Accession of Bulgaria and Romania to the EU

In the light of accession of Bulgaria and Romania to the EU, this paper aims at presenting the circumstances under which these two countries will participate in the EU motor insurance system as governed by the current EU Motor Insurance Directives.

1. Introduction

On 29 September 2006, the Commission adopted its final Monitoring Report on the preparedness of Bulgaria and Romania for EU Membership.

(http://ec.europa.eu/enlargement/key_documents/reports_sept_2006_en.htm).

The report noted positive developments in the motor insurance sector of both countries. At the same time, motor insurance was identified as an area where further progress is still needed in order to achieve the signature of the Multilateral Agreement under the aegis of the Council of Bureaux (hereinafter the Multilateral Agreement) as well as the Agreement between Compensation Bodies and between Compensation Bodies and Guarantee Funds under the aegis of the Comité Européen des Assurances (hereinafter the Agreement between Compensation bodies and Guarantee funds) before accession.

All EU Member States are party to the aforementioned two agreements which underpin the smooth functioning of the motor insurance system in the European Union. The Services of DG MARKT have put an enormous effort during the last few years into assisting Bulgaria and Romania to comply with the requirements of the two mentioned organisations and thus secure the signature of the agreements on time. Both countries have had a cooperative attitude and they made significant progress, notably, on curbing the number of uninsured vehicles and on improving the financial position of their Guarantee Funds.

The Management Committee of the Council of Bureaux (COBx) adopted on 13 November 2006 a recommendation addressed to their members to sign the Multilateral Agreement with Bulgaria and Romania. The signing procedure is ongoing. However, a few members of the COBx have already expressed their unwillingness to follow this recommendation. As a consequence, the Commission cannot begin its internal procedure for the adoption and the publication in the Official Journal of a formal Decision ascertaining the signature of the Multilateral Agreement with Bulgaria and Romania. Checks on motor third party liability insurance policies may therefore remain in place after 1 January 2007.

As far as the Agreement between Compensation Bodies and Guarantee Funds is concerned, the decision on signature with Bulgaria and Romania has not yet been made by the signatories. Should the agreement be signed by the date of accession, Directive 2000/26/EC comes into force in its entirety as part of the *acquis* upon accession without the need to adopt a new Commission Decision in respect of Article 6 of the Directive. This would allow the immediate applicability of that article.

In the following, the background and consequences of the absence of the Multilateral Agreement and the Commission Decision under Directive 72/166/EEC as well as the non-signature of the Agreement between Compensation Bodies and Guarantee Funds are described in detail.

2. The Multilateral Agreement – Article 2 of Directive 72/166/EEC

Article 2(1) of the First Motor Insurance Directive 72/166/EEC obliges Member States to refrain from checks on motor third party liability insurance policies. The prohibition of insurance checks applies to vehicles normally based in the other EU countries as well as to vehicles normally based in third countries but entering the territory of the Member State concerned from another Member State. However, Member States may carry out "random" checks. This provision has been amended by the 5th Motor Insurance Directive 2005/14/EC (to be implemented by 11 June 2007) clarifying that only non- systematic checks, which are not discriminatory and are carried as part of a control not aimed exclusively at insurance verification, may be permitted.

In accordance with Article 2(2) of the same directive, the above provision can only take effect if an agreement between national insurers' bureaux has been signed and the signature subsequently ascertained by a Commission decision fixing the date from which insurance checks should be prohibited.

Following the signature of the **Multilateral Agreement**¹ in all 25 Member States (as well as in Andorra, Croatia, Liechtenstein, Iceland, Norway and Switzerland); ascertained by Commission Decisions 2003/564/EC, 2004/332/EC and 2005/849/EC, motor vehicles bearing a licence plate of one of these countries may circulate freely in the EU without checks of motor third party liability insurance certificates².

Due to the lacking signature of the Multilateral Agreement with Bulgaria and Romania by all COBx members and in the absence of the Commission decision under Article 2(2) of the Directive, Article 2(1) will not apply to Bulgaria and Romania as a result of which all Member States will be allowed to maintain checks on motor third party liability insurance in respect of vehicles normally based in Bulgaria and Romania as well as in respect of third country vehicles entering their territory from Bulgaria and Romania. Vice-versa, Bulgaria and Romania may maintain insurance checks on vehicles registered in one of the countries belonging to the Multilateral Agreement.

¹ The Agreement between the National Insurers' Bureaux of the Member States of the European Economic Area and other Associate States was concluded on 30 May 2002 in Rethymno (Crete), in accordance with the principles laid down in Articles 2(2) and 7 of Directive 72/166/EEC. The first Appendix of that agreement incorporates all the provisions of the Uniform Agreement between Bureaux and of the Multilateral Guarantee Agreement into a single document (the Internal Regulations). These Internal Regulations replaces these two latter agreements from 1 August 2003.

² The vehicle licence plate is deemed the equivalent of an insurance certificate.

3. Agreement between Compensation Bodies and Guarantee Funds – Article 6 of Directive 2000/26/EC

The 4th Motor Insurance Directive 2000/26/EC introduced the right of injured parties who suffered a road accident abroad (the so called "visiting victims") to apply with their claim to a claims representative appointed by the insurer of the liable party in their country of residence.

Moreover, Article 6 of the Directive has granted visiting victims the right to present their claim to the national compensation body if the claims representative has not provided a reasoned reply within three months or if the insurer of the liable party failed to appoint the claims representative. At the same time, compensation bodies have been granted the right of reimbursement of the sum paid by way of compensation against the body in the country where the vehicle is normally based.

Much like in the case of insurance checks, Article 6(3) of the Directive makes the applicability of the above mechanism conditional on the conclusion of an agreement between compensation bodies and a Commission decision ascertaining the signature of such an agreement.

The agreement, encompassing also an agreement between compensation bodies and guarantee funds, has been signed under the aegis of CEA between all current Member States. Commission Decision 2003/20/EC of 27 December 2002 on the application of Article 6 of the Directive 2000/26/EC ascertained this signature and fixed 20 January 2003 as the date from which Article 6 of the Directive shall take effect. The Decision also applies to any country joining the EU after its adoption as of the date of accession (this was the case of the 10 new Member States). The agreement is divided in two parts:

- Part I defining the functions and obligations of the national compensation bodies and the procedures for reimbursement within the framework of Article 6 of the Directive (agreement between compensation bodies) - required by the Directive in order to allow Article 6 to enter in force.
- Part II defining the functions and obligations of the national compensation bodies and the national guarantee funds and the procedures for reimbursement within the framework of Article 7 of the Directive (agreement between compensation bodies and guarantee funds) – not required by the Directive: Article 7 is therefore applicable irrespective of an agreement.

The consequence of non – signature of the agreement with Bulgaria and Romania would be that Article 6 of the 4th Motor Insurance Directive could not take effect. This means that Bulgarian and Romanian nationals who suffered an accident in another Member State might encounter difficulties to obtain compensation from their respective compensation bodies (when a reasoned reply from the insurer/claims representative of the liable party would not arrive in time or when the insurer of the liable party would not have appointed a claim representative in Bulgaria or Romania). The same problem would arise for nationals from the current Member States when setting up a claim for compensation in their home country due to an accident suffered in Bulgaria or Romania.

As a result, the mechanism foreseen by the Directive to improve victims' protection in cross-border situations would apply only partially – the system of compensation bodies would not be activated.

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