

Response to EC consultation on harmonisation of limitation periods in cross-border accidents

Our reference:	NLI-MTR-12-125	Date:	16 November 2012
Referring to:	EC Consultation on limitation periods for compensation claims of cross-border road traffic accidents in the EU		
Contact person:	Malene Bye Rasmussen, Policy Advisor, Non-Life Insurance, Frida Bergman de Flores, Policy Advisor, Public Affairs	E-mail:	rasmussen@insurancееurope.eu bergman@insurancееurope.eu
Pages:	4	Transparency Register ID no.:	33213703459-54

Summary

Insurance Europe welcomes the opportunity to respond to the European Commission's (EC) consultation on the issue of limitation/prescription periods for compensation claims of victims of cross-border road traffic accidents in the European Union.

We support the objective of assisting victims that may find their claim defeated due to the expiry of the limitation period for raising a claim for compensation. It is worth pointing out from the outset that the reality is that very few such claims exist.

As was concluded in the 2008 report commissioned by the EC as part of an earlier consultation on the issue¹ "*...the number of people concerned is relatively limited*" and "*the most appropriate solutions would be those that do not lead to overhauling the whole legal framework of Member States.*"

There is, currently, no evidence available to demonstrate any *need* to harmonise limitation/prescription periods within the internal market.

For these reasons, **Insurance Europe supports option 3 – improving general information on limitation and prescription periods.** This will enable consumers to be properly and objectively advised of the various differences in limitation/prescription periods between member states. Option 3 is the most proportionate response to address an issue that affects an extremely small group of victims of road traffic accidents.

¹ Please refer to the final version of the 2008 report commissioned by the EC and entitled: "*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 – Part II*" - http://ec.europa.eu/civiljustice/news/docs/study_compensation_road_victims_en.pdf

Insurance Europe supports the proposal that the EC could draw up country fiches to be published on the e-Justice Portal in all European Union languages. The information contained on the e-Justice Portal should be based on country specific information received from each member state, updated by the member states when relevant.

Key messages

Expiry of the limitation/prescription period affects a minute number of all cross-border road traffic accidents

Insurance Europe is not aware of any market within the EU where the issue identified – that victims of cross-border road traffic accidents are defeated when raising a claim due to the expiry of the limitation/prescription period – arises regularly. Instances of such cases are very rare.

The main reasons for the rarity of cases that may be affected by the expiry of the applicable limitation/prescription period are that:

- Only a very small proportion of road traffic accidents involve a cross-border element (estimated to be somewhere between 1% and 2% of all road traffic accidents);
- Most claimants seek legal advice immediately and are therefore properly advised of the existence of limitation/prescription periods, if it is material to their case management:
 - As the 2008 report shows, legal advice is predominantly to issue a claim precisely to avoid expiry of the limitation/prescription period;
 - If a limitation/prescription period expires, it is likely that this is due to evidentiary difficulties;
- The vast majority of road traffic accident claims are settled out of court (estimated to be substantially above 90%) before the limitation/prescription period applicable to a claim becomes relevant.

Based on current estimates available on out of court settlement rates, Insurance Europe believes that only some 0.2% of all road traffic accidents are likely to have a cross-border element and be pursued through the courts. The implication is that only a minute number of claimants may find that limitation/prescription periods are coming up to expiry or have expired (i.e. far below 0.2% of all road traffic accident claims).

Any solution must be proportionate and appropriate

Any legislative response to resolve the issue must be *proportionate* to the issue at stake and *appropriate* to achieve the objectives sought. The manner of assisting an extremely small group of victims should be carefully considered to avoid unnecessarily impacting other victims negatively - especially where these, together, form a much larger group. For instance, harmonising the limitation/prescription periods for victims of cross-border accidents (e.g. visiting victims), risks putting them in an advantageous position relative to victims of accidents occurring in the same country but having no cross-border element.

Several options included in the consultation are disproportionate and shift responsibility inappropriately. In this way:

- Options 1 and 2 risk resulting in *differences* in the quality, accuracy and availability of information provided to consumers, depending on the organisation providing the information. A disparity in knowledge would therefore remain between European citizens.
- Options 1 and 2 impose an inappropriate burden on the insurance industry to:
 - Maintain accurate and up-to-date records on limitation/prescription periods in all 27 EU member states;
 - Provide explanations on a complex area of law spanning 27 different legal regimes, in sufficiently plain language to be understood by the consumer without aid or support of legal advisors;
 - Provide information on a legal aspect of claim management which could become a point of conflict of interest between the recipient of the information and the insurer (depending on *which* insurer would be required to provide the information);
 - Provide information on 27 different legal regimes that consumers would be known to rely on in the case management of their legal claim, when such information would be more

appropriately sought from a legal advisor. Both options would introduce the potential for a new legal liability on insurers in the giving of this information, arising from the tort of negligence; and

- Provide information that is sufficiently full and detailed to add value to the consumers' decision making process. The 2008 EC report exemplifies the complexity of trying to provide *sufficiently full and detailed information* to enable consumers to understand when, where and how to raise/suspend/maintain a claim to avoid expiry of the relevant limitation/prescription period (the following is not an exhaustive list):
 - Triggering events for the "clock beginning to count" differ between member states,
 - The limitation/prescription periods differ between types of *claims* (e.g. personal injury or property damage) between member states,
 - The limitation/prescription periods differ between types of *actions* (e.g. tort or contract, civil or criminal) between member states,
 - The existence and application of a right to suspend/interrupt the limitation/prescription period varies between member states, and
 - Interruption of the limitation/prescription period may require the use of specific language which again will differ between member states.
- Option 4 is disproportionate and inappropriate in the light of the extremely small group of victims of road traffic accidents that may be affected by the expiry of the limitation/prescription period. In particular, harmonisation would involve amendment to existing legal rights in all 27 member states.
 - This is disproportionate to the extremely small group of victims possibly affected by expiry of the limitation/prescription period.
 - Additionally, it is inappropriate to alter national legal provisions where the harmonisation would necessarily require substantial changes to national laws and raises the issue of competence to do so.
 - In certain member states, limitation periods are subject to substantive law and therefore cannot easily be amended by addressing the issue of limitation periods in a vacuum. Limitation/prescription periods are intimately linked to other areas of law and are (as set out above) dependent (variously between member states) on the: type of claim, type of action etc.
- Consideration of harmonisation (or imposition of obligations on the insurance industry to alleviate any risk of expiry of limitation/prescription periods) goes against the conclusions drawn in the 2008 EC report. In particular, reference should be made to the following sections of that report:
 - In the context of proportionality of solutions considered (section 5.4) the report notes: *"...Solutions should be proportionate to the objectives pursued. At the EU level, they should also be proportionate to the significance of the issues in the internal market...The latest figures confirm that road traffic accidents involving Visiting Victims represent a minute share of all road traffic accidents."* (emphasis added);
 - Concluding on its assessment of solutions relating to limitation periods (section 5.13): *"...The purpose for identifying and assessing all these solutions is to facilitate the determination of the most relevant solution given the importance of the issues at hand and the fact that any chosen solution should be proportionate to the issues identified. It does not appear that limitation periods pose a major problem to Victims and given that the number of Victims is relatively small as previously stated, any solution adopted should be precisely tailored to the real needs."* (emphasis added); and
 - Reaching its final conclusion (section 5.15), the report states: *"Given that the number of people concerned is relatively limited, the most appropriate solutions would be those that do not lead to overhauling the whole legal framework of Member States."* (emphasis added).

In the light of the conclusions of the 2008 report commissioned by the EC, harmonisation is not a desirable response to the issue identified.

Mixing the issue of limitation periods applicable to cross-border road traffic accidents with the application of the Hague Convention is inappropriate

The appraisal of limitation/prescription periods should not be mixed with an appraisal of the Hague Convention and the lack of legal certainty that some victims may encounter by virtue of its applicability in some member states.

In any event, the vast majority of victims of road traffic accidents (whether domestic or having a cross-border element) seek legal advice.

Current limitation/prescription periods do not *contravene* the right to a fair trial

The consultation document refers to a 2011 report by the European Union Agency for Fundamental Rights (the "2011 report")². According to the consultation's interpretation of that report:

"...the European Agency for Fundamental Rights emphasised in a recent report that disproportionately short periods of limitation or prescription constitute an obstacle to accessing justice in the Member States which may contravene the right to a fair trial enshrined in Article 6 of the European Convention for Human Rights."

Insurance Europe objects to this interpretation of the 2011 report. It implies that limitation/prescription periods in some member states contravene fundamental human rights. The 2011 report was very careful to conclude, in its review of limitation periods as an obstacle to justice that the proportionality of particular obstacles very much depends on the specific circumstances of the case. Additionally, it should be emphasised that the 2011 report's conclusions are drawn in the context of *general civil law* and not specifically to the types of claims considered in the current EC consultation.

Concluding remarks

Any solution adopted to improve the legal standing of victims of cross-border road traffic accidents should be proportionate and appropriate to the issue at stake. There is currently no evidence to demonstrate a need to harmonise an extremely complex area of law in the light of the exceptionally small number of victims that may benefit from such harmonisation.

The appropriate and proportionate response would therefore be improving the general information available on limitation and prescription periods as proposed by the EC under Option 3.

Insurance Europe is the European insurance and reinsurance federation. Through its 34 member bodies — the national insurance associations — Insurance Europe represents all types of insurance and reinsurance undertakings, eg pan-European companies, monoliners, mutuals and SMEs. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers generate premium income of over €1 100bn, employ nearly one million people and invest almost €7 500bn in the economy.

www.insuranceeurope.eu

² "Access to Justice in Europe: an overview of challenges and opportunities" by the European Agency for Fundamental Rights, 2011