



## **PUBLIC HEARING ON LIMITATION PERIODS FOR ROAD TRAFFIC ACCIDENTS : THE STATE OF PLAY AND THE WAY FORWARD**

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### **1. Introduction**

First of all, let me thank the rapporteur, Mr. Svoboda, for giving the insurance industry the opportunity to participate in today's hearing on limitation periods. My association, Insurance Europe, is the European insurance and reinsurance federation. Through our 34 national insurance association members, we represent around 95 percent of Europe's total premium income. We are therefore qualified to talk on behalf of the whole sector.

Motor insurance represents around a third of all non-life premiums in Europe. It is a key pillar of our sector. So we have a keen interest in taking part in any discussion around the legal framework in which insurers operate.

Motor insurers' goal is to ensure that victims of road traffic accidents are appropriately protected and we therefore welcome the opportunity to take part in today's debate.

I will start my presentation by saying a few words on the role that motor insurers play in protecting victims and on the applicable framework at EU level.

I will then move to the issue of limitation periods, providing Insurance Europe's views on the scale of the problem and possible solutions. I will touch on the provision of information and on harmonisation.

### **2. Applicable framework**

So, let me start with a few words on the EU framework under which motor insurers operate. The Motor Insurance Directive was adopted with the primary goal of ensuring that victims of road traffic accidents are adequately protected throughout the EU. A number of important provisions to achieve this goal of adequate protection are contained in the now Codified Motor Insurance Directive, which dates back to 2009. The other main goal of the Directive, which is linked to the first one, is to facilitate the free movement of persons throughout the EU.

The Motor Insurance Directive's key provision requires all motor vehicles in the EU to be covered by motor third-party liability insurance. In recent years, though, it has evolved to include a number of provisions that ensure compensation for road accident victims anywhere and facilitate access to this compensation. For example, these include setting up national bodies to guarantee compensation where the vehicle that caused the accident is uninsured or unidentified. This also includes an obligation for the relevant insurer to make a reasoned response within three months of the injured party presenting their compensation claim. The Directive also ensures that victims are entitled to claim in their own member state, rather than having to do so in the state where the accident occurred.

Let me conclude this introduction by stating that it is our belief that the compensation system put in place through the Motor Insurance Directive works well for accident victims and should therefore be preserved.

### 3. Potential difficulties resulting from different rules on limitation periods

Let me now share Insurance Europe's perspective specifically on today's topic: "limitation periods for road traffic accidents: the state of play and the way forward". Insurance Europe looked into this issue when it was discussed at the initiative of the European Parliament in 2006/2007 and then by the Commission, notably through its consultations in 2009 and again in 2012. My comments today are largely based on the discussions we had then with our members and other interested parties, as Insurance Europe's members' views remain unchanged.

Of course we are willing to discuss any new aspects to the discussion that may be brought forward, notably by the study by the Parliament's Research Services (EPRS), which will be presented later today.

The question at the core of today's hearing is whether there are particular difficulties for victims of road traffic accidents as a result of the existence of different rules on limitation or prescription periods in the EU, and how to address these difficulties.

The difficulties are generally perceived as being of two different types. They can be the result of limitation periods in some member states being considered too short to allow access to redress in cross-border claims. Or they may be linked to a perceived lack of information about the rules in different states.

### 4. Scale of the problem

The first question is: what is the scale of the problem? How often do victims of cross-border accidents face difficulties due to differences in limitation periods?

Quantifying the problem is the important first step to devising a solution that is proportionate to the problem at stake.

According to our information, the problem is of a rather limited scale. The Commission's 2009 study stated that — while there are cases of courts rejecting a claim based on the expiry of a limitation period — the surveys and interviews that it conducted indicated that — and I quote — "these cases are relatively rare"<sup>1</sup>.

To understand this, it is important to keep in mind that in practice:

- 1. Only a small percentage of accidents have a cross-border element;
- 2. Most victims of road traffic accidents, whether local or cross-border, seek legal advice. The onus of providing information on limitations periods is therefore on the victim's legal advisor;
- 3. An important proportion of road accident cases are settled out of court;
- 4. In only a few of the remaining cases would the expiry of the limitation period result in a claim being rejected.

Of course this is not to say that this is not an issue or that nothing should be done about it, but given that the number of victims affected is relatively small, "the most appropriate solutions would be those that do not lead to overhauling the whole legal framework of member states" — quoting again the Commission's 2009 study.

### 5. Possible solutions: information vs. harmonisation

In its 2012 consultation, two types of solutions were envisaged by the Commission: either providing information on the differences in limitation periods, or harmonising certain aspects of the rules on limitation periods, when they apply to cross-border accidents.

#### Provision of information on limitation periods

From Insurance Europe's perspective, the provision of information was the favoured option. Insurance Europe was not alone. The Commission noted that improving the general information on prescription and limitation periods received "almost unanimous support"<sup>2</sup>.

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<sup>1</sup> Compensation of victims of cross-border road traffic accidents in the EU: Comparison of national practices, analysis of problems and evaluation of options for improving the position of cross-border victims (EC, DG MARKT, 2009). [http://ec.europa.eu/civiljustice/news/docs/study\\_compensation\\_road\\_victims\\_en.pdf](http://ec.europa.eu/civiljustice/news/docs/study_compensation_road_victims_en.pdf)

<sup>2</sup> EC summary of 2012 consultation. [http://ec.europa.eu/justice/newsroom/civil/opinion/121031\\_en.htm](http://ec.europa.eu/justice/newsroom/civil/opinion/121031_en.htm)

At the time, we argued that the information on limitation periods in the different member states should be included in the e-Justice Portal of the Commission, in all EU languages. This would ensure that victims have access to the same information in a uniform manner. The information should be of a general nature but nevertheless be sufficiently specific to be of use. In light of the differences between national systems, the support of member states is needed to build such an information portal and ensure that the information provided is accurate and kept up to date.

So, Insurance Europe supports the provision of information as the best way to address the potential difficulties arising from the differences in limitation periods and support victims of cross-border accidents.

## **Harmonisation**

The other solution that was considered by the Commission — and indeed by the European Parliament — a couple of years ago was the harmonisation of limitation and prescription periods for cross-border accidents, or certain types of them.

This is, in our opinion, not a proportionate response to the issue at hand

Also, one needs to consider how easy it would be, in practice, to harmonise the rules.

The answer is that it would be extremely complex, notably because the laws on limitation periods may be linked to other legal factors, such as the types of claims that are available under national law, the evidence required to prove those claims and the remedies available. These factors may influence not only the length of the national limitation period, but any rules on their launch, suspension or termination. The average length of the judicial procedure and the litigation culture may also have some influence over national limitation periods.

So, amending the rules on limitation periods would almost inevitably imply interfering with member states' competence for civil tort law.

Bearing in mind that differences in limitation periods are of concern in only a small proportion of cross-border accident cases, I would close by again arguing that such a complex endeavour would be disproportionate.

## **6. Conclusion**

To conclude, I would again like to thank the European Parliament for the invitation to today's hearing. I would also reiterate Insurance Europe's willingness to continue its engagement in this debate, particularly in light of the parliamentary study to be made public today.