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Motor Insurance Directive 2009/103/EC

Derogation from the obligation in respect of compulsory insurance of vehicles (Article 5(2))

This note is a follow-up to the questionnaire about the implementation and practical application of Article 5(2) of the EU Motor Insurance Directive 2009/103/EC.

Article 5(2) states that a Member State may derogate from Article 3 of the Directive, i.e. the compulsory insurance of vehicles, in respect of certain types of vehicle or certain vehicles having a special plate; the list of such types or of such vehicles shall be drawn up by the State concerned and communicated to the other Member States and to the Commission.

Any Member State so derogating shall ensure that the above-mentioned vehicles are treated in the same way as vehicles for which the insurance obligation provided for in Article 3 has not been satisfied.

The guarantee fund of the Member State in which the accident has taken place shall then have a claim against the guarantee fund in the Member State where the vehicle is normally based.

The Commission asked a number of questions about the implementation and practical application of the said paragraph in the EEA Member States in this regard. The deadline for submitting the replies by the Member States was 15 October 2010.

Conclusion

A substantial number of EEA Member States have taken recourse to Article 5(2) of the Directive. Moreover, we also understand that no problematic issues have arisen regarding the practical application of this paragraph. Finally, one EU Member State demanded the abolition of Article 5(2) because it would not fit properly into the EU motor insurance system concerning visiting victims. Moreover, it also mentioned that its guarantee fund has found at least one hypothetical example in which the said paragraph's application would be problematic.

We suggest to maintain the current provision and invite the Member States to give their opinion in this respect.

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