

# Explanatory Memorandum to the Internal Regulations

## Introduction

Before adopting the Internal Regulations<sup>1</sup>, the Bureaux were bilaterally bound by a uniform model agreement called “Inter-Bureaux Uniform Agreement”. Furthermore, some Bureaux, in particular those in the European Economic Area (EEA) and other associated Bureaux, were signatories of an agreement known as the “Multilateral Guarantee Agreement<sup>2</sup>”.

Even though the basis of these two agreements may be different (the first established on the existence of a Green Card, the second based on the assumption of insurance following on from the normally based concept), both of these had the same objective, that is to say, to regulate the relationships between Bureaux.

We have noted throughout the years that these two agreements have developed differently. This statement is the basis of the standardisation project.

This standardisation was not easy to carry out as it is about finding a solution which will allow the combining of the text of an agreement bilaterally binding all Bureaux and a multilateral agreement which will only be obligatory for some of them. More specifically, the new document cannot be a multilateral agreement binding all Bureaux as the bilateral nature of the “Inter-Bureaux Agreement” had to be kept as it is. Moreover, the provisions of the “Multilateral Guarantee Agreement” stem directly from the First European Directive regarding motor insurance and it was not conceivable to impose these provisions on all countries that are part of the Green Card System.

The solution put forward by the Working Group responsible for the drafting of the unification project was not to draft a new agreement but to draft a reference document called “Internal Regulations” the object of which would be “to govern the reciprocal relations between National Insurers’ Bureaux thereby enforcing the provisions of Recommendation No 5 adopted on 25 January 1949”. This document is made up of obligatory provisions (which must be respected by all Bureaux) and optional provisions which only bind the Bureaux which have chosen to observe them within the framework of their relationships with other Bureaux. The commitment to respecting these obligatory and optional rules is embodied in a brief agreement signed bilaterally by the Bureaux (however this does not apply to EEA Bureaux which, on applying the 1st Directive, are obliged to reach a multilateral agreement among themselves).

This solution has the advantage of preserving the bilateral nature of these agreements between Bureaux which all refer to a single document (The Internal Regulations). This document can, according to needs, be modified over time by the General Assembly of the Council of Bureaux without introducing the obligation to proceed to the signing of the modified bilateral agreements.

The standardisation of these two agreements was not the only aim of the Working Group. The group wanted to draft a document which was accessible to all those professionally involved in motor insurance. It also wanted to put forward new solutions which follow on as much from the evolution of the system as from the adoption of the new community regulations.

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<sup>1</sup> The Internal Regulations were adopted by the General Assembly of the Council of Bureaux on the 30<sup>th</sup> of May 2002 in Rethymno (Crete).

<sup>2</sup> The “Multilateral Guarantee Agreement” was signed in Madrid on 15<sup>th</sup> March 1991.

The Working Group also drafted the current memorandum with a view to facilitating the reading of the Internal Regulations. This memorandum was officially approved in Lyon during the General Assembly of 2003.

The Internal Regulations were the subject of a publication in the Official Journal of the European Community<sup>3</sup>. In view of the fact that any modification to these Regulations involves a new publication, which constitutes a lengthy and complicated procedure, the General Assembly of the Council of Bureaux decided in 2004 that any interpretations of the Internal Regulations would be inserted in the Explanatory Memorandum to the Internal Regulations. This would preferably be as an amendment to the wording of the latter<sup>4</sup>.

The Internal Regulations begin with a preamble with a view to reminding us of the origin and the basic principles of the green card system as well as the developments which have taken place since it was created in 1951.

This preamble was completed in 2008 to take into account the updates brought to the original text of the Internal Regulations mainly following on from the 5th Directive on Motor Insurance<sup>5</sup>.

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<sup>3</sup> Official Journal L 192 of 31.7.2003, p.23 and ff.

<sup>4</sup> 2004 – General Assembly, Decision N° 3 - Interpretation of the Internal Regulations

<sup>5</sup> Directive 2005/14/EC of 11<sup>th</sup> May 2005. This directive has been repealed and replaced by Directive 2009/103/EC, enforced on 27<sup>th</sup> October 2009

## Preamble

(1) Whereas in 1949 the Working Party on Road Transport of the Inland Transport Committee of the Economic Commission for Europe of the United Nations sent to the Governments of Member States a recommendation<sup>6</sup> inviting them to ask insurers covering third party liability risks in respect of the use of vehicles to conclude agreements for the establishment of uniform and practical provisions to enable motorists to be satisfactorily insured when entering countries where insurance against such risks is compulsory.

(2) Whereas this recommendation concluded that the introduction of a uniform insurance document would be the best way to achieve that end and set out the basic principles of agreements to be concluded between insurers in the different countries.

(3) Whereas the Inter-Bureaux Agreement, the text of which was adopted in November 1951 by representatives of the insurers in States which, at the time, had responded favourably to the recommendation, formed the basis of the relationship between these insurers.

(4) Whereas:

(a) the purpose of the system, commonly known as the Green Card System, was to facilitate the international circulation of motor vehicles by enabling insurance of third party liability risks in respect of their use to fulfil the criteria imposed by the visited country and, in the case of accidents, to guarantee compensation of injured parties in accordance with the national law and regulations of that country;

(b) the international motor insurance card (Green Card), which is officially recognised by the government authorities of the States adopting the United Nations Recommendation, is proof in each visited country of compulsory civil liability insurance in respect of the use of the motor vehicle described therein;

(c) in each participating State a national bureau has been created and officially approved in order to provide a guarantee to:

- its government that the foreign insurer will abide by the law applicable in that country and compensate injured parties within its limits,

- the bureau of the visited country of the commitment of the member insurer covering third party liability in respect of the use of the vehicle involved in the accident;

(d) as a consequence of this non-profit-making dual mandate, each bureau is required to have its own independent financial structure based on the joint commitment of insurers authorised to transact compulsory civil liability insurance in respect of the use of motor vehicles operating in its national market which enables it to meet obligations arising out of agreements between it and other bureaux.

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<sup>6</sup> Recommendation No 5 adopted on January 1949, superseded by Annex 1 of the Revised Consolidated Resolution on the Facilitation of Road Transport (R.E.4) adopted by the Working Party on Road Transport of the Inland Transport Committee of the Economic Commission for Europe of the United Nations, the text of which is provided as Annex I of the Internal Regulations.

(5) Whereas:

(a) some States, in order to further facilitate international road traffic, have abolished Green Card inspection at their frontiers by virtue of agreements signed between their respective Bureaux, mainly based on vehicle registration;

(b) by its Directive of 24 April 1972<sup>7</sup> the Council of the European Community proposed to the Bureaux of Member States the conclusion of such an agreement; then known as the Supplementary Inter-Bureaux Agreement, which was signed on 16 October 1972;

(c) subsequent agreements, based on the same principles, enabled the bureaux of other countries to become members; and these agreements were then collected into a single document signed on 15 March 1991 and called the Multilateral Guarantee Agreement.

(6) Whereas it is now desirable to incorporate all provisions governing the relations between bureaux into a single document, the Council of Bureaux, at its General Assembly held in Rethymno (Crete) on 30 May 2002 adopted these Internal Regulations.

(7) Whereas the General Assembly of Lisbon (Portugal) ratified, on 29 May 2008, the updates which were made to the current Internal Regulations related principally to the application of the 5th Motor Insurance Directive (Directive 2005/14/EC of 11 May 2005).

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<sup>7</sup> Directive of the Council of 24 April 1972 (72/166/EEC) on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles and to the enforcement of the obligation to insure against such liability, the text of which is provided as Annex II of the Internal Regulations. This directive has been repealed and replaced by the 2009/103/EC Directive enforced on 27<sup>th</sup> October 2009.

## Section I – General Rules

### **ARTICLE 1 – PURPOSE**

*The purpose of these Internal Regulations is to govern the reciprocal relations between National Insurers' Bureaux thereby enforcing the provisions of Recommendation no. 5 adopted on 25 January 1949 by the Working Party on Road Transport of the Inland Transport Committee of the European Economic Commission of the United Nations, superseded by Annex 1 of the Consolidated Resolution on the Facilitation of Road Transport (R.E.4) adopted by the Inland Transport Committee at the sixty-sixth session which was held from the 17<sup>th</sup> to the 19<sup>th</sup> of February 2004, in its current version (hereinafter called "Recommendation n°5).*

#### ARTICLE 1 - Purpose

The purpose of these Internal Regulations is to govern the relations between National Insurers' Bureaux in the context of enforcing Recommendation n°5. In accordance with the name of the document – INTERNAL REGULATIONS – the definition of the purpose does not include any bodies other than the Bureaux so that only the Bureaux have direct rights under the Internal Regulations. In particular, members (see definition in Article 2.3) or correspondents (see definition in Article 2.4) can only enforce rights arising from the Internal Regulations via the Bureaux.

### **ARTICLE 2 – DEFINITIONS**

*For the purpose of these Internal Regulations the following words and expressions shall have the meanings herein assigned to them and no other:*

#### ARTICLE 2 – Definitions

The content of these definitions has been carefully considered to ensure that the wording selected is compatible with the text of Recommendation n° 5 and that of the European Directives relating to motor insurance.

**2.1 “National Insurers’ Bureau” (hereinafter called “Bureau”):** means the professional organisation which is a Member of the Council of Bureaux and constituted in the country of its establishment pursuant to Recommendation n°5.

2.1 Each National Insurers’ Bureau shall fulfil three broad criteria. It shall:

- a) be a professional organisation,
- b) be a member in the Council of Bureaux, and
- c) fulfil the requirements of Recommendation n°5 which provide for:
  1. official recognition by the government of this country’s Bureau as a single organisation established by authorised insurers,
  2. membership of the Bureau being restricted to those insurers authorised to transact motor third party liability insurance,
  3. an obligation on all insurers authorised to transact motor third party liability insurance to become members of the Bureau,
  4. an obligation on all insurers authorised to transact motor third party liability insurance to share in the financing of the Bureau so that the Bureau is in a position to meet its financial obligations.

Furthermore it provides that the government of the country of each Bureau shall provide the United Nations Economic Commission for Europe with a written undertaking not to place any obstacles in the way of the export of currency required to meet the international obligations of the Bureau and also with written confirmation that the Bureau has the means to fulfil its financial obligations.

**2.2 “insurer”:** means any undertaking authorised to conduct the business of compulsory third party liability insurance in respect of the use of motor vehicles.

2.2 The definition of an Insurer requires that the insurer must be approved by the appropriate national authority to underwrite motor third party liability insurance. This definition does not preclude the insurer from operating in other classes of motor insurance but it is essential that the approval relates to motor third party liability insurance. The operational insurance undertaking may take any authorised legal form including that of Lloyd’s.

**2.3 “member”:** means any insurer who is a member of a Bureau.

2.3 In compliance with Recommendation n°5 the definition of a Member does not distinguish between insurers authorised to underwrite motor third party liability insurance offering international territorial coverage and those offering a similar product but whose authorisation restricts them to “national” coverage only. For

the purposes of these Internal Regulations only insurers authorised to provide motor third party liability insurance offering international territorial coverage may be recognised as Members.

**2.4 “correspondent”:** *means any insurer or other person appointed by one or more insurers with the approval of the Bureau of the country in which the person is established with a view to handling and settling claims arising from accidents involving vehicles for which the insurer or insurers in question have issued an insurance policy and occurring in that country.*

2.4 The definition of a Correspondent lays down three conditions:

- a) Being appointed by one or more insurers via the National Bureau of which they are members,
- b) Being approved by the Bureau of the country of establishment,
- c) Being able to handle and settle motor third party liability claims.

Subject to any legal or regulatory provisions or conditions laid down by the Bureau of the country of establishment the function of Correspondent may be fulfilled by any organisation or natural person, such as a claims adjustor or lawyer.

**2.5 “vehicle”:** *means any motor vehicle intended for travel on land and propelled by mechanical power but not running on rails as well as any trailer whether or not coupled but only where the motor vehicle or trailer is made subject to compulsory insurance in the country in which it is being used.*

2.5 The definition of a Vehicle and the fact that this should or should not be obligatorily insured shall be understood in accordance with the legal provisions in force in the visited country and not those prevailing in the country of origin of the vehicle.

The accidents involving vehicles with attached trailers should be resolved on the basis of the law applicable in the country of the accident<sup>8</sup>. This law mainly determines whether the claim must be dealt with by the insurer of the tractor or that of the trailer or whether this charge should be shared between them.

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<sup>8</sup> 1985 – General Assembly, Item 2B(b) as modified in 2008



**2.6 “accident”:** means any event causing loss or injury which may, pursuant to the law of the country where it occurs, fall within the scope of compulsory third party liability insurance in respect of the use of a vehicle.

2.6 An accident is defined as any event causing loss or injury falling within the scope of the law on compulsory motor third party liability insurance. This definition covers every accident irrespective of the number of vehicles involved, including cases where only one vehicle is involved.

**2.7 “injured party”:** means any person entitled to claim compensation in respect of any loss or injury caused by a vehicle.

2.7 The definition of an Injured Party is based on the right to obtain compensation for property damage or personal injury. In practical terms this means that the victim of an accident and the Injured Party, as defined under the Internal Regulations, may be two different persons, typically a fatally injured victim whose surviving relatives would be entitled to claim compensation. Apart from surviving relatives, any other natural or legal person which is legally subrogated in the rights of the victim or which has a direct, self-standing right (such as e.g. a social insurer or a property insurer) is to be considered as an injured party<sup>9</sup>.

**2.8 “claim”:** means any one or more claims for compensation presented by an injured party and arising out of the same accident.

2.8 The definition of a Claim includes either one single claim or multiple claims for compensation on the condition that they arise from one and the same event causing property damage or personal injury covered by motor third party liability insurance. The term “Claim” implies that the Injured Party submits a request for compensation. The mere occurrence of an event resulting in property damage or personal injury does not constitute a Claim.

**2.9 “policy of insurance”:** means a contract of compulsory insurance issued by a Bureau member covering civil liability in respect of the use of a vehicle.

2.9 Insurance Policy is defined as a compulsory motor third party liability insurance contract issued by a member of a Bureau.

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<sup>9</sup> 2014 – General Assembly, Decision N° 5-3

**2.10 “insured”:** means any person whose third party liability is covered by a policy of insurance.

2.10 The Insured is defined as any person whose third party liability is covered by a policy of insurance. According to national legal and contractual provisions this person need not be the person who concluded the insurance contract.

**2.11 “Green Card”:** means the international certificate of motor insurance conforming to any of the models approved by the Council of Bureaux.

2.11 A Green Card is defined as the international certificate of motor insurance of one of the Council of Bureaux approved ‘models’. The final responsibility for the model of a Green Card rests with the Working Party on Road Transport of the Inland Transport Committee of the Economic Commission for Europe of the United Nations.

**2.12 “Council of Bureaux”:** means the body to which all Bureaux must belong and which is responsible for the administration and the operation of the international motor civil liability insurance system (known as the “Green Card System”).

2.12 The Council of Bureaux, which was established in 1949, is currently filed as a non-profit-making international organisation under Belgian law of which the constitution is published in the Official Journal of this country (Annexes of the Journal dating from 05.01.2009).

### **ARTICLE 3 - HANDLING OF CLAIMS**

This article describes the obligations imposed on each Bureau when an accident involving a vehicle originating from a foreign country occurs in the territory for which it is competent.

#### Article 3 – Handling of claims

**3.1** *When a Bureau is informed of an accident occurring in the territory of the country for which it is competent, involving a vehicle from another country it shall, without waiting for a formal claim, proceed to investigate the circumstances of the accident. It shall as soon as possible give notice of any such accident to the insurer who issued the Green Card or policy of insurance or, if appropriate, to the Bureau concerned.*

*Any omission to do so shall however not be held against it.*

*If, in the course of this investigation, the Bureau notes that the insurer of the vehicle involved in the accident is identified and that a correspondent of this insurer has been approved in conformity with the provisions in Article 4, it shall forward this information promptly to the correspondent for further action.*

3.1 The first paragraph of this sub-article binds the Bureau of the country of accident to commence investigation to enable a quick resolution of the case once an injured party presents a claim (see definition of this term in Article 2.8). It specifically points out its obligation to provide information to the insurer at risk or the Guarantor Bureau, that is to say the Bureau of which said insurer is a member (see Article 6). This rule does not allow the Bureau of the country of accident to invite a claim but, at the same time, it anticipates a proactive approach to cases reported to the Bureau including, if necessary, making contact with the Injured Party. It is customary to ensure that the insurer, or the guarantor Bureau, is promptly informed of any potential claim. This rule does not include any sanction in case of an occasional failure to provide information but where there is a regular failure on the part of a Bureau to give early notice of a potential claim the guarantor Bureau (or Bureaux) should seek to resolve the situation by bilateral talks. If such dealings do not lead to the expected change then the guarantor Bureau (or Bureaux) should inform the Council of Bureaux as such behaviour might be regarded as a breach of the Council of Bureaux Constitution. We also note that the provisions commented on here respond to the stipulations of Article 5 of Directive 72/166/EEC (currently laid down in Article 6 of Directive 2009/103/EC) to which the Member States of the European Economic Area (EEA) are bound. This article provides that: "Each Member State shall ensure that, where an accident is caused in its territory by a vehicle normally based in the territory of another Member State, the national insurers' bureau shall (...) obtain information: - as to the territory in which the vehicle is normally based, and as to its registration mark, if any; - in so far as is possible, as to the details of the insurance of the vehicle, as they normally appear on the green card, which are in the possession of the person having custody of the vehicle, to the extent that these details are required by the Member State in whose territory the vehicle is normally based. Each Member State shall also ensure that the bureau communicates this information to the national insurers' bureau of the State in whose territory the vehicle is normally based."

The second paragraph of this sub-article obliges the investigating Bureau to forward the case to an approved Correspondent of an identified insurer for further handling. No specific sanction for failure to comply with this rule has been provided but again there should be an amicable settlement between the Bureaux involved. Frequent breaches of the rule would constitute a breach of the Council of Bureaux Constitution.

**3.2.1** *On receipt of a claim arising out of an accident under the circumstances described above, if a correspondent of the insurer has been approved, the Bureau shall forward the claim promptly to the correspondent so that it may be handled and settled in conformity with the provisions of Article 4. If there is no approved correspondent, it shall give immediate notice to the insurer who issued the Green Card or policy of insurance or, if appropriate, to the Bureau concerned that it has received a claim and will handle it, or arrange for it to be handled, by an agent whose identity it shall also notify.*

3.2.1 Once a claim is passed to a Bureau the latter is obliged to forward it promptly to the Correspondent so that the Correspondent may handle and settle the claim. In other words this means that, where a Correspondent is authorised to handle and settle a claim, the Bureau of the country of accident should not become involved unless through the exercising of its rights under Article 4.5 and exceptionally under Article 4.6. By handing the case over to the Correspondent the Bureau is released from any further obligation to inform the insurer and/or the guarantor Bureau as long as the Correspondent fulfils his responsibilities. It is then the responsibility of the Correspondent to provide appropriate information to the insurer who requested their approval.

However, if no Correspondent has been approved the Bureau itself is obliged to immediately inform the insurer or the guarantor Bureau that it has received a claim and that it will either handle the claim itself or appoint an agent to handle it. In the latter case the Bureau shall inform the insurer or the Guaranteeing Bureau of the identity of the agent, paying particular attention to the provisions of Article 3.6 (conflict of interests). It is strongly recommended that all necessary steps be taken to ensure that this happens.

Certain insurance companies may, for linguistic or other reasons, entrust the management of a file to Intermediaries acting on behalf of the insurance company resident in the country of the company, leaving it to them to maintain contact with the Bureau of the country of accident until the file is finally closed. In the context of this mission, the said Intermediary acting on behalf of the insurance company may confirm insurance cover to the Bureau of the country of accident.

The Guaranteeing Bureau is bound by the confirmation of cover given by the Intermediary acting on behalf of the insurance company, and in particular when the insurance company is wound up, and the Guaranteeing Bureau has to substitute for it in obligations arising out of the claim.

The same principle should be applied when confirmation of cover has been given to the Bureau of the country of accident by a representative empowered for that purpose by the insurance company of the vehicle involved in the accident<sup>10</sup>.

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<sup>10</sup> 2001 – General Assembly, Decision N° 11 - Confirmation of cover, as modified in 2011 by General Assembly Decision N° 9-4 and in 2013 by General Assembly Decision N° 5-5.

In the absence of any bilateral understandings to the contrary, only the official languages of the System, English and French, should be used in correspondence<sup>11</sup>.

When it is noted that a vehicle is the subject of a Green Card issued by an insurer and of an insurance contract issued by another insurer, the Bureau of the country of the accident shall only contact the insurer which delivered the Green Card, or its correspondent to the extent that the circulation of this vehicle is subject to being in possession of this document<sup>12</sup>.

**3.2.2** *Whenever dealing with a claim, the Bureau or its agent shall inform the insurer or the Bureau concerned about its best estimate of the expected claims amounts so that the addressee can set up an appropriate technical provision. It shall attach essential and relevant documentation and update the information as well as the documentation whenever substantial changes occur to it. This obligation is without prejudice to any other obligation of the Bureau or its agent in the country of accident arising from this Article.*<sup>13</sup>

3.2.2 The paying entities are entitled to receive the essential information (including a brief description of the accident) as well as documentation on claims handled on their account. This on the one hand enables them to have a picture of the expected claims amounts so that they can set up the necessary technical provisions (reserves). On the other hand, adequate – but not over-demanding – documentation should be provided by the handling Bureau to justify the expected claims amounts which will later be subject to a reimbursement demand.

The information on expected claims amounts cannot be exact and thus can be only a best estimate of the Bureau of the country of accident, unless the final payment in favour of a victim was arranged. The best estimate of these amounts should be given for all claims arising out of the claim event (i.e. not only RBNS, but also IBNR, if available) and for individual victims. Moreover, at least the specification for material damage and bodily injury should be provided.

The supporting documentation should be made available without delay in a reasonable scope, in order to strike a balance between the interest of the paying entity to receive it and the avoidance of the Bureau of the country of accident being unnecessarily overwhelmed. Since claims files develop, regular updating is an integral part of the flow of information and/or documentation. The handling Bureau, whenever substantial changes occur, shall provide this update to the other Party. When judging the impact of the change, the handling Bureau should, on the basis of the information at its disposal carefully consider and observe, in the context of proportionality the financial capacity of the other Party. The size of the market in which the paying entity operates (both as regards the number of vehicles and the premium income) should be taken into consideration. The paying entity on the other hand should not be overly demanding when wishing to be

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<sup>11</sup> 1989 – General Assembly, Item 6(b)(iii)

<sup>12</sup> 2005 – General Assembly, Decision N° 9 – Green Cards not issued in relation to a policy

<sup>13</sup> 2016 – General Assembly, Decision N° 4-1 – Entry into force: 1<sup>st</sup> January 2017

appropriately informed and updated. It may, however, in exceptional cases indicate what change it considers as substantial.

**3.3** *The Bureau is authorised to settle any claim amicably or to accept service of any extra-judicial or judicial process likely to involve the payment of compensation.*

3.3 Pursuant to this provision, Bureaux adhering to the Internal Regulations authorise each other, by agreement (see Annex III: Model Agreement between Bureaux), to deal with and, if necessary, to amicably settle claims with Injured Parties as well as to accept service of extra-judicial or judicial process and represent the Insured before any Court or any other competent body. Such wide powers extend from payment of the required compensation to rejection of the claim. However, these powers are limited to two levels: firstly due to the fact that the Bureau must deal with claims “in the best interests of the insurer who issued the Green Card or policy of insurance or, if appropriate, the Bureau concerned” (see Article 3.4) and thereafter by “the conditions or limits applicable under the compulsory motor civil liability insurance law in force in the country of accident” (see Article 3.5).

As the “Green Card System” is essentially based on civil liability, claims for which compensation must be paid under the Internal Regulations do not include those claims introduced by the driver (or his/her beneficiaries) covered under the insurance contract of the foreign vehicle involved in the accident when the driver is held responsible for the damage of which he/she is the victim.

This limitation does not concern cases where, pursuant to the law applicable, the holder of the vehicle is responsible for any injury/damage suffered by the driver of the vehicle, where s/he is considered as a third party, even if s/he is at fault<sup>14</sup>.

**3.4** *All claims shall be handled by the Bureau with complete autonomy in conformity with legal and regulatory provisions applicable in the country of accident relating to liability, compensation of injured parties and compulsory insurance in the best interests of the insurer who issued the Green Card or policy of insurance or, if appropriate, the Bureau concerned.*

*The Bureau shall be exclusively competent for all matters concerning the interpretation of the law applicable in the country of accident (even when it refers to the legal provisions applying in another country) and the settlement of the claim. Subject to this latter provision, the Bureau shall, on express demand,*

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<sup>14</sup> 1977 – General Assembly, Item 4 and 1979 – General Assembly, Item 1, modified in 2007

*inform the insurer, or the Bureau concerned, before taking a final decision.*

3.4 This Article grants complete discretion to a Bureau when handling and settling the claim in that it confirms that the Bureau is not required to seek instruction from the insurer or the guarantor Bureau. However, the Bureau or its appointed agent must act "in the best interest" of the insurer or the guarantor Bureau. This principally implies that it shall inform as soon as possible the insurer who issued the Green Card or policy of insurance or, if appropriate, the Bureau concerned, of at least the estimated future cost of both the Material Damage and Bodily Injury elements of a particular claim. If during the handling of the claim the Bureau (or its Agent) becomes aware of additional information on the claim, suggesting an amendment to the amount(s) previously communicated, then any substantial<sup>15</sup> change of the estimated future cost shall be communicated as soon as possible to the insurer who issued the Green Card or policy of insurance or, if appropriate, to the Bureau concerned<sup>16</sup>.

If the insurer or the guarantor Bureau involved expressly asks to be informed by the Bureau handling the claim of its final decision before such a decision has been made, then this Bureau shall fulfil this obligation. This duty to inform does not impede the discretion and competence of the Bureau as referred to in the paragraph above.

*3.5 When the settlement envisaged is in excess of the conditions or limits applicable under the compulsory motor civil liability insurance law in force in the country of accident whilst covered under the policy of insurance, it shall consult the insurer in relation to that part of the claim which exceeds those conditions or limits. The consent of such insurer is not required if the applicable law imposes on the Bureau the obligation to take account of the contractual guarantees in excess of such limits and conditions provided in the law relating to insurance against civil liability in respect of the use of motor vehicles in the country of accident.*

3.5 What should be understood by "the conditions or limits applicable under the compulsory motor civil liability insurance law in force in the country of accident"?

This wording follows on from a Court of Justice ruling (64/83) interpreting what appears in Article 2(2) of Directive 72/166/EEC (currently laid down in Article 2 a) of Directive 2009/103/EC) which provides that the National Bureau of each Member State is guarantor for the settlement of claims occurring on its territory

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<sup>15</sup> 2016 – General Assembly, Decision N° 4-1 – Entry into force: 1<sup>st</sup> January 2017

<sup>16</sup> 2004 – General Assembly – Decision N° 8 - Handling of Claims - The decision is a consequence of the necessity that the claim is handled "in the best interest" of the insurer or of the Bureau involved.

caused by vehicles normally based in the territory of another Member State, *in accordance with the provisions of its own national law on compulsory insurance.*

The Court considered that this expression “*must be understood as referring to the conditions and limits of civil liability applicable to compulsory insurance, provided always that the driver of the vehicle at the time at which the accident occurred is deemed to be covered by valid insurance in conformity with that legislation*”.

The Court of Justice in this way confirms one of the fundamental principles of the Green Card system according to which the guarantee offered by the International Certificate of Insurance must correspond to the requirements of the national law on compulsory insurance of the country travelled in. This principle also applies when the Bureau of the country where the accident took place handles the claim on the basis that the vehicle is normally based in the territory of another Member State (See Section III Specific rules governing contractual relations between Bureaux based on deemed insurance cover).

The Bureau of the country where the accident took place is therefore obliged, within the framework of settling a claim, to respect the stipulations set out in the law on compulsory insurance in its country. However, these stipulations at the same time constitute the limits in which they must envisage the settlement of the claim even if the guarantee offered by the insurance contract taken out in the country of origin of the vehicle is in excess of the limits and conditions provided in the law of the country of the accident.

When this situation arises, the Bureau shall consult the insurer which issued the insurance contract in relation to that part of the claim which exceeds those conditions or limits. The consent of the insurer is required except in cases where, in accordance with the applicable law (that is to say, the national law), the Bureau is to abide by contractual guarantees exceeding the conditions or limits provided by the compulsory motor civil liability insurance law of its country.

If the Bureau does not respect this obligation, it will overstep the limits of its decision-making powers and runs the risk of being subject to a refusal of reimbursement by the insurer for the part of the compensation exceeding the conditions or limits which should have been abided by. In this case, the Bureau will not be able to benefit from the guarantee provided for in Article 6.1 for this part of the compensation.

When Article 9 applies, that is to say when the claim for compensation is handled by the Bureau on the basis of a false, unauthorised or illegally altered Green Card, the compliance with the limits and conditions provided for in the law on compulsory insurance of motor insurance civil liability of the country where the accident occurred is indisputably imposed<sup>17</sup>.

When a Handling Bureau is ordered, by a court decision rendered in the Handling Bureau's country, to compensate a victim to an extent that is in excess of the conditions or limits applicable under the compulsory motor civil liability insurance law in force in the country of accident, the Guaranteeing Bureau shall only be held to guarantee the amounts that are not in excess of the applicable conditions or limits. Any amount exceeding these conditions or limits shall remain to be borne by the Handling Bureau.

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<sup>17</sup> 2009 – General Assembly – Decision N° 5-3



This provision shall however not apply if the applicable law imposes to take account of the contractual guarantees in excess of such limits and conditions provided in the law relating to insurance against civil liability in respect of the use of motor vehicles in the country of accident<sup>18</sup>.

*3.6 A Bureau may not of its own volition or without the written consent of the insurer or Bureau concerned, entrust the claim to any agent who is financially interested in it by virtue of any contractual obligation. If it does so, without such consent, its right to reimbursement shall be limited to one half of the sum otherwise recoverable.*

3.6 An agent – in a different capacity than that of Correspondent – may be entrusted with the handling of a claim by the competent Bureau provided that he is not financially interested in the settlement of the claim. There are two exceptions: (1) where there is legally no other choice; (2) where the Bureau has the written consent of the insurer or the guarantor Bureau involved authorising the relinquishment of the handling and settlement of the claim in favour of a potentially financially interested body. The sanction for not fulfilling these provisions is significant as it reduces the right to reimbursement to 50% of the sum otherwise recoverable.

Potential conflicts of interest may arise in circumstances other than where an agent acts as third party liability insurer for another vehicle involved in the same accident. A conflict of interest may also arise where certain other insurance products can be relied upon to cover the claim, for example a property insurance policy covering a private house damaged by a motor vehicle. Where Bureaux can identify such situations in advance they should always do so. Where Bureaux are, for valid reasons, unable to carry out such checks, they would be well advised to require the appointed agent himself to carry out such checks and, where conflicts of interest are identified, revert the case in point to the Bureau.

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<sup>18</sup> 2013 – General Assembly – Decision N° 5-6

#### **ARTICLE 4 – CORRESPONDENTS**

*4.1 Subject to any agreement to the contrary binding it to other Bureaux and/or to any national legal or regulatory provisions, each Bureau shall, with complete autonomy, set out the conditions under which it grants, refuses or withdraws its approval to correspondents established in the country for which it is competent. Each Bureau has at any time the right to exercise control over correspondents established in the country for which it is competent.*

*However, this approval shall be granted when requested in the name of a member of another Bureau for any establishment of this member in the country of the Bureau receiving the request provided that such establishment transacts insurance against civil liability in respect of the use of motor vehicles.<sup>19</sup>*

#### ARTICLE 4 – Correspondents

4.1 The provision describes the basic principle governing the approval of correspondents: i.e. each Bureau is free to establish – whilst acting within the limits of its national law ( e.g. prohibition of accrediting loss adjusters) – the conditions under which it grants, denies or withdraws approval to correspondents established in the country for which it is competent.

It follows on from this principle that each Bureau shall produce a document accessible on request to all candidates for the position of correspondent established in its country. This is without prejudice to those conditions that are laid down by national law. (For reasons of transparency, it is recommended to display the document on the website of each Bureau.) This document describes all the qualifications required to perform this function. Nonetheless, since the Green Card System was established by the insurers, it is important for the Bureaux to respond to their wishes whilst abiding by their national law. The General Assembly of the Council of Bureaux (2009) has approved the use of the following three documents by Bureaux: 1) a model correspondents' charter 2) a model handling and payment agreement and 3) rules for outsourcing. These documents can be adapted by the Bureaux to their own specific situation. The above documents approved by the General Assembly can be consulted on the Council of Bureaux extranet.

In this regard it should be noted that each Bureau must abide by the principle of non-discrimination i.e. it cannot impose, without justification, on certain correspondents alone, conditions or charges (e.g. surety deposits) which would not be imposed on others. Furthermore, should a Bureau require the payment of certain amounts by correspondents, the same criterion of non-discrimination shall apply and the amounts charged shall be related to services actually provided on a non-profit making basis by the Bureau.

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<sup>19</sup> 2017 – General Assembly, Decision N° 4-1 - Entry into force: 1<sup>st</sup> January 2018

In the document laying down the conditions for correspondents, the Bureaux shall also address the matter of the withdrawal of the approval. This is a sensitive matter which should be approached with caution as any withdrawal might result in financial consequences for the entity concerned. Each Bureau shall accept responsibility for the consequences of any litigation ensuing from a withdrawal judged to be unfair.

While each Bureau is free to unilaterally establish the conditions for granting or withdrawing such approval, the Internal Regulations also provide the Bureaux with an option to exceptionally agree upon conditions bilaterally or multilaterally when this is warranted by the case(s) concerned.

In 2015, the CoB has adopted new Guidelines on Outsourcing in the Green Card system.<sup>20</sup> The guidelines apply to outsourcing by Bureaux, insurers and correspondents. When setting the conditions of outsourcing for correspondents, the Bureaux also have to take into account these guidelines.

The second paragraph of Article 4.1 addresses a restriction of the autonomy of every Bureau in so far as any legally recognised establishment of a foreign insurer (e.g. a related undertaking) actually transacting motor insurance in accordance with the law in the country where the approval is requested shall be approved. An establishment can also be realised within the meaning of EU legislation which foresees that insurance undertakings may operate motor insurance in other countries than their home Member State under the Freedom of Establishment (FoE – a branch office or agency) or the Freedom to Provide Services (FoS).

Experience has shown that an establishment of an insurance undertaking will not necessarily actually transact MTPL business. Consequently, the automatic approval of an establishment as correspondent of the mother company - as foreseen previously in the Internal Regulations - does not seem to be appropriate. The establishment will only be approved as correspondent – without necessarily having to undergo the same examinations as other entities wishing to become correspondents – if it really exercises MTPL business in the country of the Bureau receiving the request.<sup>21</sup>

In order to facilitate the daily practice of requesting the approval of correspondents, a model wording has been prepared that must be used by a Bureau when requesting the approval of the nomination of a correspondent in another country. The model wording can be included by the Bureaux in the format of their choice (it is a model wording; not a model letter) and is available on the CoB website<sup>22</sup>.

**4.2** *Bureaux in the Member States of the European Economic Area shall, when receiving such a request, approve as correspondents in their country claims representatives already appointed by insurers of the other Member States pursuant to Directive 2009/103/EC, provided that the conditions set out by*

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<sup>20</sup> 2015 – General Assembly, Decision N° 5-2 – Entry into force: 1<sup>st</sup> July 2015

<sup>21</sup> 2017 – General Assembly, Decision N° 4-1 - The wording of Article 4.1 and the pertaining explanatory text was revised. The amendments shall enter into force on 1<sup>st</sup> January 2018.

<sup>22</sup> 2013 – General Assembly, Decision N° 4-1 – The model wording can be found on the CoB extranet.

*the bureaux for the approval of a correspondent in their country are met. This approval may be withdrawn under the same conditions which apply to all correspondents nominated in their territory of competence.*<sup>23</sup>

4.2 Article 4.2 concerns the Bureaux of the EEA (European Economic Area) States and Switzerland. The provision results from the requirements of the European Motor Insurance Directive (The codified version: 2009/103/EC). This Directive provides that any insurer approved in one of the Member States shall appoint a claims representative responsible for handling and settling claims in each of the other Member States. It seems practical that an insurer designates the same entity for correspondent as the one which is already operating as its claims representative in a given country. However, the approval of that entity as correspondent should not be automatic, because there is a substantial difference between the scope of competence and liability of claims representatives and correspondents, with different consequences to compensation bodies or Bureaux in case of defaults of claims representatives or correspondents. The advantage of having the same entity as correspondent is that the insurer will have already established a cooperation (ideally a good working relationship) with that entity which is already operating for them as claims representative. This can be seen by the Bureau which receives the request as an asset when evaluating the request. Nonetheless, this does not constitute a guarantee that the entity will automatically also comply with all the requirements of becoming a correspondent, that they are familiar with the rules and will abide by them. Therefore, the conditions of becoming a correspondent or those of the withdrawal of the authorisation also apply in these cases. .

Finally, Freedom of Establishment (FoE) and/or Freedom to Provide Services (FoS) operations might give rise to confusion around the nomination of a correspondent for the same company in countries other than the country of establishment or of the services. The FoE and FoS entity may also wish to nominate another correspondent in a country where the mother company has already nominated one despite the fact that legally this is not possible. In both cases (FoE and FoS), the insurance undertaking is required to join the Bureau of the Member State where insurance activities are performed. However, neither the branch office (or agency), nor the FoS entity constitutes an independent entity in that country. The legal person is the insurance undertaking. It follows that only the insurance undertaking can ask for the nomination of a correspondent. In the interest of transparency for victims, any insurer should only be able to nominate one single correspondent in another country.

The Bureau of the country of the nominated correspondent is in the best position to identify that an insurance undertaking proposes to nominate more than one correspondent and to take action. It is also in its interest to take action in view of the position of victims of accidents on its territory. It will in such a situation refuse the nomination of the second correspondent and inform the Bureau which requested this nomination. That Bureau will then contact its member and invite it to harmonise the nomination of its correspondents in its own organisation.

The following procedure shall apply if the nomination of a correspondent is requested:

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<sup>23</sup> 2017 – General Assembly, Decision N° 5-1 – the wording of Article 4.2 and the first two paragraphs of the explanatory text have been revised. The date of entry into force of the decision is 1<sup>st</sup> January 2018.

If it comes to the knowledge of the Bureau which has to approve the nomination of a correspondent that the insurance undertaking, either for its activities in the home Member State or for its branch office or under FoS, has already nominated another correspondent in the same country, it shall refuse the later nomination and it shall inform the Bureau which requested this nomination accordingly.

The Bureau thus informed shall then invite its member to decide on the nomination of a single correspondent for all its activities in the said country.<sup>24</sup> In this respect, reference is made to the model wording for the request for the approval of a correspondent (published on the CoB extranet) which is to be used by the Bureaux when requesting the nomination of a correspondent.

*4.3 Only a Bureau shall have the authority, on the request of one of its members, to send to another Bureau a request for approval of a correspondent established in the country of that Bureau. This request shall be sent in accordance with the practical terms and conditions decided at the General Assembly and supported by proof that the proposed correspondent accepts the requested approval. Only a request for the approval of one single correspondent can be accepted.<sup>25</sup>*

*The Bureau concerned shall grant or refuse its approval within three months from the date of receipt of the request and shall notify its decision and its effective date to the Bureau that made the request as well as to the correspondent concerned. In the event of no response being received, approval shall be deemed to have been granted and to have taken effect on the expiry of that period.*

4.3 The communication of a request for approval falls within the exclusive competence of the Bureau of which the insurer making the request is a member. It is provided that such request shall be sent in accordance with the terms and conditions defined by the General Assembly (i.e. by fax or e-mail at the time of the adoption of the provision but through the CoB online platform as soon as it is operational), so that the period of three months available to the recipient Bureau to decide on the request for approval may be verified.<sup>26</sup> This request shall be supported by proof that the proposed Correspondent has agreed to the

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<sup>24</sup> 2012 – General Assembly, Decision N° 5-1

<sup>25</sup> 2017 – General Assembly, Decision N° 4-1; Entry into force: 1<sup>st</sup> January 2018

<sup>26</sup> 2017 – General Assembly, Decision N° 4-1 - the wording of Article 4.3 and the first paragraph of the explanatory text was revised. The amendments shall enter into force on 1<sup>st</sup> January 2018.

requested approval. We will note that the request for the appointment of second or reserve correspondents is NOT acceptable<sup>27</sup>.

Proof that the proposed correspondent accepts the nomination can consist of any credible and clear declaration of acceptance. This can also be made by the international organisation of which the local correspondent is a representative<sup>28</sup>.

The Bureau receiving the request for approval shall grant or deny it within a period of three months from the date of receipt of the request. If there is no response within this period approval shall be deemed to have been granted. The Bureau shall also notify its decision and the date of its activation to the Bureau having sent the request as well as to the Correspondent concerned. It is not specified whether this decision should be justified. Subject to any legal considerations it would be helpful if a brief explanation were given in the case of denial<sup>29</sup>.

*4.4 The correspondent shall handle all claims in conformity with any legal or regulatory provisions applicable in the country of accident relating to liability, compensation of injured parties and compulsory motor insurance, in the name of the Bureau that has approved it and on behalf of the insurer that requested its approval, arising out of accidents occurring in that country involving vehicles insured by the insurer that requested its approval.*

*When any settlement envisaged exceeds the conditions or limits applicable under the compulsory motor civil liability insurance law applicable in the country of accident, whilst covered under the policy of insurance, the correspondent must comply with the provisions set out in Article 3.5.*

4.4 It is clearly specified that, when handling and settling a claim, the approved Correspondent shall act in the name of the approving Bureau, thus providing Injured Parties with the same level of guarantee as they are entitled to expect from any national Bureau of any country of accident. The Correspondent also acts on behalf of the insurer having requested his approval, clearly signifying that the insurer is the principal debtor of the reimbursement.

When the settlement envisaged is in excess of the conditions and limits applicable under the compulsory motor civil liability insurance law applicable in the country of accident, whilst being covered by the policy of insurance, the second paragraph imposes on the approved Correspondent the same obligation as that

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<sup>27</sup> 1999 – General Assembly, Item 7.11 – Second correspondent

<sup>28</sup> 2005 – General Assembly, Decision N° 8 – Proof of the acceptance of the nomination by a correspondent

<sup>29</sup> For further details in case of a request for appointment of a correspondent replacing a dismissed correspondent see Article 4.9 and the explanatory text to it.

placed on the Bureau of the country of accident. In case of breach of this obligation the correspondent shall not have the right to avail himself of the guarantee offered under the second paragraph of Article 4.7.

*4.5 The Bureau that has granted its approval to a correspondent recognizes it as exclusively competent to handle and settle claims in the name of the Bureau and on behalf of the insurer that requested its approval. The Bureau shall inform injured parties of this competence and forward to the correspondent any notifications relating to such claims. However it may, at any time and without any obligation to justify its decision, take over the handling and settlement of a claim from a correspondent.*

4.5 Once approval has been granted the Correspondent shall have exclusive competence to handle and settle claims resulting from accidents caused by vehicles insured by the insurer having requested his appointment. Although this competence in handling and settling claims is exclusive the Bureau retains the authority to substitute itself for the Correspondent without any duty of justification. It is considered that only exceptional circumstances would justify such authority being exercised and then solely for the purpose of ensuring the efficient handling of claims.

*4.6 If, for whatever reason, the Bureau that granted the approval is required to compensate any injured party in place of the correspondent, it shall be reimbursed directly by the Bureau through which the request for approval was sent, in accordance with the conditions set out in Article 5.*

4.6 If, for whatever reason, a Bureau is required to make a payment in place of a Correspondent it shall be reimbursed directly by the Bureau which sent the request for approval. The demand for reimbursement shall be sent directly to the Bureau of which the insurer in question is a member, under the conditions set out in Article 5, which means that reimbursement shall be made within a period of two months from the date of the demand for reimbursement. In addition and in such a case it would seem appropriate for the Bureau having paid the compensation to inform the Bureau from which reimbursement is demanded of the reasons of its intervention.

*4.7 Subject to the provisions of Article 4.4, the correspondent is free to agree with the insurer that requested its approval the conditions for reimbursement of sums paid to injured parties and the method for calculating its handling fees which*

agreement, however, shall not be enforceable against any Bureau.<sup>30</sup>

4.7 Insurers and their Correspondents are free to agree among themselves the terms for reimbursements and handling fees. These terms shall not, however, be enforceable against Bureaux which means that if a Bureau has to act in place of a Correspondent it shall do so in accordance with the rules set out in Article 5 and shall not be bound, in any circumstances, by those agreed between the insurer and the Correspondent.

**4.8** *If a correspondent is unable to obtain reimbursement of advance payments it has made in accordance with the conditions set out in Article 4.4 on behalf of the insurer that requested its approval, it shall be reimbursed by the bureau that approved it, upon the fulfilment of all the following conditions:*

8.1 *The correspondent informs the bureau that approved it of the inability to receive reimbursement and requests reimbursement within a period of minimum 6 and maximum 9 months since the date on which the correspondent has sent the demand for reimbursement to the insurer that requested its approval.*

8.2 *Together with the request mentioned in subparagraph 8.1 and in order to receive reimbursement from the national bureau that approved it, the correspondent has to provide this bureau with:*

- i. Material proof that it had, in scope of the demanded amount, compensated the injured party before sending the demand for reimbursement to the insurer that requested its approval;*
- ii. Any document establishing the correspondent's right to handle the claim on behalf of the insurer (containing the insurer's confirmation that insurance cover was accepted for the vehicle in question);*
- iii. A copy of the demand for reimbursement sent by the correspondent to the insurer that requested its approval;*

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<sup>30</sup> 2013 – General Assembly, Decision N° 5-1 - Entry into force: 1<sup>st</sup> January 2014



iv. *A copy of at least one reminder for reimbursement sent by the correspondent to the insurer that requested its approval at least one month prior to sending the request to the bureau that approved the correspondent.*

*The reimbursement of the correspondent by the bureau that approved it shall be limited to sums mentioned in Article 5.1.1 and 5.1.2 and shall neither include any handling fees as mentioned in Article 5.1.3 or agreed between the correspondent and the insurer that requested its approval, nor any late interest as mentioned in Article 5.2 or agreed between the correspondent and the insurer that requested its approval.<sup>31</sup>*

4.8<sup>32</sup> This Article sets out the rules relating to the reimbursement of a Correspondent by the handling Bureau when that Correspondent has not been reimbursed by the insurer which requested its approval.

A Correspondent which is unable to obtain a reimbursement from the insurer, can submit a request for reimbursement to the Bureau which approved it (the handling Bureau), but under the strict conditions set out in Article 4.8.

The rules are formulated in a way to ensure that

- the timely and correct compensation of the Injured party is preserved;
- the financial discipline of all involved partners is reinforced;
- the entrepreneurial risk of the activity of a Correspondent is distributed in a balanced way between the Correspondent and the (handling) Bureau.

The conditions for invoking the handling Bureau's guarantee towards the Correspondent are as follows:

1. Strict time limits have been introduced in order to avoid any progressive accumulation of a financial exposure. Moreover, by abiding by the time-limit, Correspondents have sufficient time to make attempts for reimbursement of the sums they had advanced before they turn to the handling Bureau for reimbursement. At the same time, the handling Bureau is still within the time limit to issue a guarantee call, should it be obliged to intervene. (Article 4.8.1 read together with paragraph 3 of Article 6.2 ensures that the handling Bureau has 3-6 months to issue a guarantee call if needed.);

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<sup>31</sup> 2013 – General Assembly, Decision N° 5-1 - Entry into force: 1<sup>st</sup> January 2014

<sup>32</sup> 2014 – General Assembly, Decision N° 5-1

2. Any document establishing the Correspondent's right to handle the claim on behalf of the insurer (containing the insurer's confirmation that the insurance cover was accepted for the vehicle in question) has to be presented by the Correspondent;
3. Prior compensation of the victim is a prerequisite of applying the guarantee (protection of the victim) and the Correspondent has to provide evidence of this;
4. A prior demand for reimbursement must have been addressed to the insurer within a maximum period of one year from the date of the last payment made in favour of an Injured party before the Correspondent can address his claim to the handling Bureau. In case the request for reimbursement does not fulfil this precondition, a Correspondent cannot invoke the application of Article 4.8 of the Internal Regulations towards a handling Bureau and the Bureau shall consider this request as inadmissible;
5. At least one reminder must have been sent at the earliest two months after the demand for reimbursement;
6. The reimbursement paid by the handling Bureau is restricted to the compensations paid to the Injured party and to the external costs of the claims handling and settlement (Article 5.1.1 and 5.1.2). It does not extend to the handling fees and late interests (Article 5.1.3 and 5.2). This limitation ensures the equal distribution of entrepreneurial risk between the Correspondent and the handling Bureau, without limiting the protection of the compensation of the Injured party.

The Correspondent thus has to respect a strict time-frame in requesting reimbursement from the handling Bureau, in order to allow the latter to issue a possible guarantee call still within the one year time-limit.

The handling Bureau shall ascertain whether the Correspondent has complied with all the conditions set out in Article 4.8 prior to making any reimbursement in favour of the Correspondent. In the event the Correspondent has not provided the handling Bureau with documents proving that all the conditions have been met when presenting its request for reimbursement, the handling Bureau shall invite the Correspondent to complete the outstanding documentation within a specified time limit, which the handling Bureau should set in such a way to allow it to fulfil the conditions under Article 6.2 when issuing a guarantee call.

The date of entry into force of these provisions is 1<sup>st</sup> January 2014, for all requests for reimbursement sent by the Correspondent to the handling Bureau on or after this date<sup>33</sup>.

*4.9 When a bureau is informed that one of its members has decided to dismiss a correspondent, it shall immediately so inform the Bureau that granted the approval. This latter Bureau shall be at liberty to determine the date on which its approval will cease to have effect.*

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<sup>33</sup> 2013 – General Assembly, Decision N° 5-1

*In case the insurer wishes to appoint a new correspondent according to Article 4, the bureau which is requested to approve the correspondent shall, amongst others, take explicitly into consideration:*

- i. the number of demands for reimbursement sent by the correspondent to the insurer and that remain unpaid, the amounts mentioned in these unpaid demands for reimbursement and the period of time they remain unpaid and/or*
- ii. the way in which Article 4(4) has been respected by both the correspondent and the insurer that requested the approval of the correspondent.*

*When a Bureau that granted approval to a correspondent decides to withdraw it or is informed that the correspondent wishes to have its approval withdrawn, it shall immediately so inform the Bureau that forwarded the request for the approval of the correspondent. It shall also inform the Bureau of the date of the correspondent's effective withdrawal or the date on which its approval will cease to have effect.<sup>34</sup>*

4.9 This sub-article deals with the cancellation or withdrawal of approval.

Three different situations are envisaged:

- The insurer wishes to put an end to the contract binding it to a Correspondent,
- The Correspondent wishes to put an end to the contract binding him to an insurer,
- The Bureau decides to withdraw the approval it has granted to a Correspondent.

In these situations it is up to the Bureau having granted the approval to determine the date on which the activity of the Correspondent shall end.

Should an insurer wish to appoint a new Correspondent, the Bureau that was requested to give its approval has to assess the financial stability of the relationship between the insurer and the old Correspondent. The situation is to be avoided whereby an insurer would merely change the approved Correspondent in a specific country in an attempt to escape its financial obligations towards the existing Correspondent. Therefore, the Bureau that was requested to give its approval shall take into account *inter alia* the level of financial discipline

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<sup>34</sup> 2013 – General Assembly, Decision N° 5-1; Entry into force: 1<sup>st</sup> January 2014

with which the insurer requesting the approval of the Correspondent operates. Consequently, the Bureau has to examine carefully the way in which the insurer fulfils its reimbursement obligation to the existing Correspondent. It is important to emphasize here that the Bureau may not only examine the conditions explicitly mentioned in i. and ii. but it may also take into account any other aspects which in its view suggest that the insurer is not respecting the relevant rules.

The Bureau thus may, if appropriate, postpone its approval of the new Correspondent until outstanding debts of the requesting insurer are paid. Nevertheless in such a case it has to justify its decision. In any case, the Bureau shall act in compliance with the conditions laid down in Article 4.3. and inform the requesting Bureau of the position within the time-limit set out in Article 4.3., even if it wishes to postpone such approval beyond this time-limit<sup>35</sup>.

#### **ARTICLE 5 – CONDITIONS OF REIMBURSEMENT**

*5.1 When a Bureau or the agent it has appointed for the purpose has settled all claims arising out of the same accident it shall send, within a maximum period of one year from the date of the last payment made in favour of an injured party, by fax or e-mail to the member of the Bureau which issued the Green Card or policy of insurance or, if appropriate, to the Bureau concerned a demand for reimbursement specifying:*

*5.1.1 the sums paid as compensation to injured parties under either an amicable settlement or a court order;*

*5.1.2 the sums disbursed for external services in the handling and settlement of each claim and all costs specifically incurred for the purposes of a legal action which would have been disbursed in similar circumstances by an insurer established in the country of the accident;*

*5.1.3 a handling fee to cover all other charges calculated under the rules approved by the Council of Bureaux.*

*When claims arising out of the same accident are defended and settled without any compensation being paid, such sums as provided in 5.1.2 above and the minimum fee fixed by the Council of Bureaux in conformity with 5.1.3 above may be claimed.*

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<sup>35</sup>The two last paragraphs were adopted by the 2014 General Assembly, Decision N° 5-1

**5.1.4** *The amount of compensation exceeding 10.000 EUR (or its value in the currency of the country of the accident at the rate of exchange on the date of the demand for reimbursement) the payment of which is blocked or deposited due to pending court proceedings, may be subject to a demand for reimbursement sent to the insurer or, if appropriate, to the Bureau concerned despite such amount not being paid to the injured party, under the condition that depending on the final decision of the court, the amount will be subject to a set-off between the Parties involved. The handling Bureau may request the reimbursement of this amount from an approved correspondent of the respective insurer. Any amount to be set-off in favour of the entity which reimbursed the handling Bureau, must be transferred back by the latter without any delay in accordance with the court decision releasing the amount.*<sup>36</sup>

#### ARTICLE 5 - Conditions of reimbursement

- 5.1 The conditions for sending out a demand for reimbursement are as follows:
- a) All claims resulting from the same accident have been paid,
  - b) The time interval between the date of the last payment made in favour of an Injured Party and the demand for reimbursement is less than or equal to one year,
  - c) The demand is sent by fax or e-mail
  - d) The demand specifies the sums:
    - a. paid as compensation to Injured Parties,
    - b. disbursed for external services (loss adjusters, etc) and costs of legal proceedings which would have been disbursed by an insurer in the country of accident under similar circumstances,
    - c. The handling fee covering all other charges and calculated in accordance with the rules approved by the Council of Bureaux. A handling fee cannot be increased by V.A.T. or other local taxes<sup>37</sup>.

Any demand for reimbursement must necessarily contain the following information<sup>38</sup>:

1. The date of the demand
2. The name of the party addressing the demand (the handling party)
3. The name of the party to which the demand is addressed (the final debtor)
4. The number of the file of the final debtor (and the reference of the handling Bureau, if both are available)

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<sup>36</sup> 2016 – General Assembly, Decision N° 4-1 – Entry into force: 1<sup>st</sup> January 2017. The amount specified in Article 5.1.4. shall be subject to review after an assessment which will be carried out by the General Rules Committee. This assessment shall be done after two years of application of the new provisions.

<sup>37</sup> 1973 – General Assembly, Item 5 and 1974 – General Assembly, Item 4, as modified in 2006

<sup>38</sup> 2011 – General Assembly, Decision N° 9-2 – Minimum obligatory data for a demand for reimbursement

5. The date and the country of the accident, the place of the accident only if available
6. Information regarding the responsible party:
  - a. For claims handled according to Section II : the number of the Green Card (if available, the number of the insurance policy)
  - b. For claims handled according to Section III: one of the criterion that determines the territory of the State in which the vehicle is normally based (the registration number of the vehicle, the insurance plate or the place of permanent residency of the person to which the vehicle belongs)
7. The sums that the final debtor must reimburse:
  - a. Compensation of the injured parties
  - b. External services (expert costs, lawyers' fees, etc.) if necessary
  - c. Handling fees, if necessary
  - d. The total amount, expressed in the national currency or in Euro
8. The compulsory information arising out of paragraph 1 of article 5.2 of the Internal Regulations
9. Details regarding the bank of the handling party

The demand for reimbursement shall be addressed to the insurance undertaking that has issued the Green Card or the insurance policy even if this undertaking has delegated, in its country of establishment, the handling of claims occurred abroad to a loss adjuster<sup>39</sup>.

Where the claim has not resulted in compensation being paid, sums disbursed for external services and costs of legal proceedings may be claimed as well as the minimum handling fee as approved by the Council of Bureaux<sup>40</sup>.

In this case, the demand for reimbursement of sums disbursed for external services and costs of legal proceedings as well as the demand for payment of the minimum handling fee shall be addressed:

- Within a period of maximum one year after the last negative response that a Bureau or the agent it has appointed has given to the claimant and that has remained without further reaction or that no legal action was taken by the injured party, or
- Within a period of maximum one year after the decision of a Court or any other competent body, refusing any compensation to the claimant, has become final and irrevocable or after that the decision has been rendered if, according to the applicable legal rules and proceedings, it is possible that such decision does not become final or irrevocable<sup>41</sup>.

The translation fees paid by the Bureau of the country where the accident took place or by their agent can be claimed back from the Guaranteeing Bureau or the insurer in question if they have been expressed in the best interest of the Guaranteeing Bureau or the insurer or at their request or finally in the event of legal proceedings<sup>42</sup>.

<sup>39</sup> 2010 – General Assembly, Decision N° 6-1

<sup>40</sup> 2004 – General Assembly, Confirmation - Minimum Handling Fees

<sup>41</sup> 2012 – General Assembly, Decision N° 6-1

<sup>42</sup> 1989 – General Assembly, Item 6 b)(ii) modified in 2007

Procedure to be followed when the insurer at risk is in a state of insolvency:

All Guaranteeing Bureaux are bound by the debts of one of its members in a state of insolvency including any late interest due in carrying out the demands for reimbursement (see Article 5.2).

All Guaranteeing Bureaux, who are aware that a member is in a state of insolvency (winding-up or other) shall inform the Council of Bureaux Secretariat immediately as well as all other Bureaux.

After having received this information, these Bureaux shall inform the Guaranteeing Bureau in question of all the pending demands for reimbursement addressed to the member in a state of insolvency as well as informing them of all the cases which are being handled.

Demands for reimbursement concerning claims settled after the liquidation of a Company shall be sent to the Bureau of which the Company is a Member. If the Bureau of the country of accident or its Member does not send the reimbursement demand directly to the Guaranteeing Bureau after the date of notification to the Council of Bureaux, the Guaranteeing Bureau is not obliged to pay penalty interest.

The deadline for reimbursement of 60 days is calculated as of the date of receipt by the Guaranteeing Bureau<sup>43</sup>.

The payment of compensation is sometimes delayed by court proceedings. In those cases, the Bureau of the country of accident may be obliged to block the amounts under dispute or to deposit them. Where the amount is considerable (exceeds 10.000 EUR or its value in the currency of the country of the accident at the rate of exchange on the date of the demand for reimbursement) and the proceedings are pending for a long period of time, the liquidity of the handling Bureau might be jeopardised for an uncertain period. It is appropriate therefore to allow this Bureau to ask for the "reimbursement" of the amounts in question. In this way the financial burden (and risks) of such claims is placed on the final paying entity. In this case, however, the handling Bureau must provide proof of the amount being blocked or deposited and give appropriate reasoning for what had happened. The reimbursement is not a recognition that the amount is due. Depending on the final outcome of the proceedings, the amount must be off-set against the final amount due between the parties involved. The Bureaux involved should agree on appropriate procedures for this process (e.g. introduce time limits, issue additional demands for reimbursement).

*5.2 The demand for reimbursement shall specify that the amounts due are payable in the country and in the national currency of the beneficiary, free of costs, within a period of two months from the date of demand and that, on expiry of that period, late interest at 12% per annum on the amount due from the date of the demand until the date of receipt of the remittance by the bank of the beneficiary shall apply automatically. In the event of a guarantee call according to Article 6 resulting from the demand for reimbursement, the application of late*

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<sup>43</sup> 1994 – General Assembly, Item 2

*interest shall accrue until the date of issuance of that guarantee call.*<sup>44</sup>

*The demand for reimbursement may also specify that amounts expressed in the national currency are payable in Euro, at the official rate of exchange current in the country of the claiming Bureau at the date of the demand.*

5.2 The demand for reimbursement shall specify that:

- a) the amounts due to the demanding Bureau are to be paid in its country and in the national currency of that country,
- b) the demanding Bureau shall receive the amount due free of costs (bank charges, etc.),
- c) the amounts due shall be paid within 2 months of the date of the demand
- d) the payments received after the expiry of the 2 month period shall automatically attract late interest at 12% p.a. on the amount due from the date of the demand until the date of receipt of the remittance by the bank of the beneficiary. This late interest is also due when the Guaranteeing Bureau member is in a state of insolvency<sup>45</sup>.

In case a guarantee call is issued for the reimbursement of the sums paid by the Bureau or its agent, the late interest due is the amount accrued until the date of the guarantee call<sup>46</sup>. The guarantee call has the effect of making the guaranteeing Bureau responsible for the amounts claimed. After the date of the guarantee call, further late interest starts to accrue if the guaranteeing Bureau fails to make the payment to the demanding Bureau or its agent on time. Under Article 6.1., the guaranteeing Bureau has one month from the receipt of the guarantee call to make the payment requested in the guarantee call. Upon expiry of that period, the guaranteeing Bureau has to pay a late interest of 12% per annum on the amount due<sup>47</sup>.

Late interest is payable no matter how small the amount. Bureaux which address demands for late interest are however invited to find an appropriate approach, bearing in mind that the aim of this provision is not to be used for insignificant amounts. Regarding the guaranteeing Bureaux, they are asked to fully reimburse the amounts claimed and within the given timeframe<sup>48</sup>.

For Bureaux of EEA Member States, the terms “free of costs” shall be read in accordance with the relevant provisions of Directive 2007/64/EC as regards payment services which, regarding bank fees, shall imply that, as from 1<sup>st</sup> June 2010, fees between the Paying Bureau and the Demanding Bureau shall be shared if both of them are within the EEA and if the bank transfer made either in euro or in another EEA currency does not imply any currency conversion for the Paying Bureau.

The Euro zone Bureaux are encouraged to use SEPA payment facilities (Single Euro Payments Area) for payment in Euro. For bank transfer between EEA Bureaux implying a currency conversion for the Paying

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<sup>44</sup> 2013 – General Assembly, Decision N° 5-2; Entry into force: 1<sup>st</sup> January 2014

<sup>45</sup> 1994 – General Assembly, Item 2

<sup>46</sup> 2013 – General Assembly, Decision N° 5-2 – Late interest in case of guarantee calls

<sup>47</sup> 2014 – General Assembly, Decision N° 5-1

<sup>48</sup> 2011 – General Assembly, Decision N° 9-1



Bureau or for bank transfer from or to a non-EEA Bureau, the demanding Bureau shall receive the amount free of costs<sup>49</sup>.

The demand for reimbursement may be denominated in euros. The applicable rate shall be the official rate of exchange between the national currency of the demanding Bureau and the euro, as applicable in the country of the demanding Bureau at the date of the demand.

Payment by cheque for the demand of reimbursement is prohibited because it does not conform to Article 5.2, which provides that the amounts due are payable free of costs to the beneficiary. Payment by cheque always entails additional costs for the beneficiary, consisting not only of the fees requested by the bank, but also of the burden of additional administrative work that the beneficiary is obliged to complete in order to cash a cheque. Moreover, cashing a cheque often entails lengthy timescales, which can be a cause of further delay and justify possible demands for reimbursement of late interest. Finally the possible misdirection of the letter accompanying a cheque can be a cause of more problems for the beneficiary<sup>50</sup>.

*5.3 Under no circumstances shall demands for reimbursement include payments for fines, bail bonds or other financial penalties imposed upon an insured which are not covered by insurance against civil liability in respect of the use of motor vehicles in the country of accident.*

5.3 Sums disbursed for the payment of financial sanctions levied against an Insured and which are not covered by motor third party liability insurance in the country of accident are not recoverable under the Internal Regulations and therefore may not be included in any demand for reimbursement.

*5.4 Unless already provided, supporting documents, including the objective proof that compensation due to injured parties has been paid (or blocked/deposited due to pending court proceedings)<sup>51</sup>, shall be sent promptly on demand but without delay to the reimbursement.*

5.4 Notwithstanding Article 3.2bis, supporting documentation, including proof of payment, need not form part of the demand for reimbursement. However, when requested by the other party, the Bureau requesting the reimbursement shall send the relevant documentation promptly. Nonetheless, reimbursement is not conditional on submission of this documentation. Delayed delivery of the supporting documentation neither suspends nor terminates the period of time allowed for reimbursement on the expiry of which interest becomes payable.

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<sup>49</sup> 2010 – General Assembly, Decision N° 6-2

<sup>50</sup> 2006 – General Assembly, Decision N° 1 – Means of Payment

<sup>51</sup> 2016 – General Assembly, Decision N° 4-1 – Entry into force: 1<sup>st</sup> January 2017

If the guaranteeing Bureau requests proof of payment by the Bureau of the country of accident, it can be provided *by any means*. For example by producing one of the following documents:

- a copy of the remittance advice/cheque or an order to transfer;
- the words **"paid on..."** on an order for payment or invoice;
- a cash-on-delivery receipt or certificate;
- a receipt;
- a computer print-out or copy of the computer screen form, or even, the proof of tele-transmission between the handling entity and the recipient of the money<sup>52</sup>.

*5.5 Reimbursement of all sums cited in Articles 5.1.1 and 5.1.2 above may be claimed in accordance with the conditions set out in this article notwithstanding that the Bureau may not have settled all claims arising out of the same accident. The handling fee provided for under Article 5.1.3 above may also be claimed if the principal sum which is the subject of the reimbursement is in excess of the amount fixed by the Council of Bureaux.*

5.5 It is permitted to request reimbursement of amounts paid as provisional payments, even if all claims arising out of the same accident have not yet been settled. In such cases a handling fee may be claimed but only if the principal sum of the requested reimbursement exceeds the minimum amount fixed by the Council of Bureaux. Demanding Bureaux should refrain from claiming reimbursement of small amounts. The following rules are applicable to demands for reimbursement of deposits:

1. The amount of handling fees payable shall be calculated on the basis of 15% of certain specified disbursements as specified in Article 5.1.1 of the Internal Regulations.
2. The handling fees payable shall be subject to a minimum fee of €200 and a maximum fee of €3,500.
3. If the disbursements calculated under the rules of Article 5.1.1 of the Internal Regulations result in a provisional demand for reimbursement of €1500 or more then a handling fee may be claimed. If the provisional demand for reimbursement is less than €1500 then no handling fee may be claimed.
4. If a claim for an additional provisional demand for reimbursement of €1500 or more is made then an additional provisional handling fee may be claimed. However, the cumulative handling fee paid shall not exceed the maximum handling fee which has been approved by the General Assembly at the time of a demand for further reimbursement from the responsible bureau.
5. The minimum and maximum handling fee as specified in paragraph 2 and the minimum provisional demand for reimbursement before a handling fee may be claimed as specified in paragraphs 3 and 4 shall be subject to review by the Management Committee at the request of the membership. This review may result in a recommendation for change to the following General Assembly<sup>53</sup>.

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<sup>52</sup> 1998 – General Assembly, Item 6.11 – Proof of payment by the Bureau of the country of accident

<sup>53</sup> 2003 – General Assembly, Decision N° 2 – Handling Fees: New rule for a provisional demand for reimbursement

*5.6 If, after satisfaction of a reimbursement demand, a claim is reopened or a further claim arising out of the same accident is made, the balance of the handling fee, if any, shall be calculated in accordance with the provisions in force at the time when the demand for reimbursement in respect of the re-opened or further claim is presented.*

5.6 In case of a reopened or further claim, the handling fee balance shall be calculated according to the rules of the Council of Bureaux valid at the time when the demand for reimbursement relating to the reopened or further claim is submitted.

*5.7 Where no claim for compensation has resulted from an accident, no handling fee may be claimed.*

5.7 If, for whatever reason, no claim is made, the Bureau claiming reimbursement has no right to claim for a handling fee<sup>54</sup>. The activities of the Bureau in the country of accident carried out under Article 3.1 would justify reimbursement where expenses incurred are as described in Article 5.1.2. This is not intended to deter Bureaux from a proactive approach. It is intended to prevent other Bureaux from being approached with demands for reimbursement where there has been no material handling activity carried out which would justify a reimbursement. This is in keeping with the concept of reciprocity which shall exist between Bureaux.

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<sup>54</sup> 2004 – General Assembly, Item 2 Confirmation: Minimum Handling Fees

## **ARTICLE 6 - OBLIGATION OF GUARANTEE**

*6.1 Each Bureau shall guarantee the reimbursement by its members of any amount demanded in accordance with the provisions of Article 5 by the Bureau of the country of accident or by the agent that it has appointed for the purpose.*

*If a member fails to make the payment demanded within the period of two months specified in Article 5, the Bureau to which this member belongs shall itself make the reimbursement in accordance with the conditions described hereunder, following receipt of a guarantee call made by the Bureau of the country of accident or by the agent that it has appointed for the purpose.*

*The Bureau standing as guarantor shall make the payment i.e. the amount of the demand for reimbursement according to Article 5 plus late interest accrued until the date of issuance of the guarantee call,<sup>55</sup> at a rate of 12% per annum, within a period of one month. On expiry of that period, late interest at 12% per annum on the amount due, calculated from the date of the guarantee call to the date of receipt of the remittance by the beneficiary's bank, shall apply automatically.*

*The guarantee call shall be made according to the practical terms and conditions decided at the General Assembly within a period of twelve months after the date of despatch of the demand for reimbursement under Article 5. On expiry of that period and without prejudice to any late interest for which it may be liable, the liability of the Bureau standing as guarantor shall be limited to the amount claimed from its member plus a 12 months interest calculated at 12% per annum.*

*No guarantee call shall be admissible if made more than two years after the despatch of the demand for reimbursement.*

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<sup>55</sup> 2013 – General Assembly Decision N° 5-2; Entry into force: 1<sup>st</sup> January 2014

## ARTICLE 6: Obligation of guarantee

6.1 Each Bureau shall guarantee the reimbursement by its members of any amount (including late interest) subject to a specific demand for reimbursement<sup>56</sup> claimed by the Bureau of the country of accident or by the agent appointed by it.

This obligation of guarantee is imposed on the Bureau itself even if the member which issued the card or insurance cover is in a state of insolvency leading to its winding-up proceedings or bankruptcy. The potential intervention of a liquidator comes under the national law of the country where the insurance undertaking is (or was) authorised to carry out compulsory motor civil liability insurance and can at no time prevent the smooth functioning of the Green Card System<sup>57</sup>.

The demand for reimbursement shall be in accordance with the provisions specified in Article 5. In the event of non-conformity with the above mentioned article, the Bureau is free from any obligation of guarantee. According to Article 5.2, the amounts claimed are payable within a period of two months from the date of the demand for reimbursement. On expiry of that period the Bureau of the country of accident or its agent may contact the Bureau of the insurer owing the initial reimbursement and claim payment of the outstanding amount. This guarantee call shall have the effect of making the guaranteeing Bureau responsible for the amounts claimed under the following conditions:

The guaranteeing Bureau shall pay the amount claimed within one month of the date of the guarantee call. The amount to be paid is the sum specified in accordance with Article 5.1, increased by the late interest accrued until the date of issue of the guarantee call<sup>58</sup>. To avoid double payment it would be advisable for the guaranteeing Bureau to inform its member of the payment it has made under the guarantee. Thereafter, the insurer owing the initial reimbursement will have to settle payment of the amount claimed with its own Bureau.

If payment is not made by the guaranteeing Bureau within the period of one month, late interest at 12% per annum shall automatically become due by rights from the guaranteeing Bureau without any further reminder. This interest shall run from the date of the guarantee call to the date of receipt of the remittance by the bank of the beneficiary.

Late interest is payable no matter how small the amount. Bureaux which address demands for late interest are however invited to find an appropriate approach, bearing in mind that the aim of this provision is not to be used for insignificant amounts. Regarding the guaranteeing Bureaux, they are asked to fully reimburse the amounts claimed and within the given timeframe<sup>59</sup>.

The procedure therefore develops in two stages.

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<sup>56</sup> 2004 – General Assembly, Decision N° 7: Obligation of guarantee - interest

<sup>57</sup> 1979 – General Assembly, Item 1C, modified in 2007

<sup>58</sup> 2013 & 2014 – General Assembly Decisions N° 5-1

<sup>59</sup> 2011 – General Assembly, Decision N° 9-1

1. The first stage relates to the demand for reimbursement sent by the Bureau of the country of accident or its agent to the insurance company having issued the Green Card or the insurance contract covering the vehicle involved in the accident (Article 5).

At this stage the insurance company shall proceed with the reimbursement claimed from it within a period of two months from the date of the demand. On expiry of this period the insurance company shall be liable to pay late interest calculated at the rate of 12% per annum on the amount claimed as principal and accruing from the date of the demand until the date of receipt of the remittance by the bank of the beneficiary.

If the Bureau of the country of accident or its agent has not received the reimbursement within the period of two months it may call on the guarantee of the guaranteeing Bureau.

2. The second stage therefore refers to the guarantee call which the Bureau of the country of accident or its agent is entitled to make to the guaranteeing Bureau, namely the Bureau of which the insurance company responsible for the demand for reimbursement is a member (Article 6.1). The Bureau standing as guarantor shall have one month from the date of receipt of the guarantee call to arrange the required reimbursement i.e. the amount of the claim sent to the insurance company plus late interest calculated at a rate of 12% per annum and accruing until the date of the guarantee call.

If this payment is not made within the period of one month the guaranteeing Bureau shall be liable to pay to the Bureau of the country of accident or to its agent:

- a) the amount claimed from it - namely the amount initially claimed from the insurance company plus late interest calculated at a rate of 12% per annum accruing from the date of the demand for reimbursement made to the insurance company until the date of the guarantee call;
- b) additional late interest calculated at a rate of 12% per annum on the amount referred to in a) above - that is principal and interest - and accruing from the date of the guarantee call until the date of receipt of the remittance by the bank of the beneficiary.

However two restrictions of the Bureau's obligations have been provided at this second stage:

- 1) late interest as referred to in a) cannot accrue for more than twelve months.
- 2) no guarantee call shall be admissible if made to the guaranteeing Bureau more than two years after the date of the first demand for reimbursement sent to the insurance undertaking.

To expedite the procedure and provide legal evidence the guarantee call shall, in all circumstances, be sent according to the terms and conditions decided at the General Assembly.<sup>60</sup> In 2012, the Council of Bureaux introduced the Online Guarantee Call system as the only valid mandatory system to issue a guarantee call as from the date to be determined by the Management Committee, with the condition that questions regarding a sufficient level of data protection have been solved. Guarantee calls shall be issued via the online

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<sup>60</sup> 2012 – General Assembly, Decision N° 1-1

system established for that purpose.<sup>61</sup> The guarantee call shall be supported with a copy of the original demand for reimbursement sent to the insurer under Article 5<sup>62</sup>. As the guarantee call shall cease to be admissible if made more than two years after the date of the initial demand for reimbursement made to the insurer, the Bureau's guarantee obligation becomes extinct on expiry of that period.

The first stage reimbursement remains due and shall be settled between the parties involved (including the first stage interest which is not time-barred) but without the guarantee from the Bureau of which the insurer responsible is a member.

#### Guarantee Call "Pro Forma"

In certain circumstances (for example, in the case of absence of insurance, a false Green Card, an insurance undertaking in winding-up proceedings, a Bureau operating frontier insurance, Art. 4.5 and 4.6, etc.), this demand for reimbursement is addressed directly to the Bureau concerned. In this case, if the Bureau receiving the demand does not execute the reimbursement within the two month period then no Guarantee Call can be sent to the Bureau. This is on the basis of the legal principle according to which it is not possible to be the guarantor of one's own debt. This lack of feasibility indirectly leads to the fact that the non-payment of the demand for reimbursement by this Bureau will not appear on the list of unexecuted Guarantee Calls which has to be sent to the Secretariat of the Council of Bureaux within the framework of the continuous monitoring of the Members' fulfilment of Guarantee Calls. In order to avoid this unsatisfactory situation, the Bureaux (or their agents) are asked in the situation envisaged here above, to issue "pro forma" Guarantee Calls to the Bureaux which do not respect the two-month period and as such allowing the Council of Bureaux Secretariat to draw up a report on the matter. Terms and conditions of Article 6 of the Internal Regulations shall also apply to the Guarantee Calls pro forma<sup>63</sup>.

A standardized form for the guarantee call as well as an instructions set approved by the General Assembly<sup>64</sup> are available to Bureaux on the CoB website (extranet).

***6.2 Each Bureau shall guarantee the reimbursement by its members of any amount reimbursed by a Bureau to a correspondent in accordance with Article 4.8.***

*After having reimbursed the correspondent, the Bureau that approved the correspondent shall make a guarantee call to the Bureau of which the insurer in question is a member.*

*Such guarantee call shall comply with the conditions of Article 4.8 and shall be made according to the practical terms and conditions decided at the General Assembly within a period of 12 months since the date on which*

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<sup>61</sup> 2014 – General Assembly, Decision N° 5-1

<sup>62</sup> 2005 – General Assembly, Decision N° 10 – Documentation supporting a guarantee call

<sup>63</sup> 2008 – General Assembly, Decision N° 4.3: Guarantee Call "Pro Forma"

<sup>64</sup> 2011 – General Assembly, Decision N° 9-5

*the correspondent sent the demand for reimbursement to the insurer that requested its approval at the latest. All remaining conditions of Article 6.1 shall apply to this guarantee call.*

6.2 In 2013, new rules were introduced in Article 4 on the conditions of reimbursement of a Correspondent by the Bureau that approved it. A (handling) Bureau will reimburse the Correspondent if the strict conditions laid down in Article 4.8 have been respected. The reimbursement of the handling Bureau by the guaranteeing Bureau is guaranteed under Article 6.2. Having reimbursed the Correspondent, the handling Bureau may directly issue a guarantee call to the Bureau of which the insurer (which requested the approval of the Correspondent) is a member. It does not need to ask for reimbursement beforehand in accordance with Article 5. However, the guarantee shall only apply if the request for reimbursement made by the Correspondent to the handling Bureau was made in compliance with the conditions laid down in Article 4.8. This condition was introduced in order to ensure that the Bureau reimbursing the Correspondent can comply with the time-limit within which it is required to issue the guarantee call.

The “practical” terms and conditions referred to in the third paragraph of Article 6.2 refer to the Online Guarantee Call System of the Council of Bureaux.

As to the other conditions of a guarantee call (deadlines for reimbursement, late interest rates) under Article 6.2., the provisions of Article 6.1. apply accordingly<sup>65</sup>.

During the General Assembly of 26 May 2011 in Dubrovnik, the Council of Bureaux decided to approve a catalogue of qualified reasons to reject the guarantee calls drafted in the following terms<sup>66</sup>:

### **1) Reasons to reject a Guarantee Call arising from Article 5 of the Internal Regulations**

Under Article 6.1, each bureau shall guarantee the reimbursement by its members of any amount demanded in accordance with the provisions of Article 5. It follows from the above provision that if a reimbursement demand is not made in compliance with Article 5, the Bureau shall be released from any obligation of guarantee.<sup>67</sup>

Hence, a guarantee call can be rejected by the guaranteeing Bureau if the underlying demand for reimbursement of the handling Party did **not contain all of the following information**:

1. The date of the demand
2. The name of the party issuing the demand (Handling Party)
3. The name of the party to which it is issued (Ultimate debtor)
4. The file number of the Ultimate debtor (and reference of the Guaranteeing Bureau, both if available)
5. The date and country of accident; place of accident only if known
6. Information on the liable party:

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<sup>65</sup> The first three paragraphs of the explanatory text were adopted by the 2014 General Assembly, Decision N° 5-1

<sup>66</sup> 2011 – General Assembly, Decision N° 9-2 – Catalogue of qualified reasons to reject a guarantee call

<sup>67</sup> 2014 – General Assembly, Decision N° 5-1



a. for claims handled under Section II of the IR: the Green Card number (if available, policy or insurance number)

and

b. for claims handled under Section III of the IR: one of the criteria determining the territory of the State in which the vehicle is normally based (the registration number of the motor vehicle, the insurance plate or the permanent residence of the person who has custody of the vehicle)

7. The sums which are to be reimbursed by the Ultimate debtor:

- a. compensation to injured parties ;
- b. external services (Expert fees, lawyer fees, etc.) if applicable ;
- c. handling fee, if applicable ;
- d. late interest, if applicable ;
- e. and the total sum in euro or national currency<sup>68</sup>.

8. Obligatory specifications arising from the 1st paragraph of art 5.2. of the Internal Regulations

9. And the bank details of the Handling Party

Moreover, following Article 5.1, a Guarantee Call can be rejected in case the underlying reimbursements demand:

10. Was not sent by email or fax :

- a. for claims handled under Section II of the IR: to the member of the Bureau which issued the Green Card or, if appropriate, to the Bureau concerned and
- b. for claims handled under Section III of the IR: to the member of the Bureau which issued the policy of insurance or, if appropriate to the Bureau concerned

11. Was sent later than the maximum period of one year from the date of the last payment made in favour of an injured party

12. Was sent to the MTPL insurer of the liable party after CoB informed all the members about the suspension (due to bankruptcy, insolvency, etc.) of that insurer.

## **2) Reasons to reject a guarantee call arising from Article 6 of the Internal Regulations**

Moreover a guarantee call can be rejected by the guaranteeing Bureau in any of the following situations:

- 1. Following Article 6 of the Internal Regulations, “no Guarantee Call shall be admissible if made more than two years after the despatch of the demand for reimbursement”.

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<sup>68</sup> The Bureaux that are not in the Euro area have the option to make reference to the possibility to pay in Euro the amounts expressed in the national currency (at the official and current exchange rate in the country of the claiming Bureau at the date of the demand).

2. The Guarantee Call can be rejected if it was sent before the end of the two-month period stipulated in Article 5.2. to the Guaranteeing Bureau.
3. A Guarantee Call should be regarded as invalid in the event that the Guaranteeing Bureau proves that the demand for reimbursement has already been fully settled by itself, its member or by one of its agents.
4. If Articles 4.5, 4.6 have been applied by the Handling Bureau, the Guarantee Call to the Bureau of which the insurer in question is a member, is not valid if the latter was not preceded by a reimbursement demand to the Guaranteeing Bureau in accordance with the conditions set out in art. 5 of the IR.
5. The Guarantee call can be rejected if it contains no reference to the relevant demand for reimbursement.
6. When the claim has been handled:
  - a. in absence of confirmation of guarantee from the insurer, or
  - b. in absence of a confirmation of guarantee in conformity with art. 8 or Art. 13 depending whether Section II or III is applicable, or
  - c. in absence of a confirmation from the Bureau that the vehicle is normally based in the country for which the Bureau is competent, provided that the Guaranteeing Bureau took the negative position in conformity with art. 8 or art. 13 of the IR depending whether Section II or III is applicable.
7. The guarantee call was not sent by according to the terms and conditions decided at the General Assembly.

### **3)<sup>69</sup> Reasons to reject a guarantee call arising from Article 6.2 of the Internal Regulations**

A guarantee call in accordance with Article 6.2 of the Internal Regulations can be rejected by the guaranteeing Bureau in any of the following situations:

1. If made more than 12 months since the date on which the Correspondent sent the demand for reimbursement to the insurer that requested its approval;
2. If the underlying request for reimbursement sent by the Correspondent to the handling Bureau did not comply with the conditions laid down in Article 4.8.;
3. In the event that the guaranteeing Bureau proves that the demand for reimbursement has already been fully settled by itself, its member or by one of its agents;
4. If it contains no reference to the relevant demand for reimbursement;
5. If the underlying demand for reimbursement (sent by the Correspondent to the insurer) was

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<sup>69</sup> 2014 – General Assembly, Decision N° 5-1

- a. sent later than the maximum period of one year from the date of the last payment made in favour of an Injured party
  - b. sent to the MTPL insurer of the liable party after the CoB informed all the members about the suspension (due to bankruptcy, insolvency, etc.) of that insurer;
6. If the guarantee call was not sent according to the terms and conditions decided at the General Assembly.

If one of these qualified reasons under section 1), 2) or section3) above has been invoked by the Guaranteeing Bureau within one month since the date of the guarantee call, such guarantee call has to be considered as rejected. In case of disagreement by the Handling Bureau, the Handling Bureau will have to take the initiative for resolving the dispute by mediation or by arbitration.

*6.3 Each Bureau guarantees that its members shall instruct the correspondents whose approval they have requested to settle claims in conformity with the provisions of the first paragraph of Article 4.4 above and forward to those correspondents or to the Bureau of the country of accident all documents concerning all claims entrusted to them.*

6.3 The purpose is to guarantee that claims made by Injured Parties shall be settled in conformity with the legal and regulatory provisions applicable in the country of accident insofar as they relate to liability, compensation of Injured Parties and compulsory motor insurance. That is why each Bureau shall ensure and guarantee that its members instruct the correspondents whose approval they have requested to settle all claims arising out of an accident in conformity with the said provisions. Moreover, Correspondents shall receive instructions to pay compensation in the name of the Bureau of the country of accident and on behalf of the insurer having appointed them for the purpose. Finally, each Bureau shall ensure that its members forward to their correspondents or to the Bureau handling the claims all documents concerning these claims or which are required in settling them.

If a claim is not handled by an approved correspondent in conformity with the provisions in the first paragraph of Article 4.4 and that, as a result of such lack of performance, the Bureau of the country of accident is required to pay sanctions as provided by the national regulatory provisions, this Bureau, if it has not been reimbursed by the correspondent involved, after a reminder sent by fax or e-mail, shall be reimbursed directly by the Bureau through which the request for approval was sent, in accordance with the conditions set out in Article 5, by analogy with the provisions of Article 4.6<sup>70</sup>.

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<sup>70</sup> 2005 – General Assembly, Decision N° 5 – The reimbursement of a bureau for sanctions paid

## **Section II – Specific Rules Governing Contractual Relations Between Bureaux Based on the Green Card**

*The provisions of this section apply where contractual relations between Bureaux are based on the Green Card.*

This Section governs the relations between Bureaux when either both parties or one party have (has) not signed the Agreement between the National Insurers' Bureaux of the Member States of the European Economic Area and other Associate Bureaux (hereafter called the "Multilateral Agreement"), referred to in Article 17.1 of the Internal Regulations, which binds the Bureaux of the EEA Member States and to which the Bureaux of non EEA Member States have been associated.

The provisions of this section also apply to the relationship between two Signatory Bureaux of the Multilateral Agreement when it is regarding the settlement of a claim following on from an accident involving a vehicle registered in a third country (that is to say, a country where the Bureau is not a signatory of the Multilateral Agreement) when it is the subject of a Green Card issued by a member of one of these two Bureaux.

### **ARTICLE 7 – ISSUE AND DELIVERY OF GREEN CARDS**

#### **ARTICLE 7 - Issue and delivery of Green Cards**

*7.1 Each Bureau shall be responsible for printing its Green Cards or shall authorize its members to print them.*

7.1 This sub-article deals with the responsibility of a Bureau for printing Green Cards. An option is offered to each Bureau: it may proceed to printing the Green Cards itself or it may authorise its members to print Green Cards conforming to the model proposed by the Council of Bureaux and approved by the UNECE<sup>71</sup>. Whatever the method selected, the Bureau bears the ultimate responsibility for the printing of Green Cards.

In 2008, the Council of Bureaux General Assembly adopted a new Green Card format. This was then approved by the Working Party on Road Transport of the Inland Transport Committee of the Economic Commission for Europe of the United Nations during their 130th session which took place in Geneva from the 29th to the 31st of October 2008<sup>72</sup>. It may be put into circulation as from the 1st of January 2009. However, the previous format can be used for two years, that is to say, until the 31st of December 2010. Once this deadline has elapsed, the Green Card issued under the old format will no longer be valid. However,

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<sup>71</sup> 1996 – General Assembly, Item 3B, as modified in 2001 and confirmed in 2006.

<sup>72</sup> "The Working Party approved the new Green Card format that has been adopted by the 42<sup>nd</sup> General Assembly (for both horizontal and vertical models) as from 1<sup>st</sup> January 2009 with a two year transitional period (ending on 31<sup>st</sup> December 2010) in order to replace the current version of the Green Card."

this would not be the case if, having been issued during the transitional period, the expiry date goes beyond the 31st of December 2010<sup>73</sup>.

What happens if the modification of the Green Card is the result of the addition of the international letters of a new member or a member which has been reactivated?

The Bureaux and insurance undertakings which are members must first of all be reminded that they have two years to modify the Green Cards which they distribute to insureds. Those Green Cards which remain in circulation and which have not been updated within this timescale of two years will be considered as being valid for the specified period, for the countries shown on the Green Card and will not be rendered as being invalid.

For new or reactivated member bureaux there is no automatic extension of the territorial validity of the Green Cards of other members to the new bureau unless the letters of the new bureau are displayed on the Green Card and are not crossed out.

However, the Council of Bureaux will allow special bilateral agreements between a new bureau and another bureau to recognise the existing Green Cards of the other bureau until the cards have been reprinted or until two years have expired providing both bureaux so agree. However, such special bilateral agreements are not enforceable under the agreements of the Council of Bureaux against any bureau.

A hand-written, typewritten or machine-written addition of the international identity letters of a Bureau on a Green Card is absolutely not valid in the sense that such addition shall not be interpreted as an extension of the guarantee given by a Green Card whose international identity letters have been added on the Green Card. A hand-written, typewritten or machine-written addition on a Green Card of the international identity letters of a Bureau shall not be considered as an unauthorised or illegal alteration for the consequences foreseen by Article 9 of the Internal Regulations<sup>74</sup>.

Pursuant to the decisions adopted in 2008 and previous currently valid provisions, the Green Cards must adhere to the following conditions:

Dimensions:

The dimension of the Green Cards is left at the discretion of each Bureau provided that it is not bigger than A4 format.

Structure of the text:

The standard text distributed by the Council of Bureaux must be reproduced in the provided order and the following 11 headers must appear on it:

1. The title of the document "INTERNATIONAL MOTOR INSURANCE CARD/CARTE INTERNATIONALE D'ASSURANCE" shall appear in English and French and the language of the country of the issuing Bureau, with the title of the document being expressed in addition in English and French, as specified in Art. 14 of Annex 1 of the Revised Consolidated Resolution on the Facilitation of Road Transport (R.E.4) adopted by the UN Economic Commission for Europe<sup>75</sup>. The

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<sup>73</sup> 2008 – General Assembly, Decision N° 5-2

<sup>74</sup> 2003 – General Assembly, Decision N° 3

<sup>75</sup> 1994 – General Assembly, Item 4 b)(ii) modified in 2007

- order in which the main languages appear on the document is left at the discretion of each Bureau. The language in which the document is drafted is that of the issuing Bureau. However, the use of the latin alphabet is obligatory. The same information can be reproduced in other alphabets<sup>76</sup>.
2. Identity of issuing Bureau: the further addition of the Bureau's logo is authorised at the Bureau's discretion. The insertion, deletion or any other alteration of a Bureau's logo can never be deemed as constituting the falsification of the Green Card itself.
  3. The validity period of the certificate. The mode of indication is optional, the year of validity can appear in either 2 figures or 4 figures.
  4. The identification of the Green Card must conform to the following conditions: "Country code/Insurers code/number". The use of "Number" when referring to a policy or a serial number or to any other form of numbering is left to each Bureau to decide.
  5. Identification of the insured vehicle by its registration, or in absence of this, by the chassis or motor number.
  6. The heading "Category" takes on one of the seven options appearing at the bottom of this document. The words "and trailer" or "and caravan" can be added to this case if the law on compulsory insurance of the country visited does not require a separate Green Card to cover trailers and caravans<sup>77</sup>. It is left to the individual insurer to assess which option is most suitable for certain types of vehicles<sup>78</sup>.
  7. The "make" of vehicle
  8. The territorial validity takes the international letter of each country participating in the Green Card system. The card is valid in the country where the letters are not crossed out. The letters "TR" indicate that the Green Card is valid for the European and Asian part of Turkey<sup>79</sup>.  
A reference appears on the last line before the list of countries of the list of Bureaux on the back of the document.
  9. The name and address of the policyholder to the insurer contract or the vehicle user
  10. A space is available to the insurer issuing the card who can add, in addition to their name and address (compulsory information), their logo, telephone and/or fax number, home page of their site, their e-mail address and other useful information to the insured. The insertion, deletion or any other modification of a Bureau's logo can never be deemed as constituting the falsification of the Green Card itself.
  11. Signature of the insurer

Each card must indicate the internet link to the website of the Council of Bureaux and those of different Bureaux (this last piece of information is optional). The Council of Bureaux website address must appear (compulsory) at the front of heading 8. The website address of each Bureau (optional) can appear on the back under the Bureau's official name. The Council of Bureaux website address must also appear on the last line on the back of the Green Card (obligatory).

The text appearing on the back of the Green Card starts with a "Note for the insured". After that comes "Names and addresses of Bureaux". The complete mention of the name of the country preceded by its official abbreviation is compulsory.

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<sup>76</sup> 1999 – General Assembly, Item 7.9

<sup>77</sup> 1954 – General Assembly, Item 2 modified in 2006

<sup>78</sup> 1959 – General Assembly, Item 8 modified in 2006

<sup>79</sup> 1968 – General Assembly, Item 6

Specific case: issuing a Green Card in the case of permanently “transmittable registration plates”:

Permanently transmittable registration plates are a special type of registration plate which are not allocated to a specific vehicle and can be used for all categories of vehicles defined in the insurance contract. Such plates can have different names in different countries (e.g.: “commercial plates”, “test plates”, etc.) and usually they are delivered to car dealers, second hand car market operators or other special entities. There, where such plates can be legally used for more than one category of a vehicle, the display of this information on the Green Card requires a harmonized approach. Hence, Item N° 6 of the Green Card (Category of Vehicle) should bear the code G (others). The way to fill Item N° 7 of the Green Card (Make of Vehicle) and to add possible data on the optional space of the Green Card called useful information is left at the discretion of each Bureau according to its national law and to the practicability of the situation<sup>80</sup>.

Co-existence of a Green Card and of a Frontier Insurance:

It has been decided that in the case of co-existence of a Green Card and of a Frontier Insurance, priority should be given to the Frontier Insurance<sup>81</sup>.

*7.2 Each Bureau shall authorize its members to issue Green Cards to their insureds solely for vehicles registered in any country for which it is competent.*

7.2 The Bureau shall authorise and instruct its members to issue Green Cards for vehicles registered in any country for which it is competent. In certain cases the Bureau may be competent for more than one country - for example the Swiss Bureau for Liechtenstein and the French Bureau for Monaco. This provision does not restrict the issuing of Green Cards as certificates of a frontier insurance policy for vehicles registered in a third country and valid for the EEA countries and Switzerland<sup>82</sup>.

Specific case 1: Green Card issued for vehicles despatched from one EEA Member State to another.

Art. 4.4 §1 of the 5th Motor Insurance Directive (currently, Article 15 of Directive 2009/103/EC) creates an exception to the rules and provides for that when a vehicle is despatched within the EEA from one Member State to another Member State, the insurance risk moves to the Member State of destination for a period of 30 days, even if the vehicle remains normally based in the Member State of origin. The MTPL insurance cover is to be bought in this specific case only in the MS of destination.

In that context, Art. 7.2 of the IR does not restrict the issuing of a Green Card (certificate of an insurance policy), by an insurance undertaking active in the Member State of **destination if a vehicle is being dispatched from one EEA Member State to another**. This means that this Green Card will remain valid during 30 days even, if an accident occurs in a Section II country.

However, for countries within Section III, the Green Card will have no relevance for the claim handling and the related relationships among the Bureaux concerned which will be governed by the normally based

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<sup>80</sup> 2009 – General Assembly, Decision N° 5-2 (1<sup>st</sup> part)

<sup>81</sup> 1997 – General Assembly, point 9.9 modified in 2007

<sup>82</sup> 1995 – General Assembly, Item 2D

principles implying thus no change to the rules applicable for Section III. The Green Card will only be relevant for obtaining information to identify the insurer (ultimate debtor).

According to the 5th Motor Insurance Directive, the MTPL insurance policy issued for a despatched vehicle by the insurer of the Member State of destination shall not exceed 30 days.

Should an insurer issue such a Green Card for a longer period than 30 days, its Bureau's guarantee shall not apply after the expiry of the 30 days as then the vehicle will not be a risk situated in the country of that Bureau, but the insurer shall cover the related risk until the final expiry date of the MTPL insurance policy<sup>83</sup>.

Specific case 2:<sup>84</sup> Green Card issued for international (supranational) organisations

Insurers may exceptionally be authorised to issue Green Cards for vehicles bearing registration plates of international (supranational) organisations. International and supra-national organisations (e.g. the United Nations and the European Union) regularly operate humanitarian, civilian or other missions in Europe and/or in the countries of the Green Card system. These organisations or their missions generally possess a vehicle fleet bearing specific registration plates that are not issued by any country but by the organisations themselves. The vehicle fleet is insured with insurers operating in the Green Card system and selected in a procurement procedure launched by the mentioned organisations.

The Bureau of which the insurer in question is a member shall guarantee the Green Cards issued for vehicles of these organisations. The guarantee shall apply after the Bureau has undergone the approval procedure referred to in Article 7.3. The guarantee may only be denied exceptionally, on the same grounds as in the case of Green Cards purporting to be issued under Article 7.3 (cf. explanations to Article 9.2 further below).

*7.3 Any member may be authorised by its Bureau to issue green cards to its insureds in any country where no bureau exists provided that the member is established in that country. This option is limited to vehicles registered in the country in question.*

7.3 Any insurer may, with the authorisation of the Bureau of which it is a member<sup>85</sup>, issue Green Cards to its insureds for vehicles registered in a country where no Bureau exists and where the insurer has a duly authorised establishment. Establishment means any office, branch or subsidiary in the country concerned which is officially approved by the authorities for the transacting of motor insurance in that country. It should be noted that the guarantee of a Bureau shall apply in all cases cited in the second paragraph of Article 9. Each Bureau should be responsible for controlling whether each Member concerned is established in a particular country in accordance with the above criteria.

Approval procedure<sup>86</sup>

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<sup>83</sup> 2009 – General Assembly, decision N° 5-2 (2<sup>nd</sup> part)

<sup>84</sup> 2017 – General Assembly, Decision N° 3-3 – Entry into force: 1<sup>st</sup> July 2017

<sup>85</sup> 1996 – General Assembly, Item 3E

<sup>86</sup> 2014 – General Assembly, Decision N° 3-1



A Bureau which intends to authorise one (or more) of its members to issue Green Cards to a country where no Bureau exists, should ask for the approval of CoB before starting these activities.

In practice, the Bureau should contact the CoB Secretariat with its request, taking into account the following preconditions:

1. Basic conditions for a “third” country receiving Green Cards from a CoB member country:
  - The country must be recognised as a member of the UN.
  - The location of the country must be within the geographical scope of the Green Card system.
2. Basic conditions for a Bureau to authorise one (or more) of its members to issue Green Cards to a “third” country:
  - The Bureau should not be under “Monitoring” status.
  - The Bureau should confirm that reinsurance cover, be it under the control of the Bureau itself or of its member(s), has been extended to this new activity.
3. Additional assessments by the CoB Secretariat:
  - The CoB Secretariat will compile an overview of the Online Guarantee Calls of the last 3 years in order to review the financial performance of the Bureau and its (relevant) members.
  - If necessary, the CoB Secretariat will ask to have an insight into the relevant reinsurance treaties.

After that, the CoB Secretariat will inform the Monitoring Committee with the gathered information. The Monitoring Committee will decide on a recommendation to the Management Committee which has the final power of approval.

The decision of the Management Committee will be communicated by the CoB Secretariat to the Bureau asking for approval.

In order to speed up the approval procedure, written consultations can be performed with the involved parties (CoB Secretariat, Monitoring Committee, Management Committee), except the Bureaux which should only direct their communication to the CoB Secretariat.

Validity of the approval and exchange of information

After the approval of the Management Committee, the following rules should be in place:

- The validity of the approval should be valid for one calendar year after the approval of the Management Committee.
- For the renewal of the approval, the Bureau should provide the CoB Secretariat with statistical data about the number of Green Cards issued and claims incurred during the previous year.
- The CoB Secretariat will also perform a review of the development of the OGC statistics after the previous year.

The approval procedure as described under points 1-3. shall also apply to the specific case 2 described under Article 7.2. (Green Cards issued for international (supranational) organisations).

*7.4 All Green Cards are deemed to be valid for at least fifteen days from their date of inception. In the event that a Green Card is issued for a lesser period, the Bureau having authorised the issuing of the Green Card shall guarantee cover to the Bureaux in the countries for which the card is valid for a period of fifteen days from the date of inception of its validity.*

7.4 A Green Card is deemed to be valid for at least 15 days from its inception date. If the Green Card has been issued for a lesser period it will nevertheless be valid for fifteen days under the guarantee of the Bureau that authorised the issuing of the Green Card.

*7.5 Where an agreement signed between two Bureaux is cancelled under Article 16.3.5, all Green Cards delivered in their name for use in their respective territories shall be null and void as soon as the cancellation becomes effective.*

7.5 This sub-article deals with the effect on Green Cards of any cancellation of the agreement (Article 16.3.5). All Green Cards issued in the name of the Bureaux concerned shall be invalid from the effective date of the cancellation.

*7.6 Where an agreement is cancelled or suspended by the application of Article 16.3.6, the residual period of validity of the Green Cards delivered in the name of the Bureaux concerned for use in their respective territories shall be determined by the Council of Bureaux.*

7.6 If a Bureau's membership is suspended or if it ceases to be a CoB member (Article 16.3.6), resulting in the cancellation or suspension of the agreement, the Council of Bureaux shall determine the residual period of validity of the Green Cards issued in the name of the Bureau concerned.

#### **ARTICLE 8 – CONFIRMATION OF THE VALIDITY OF A GREEN CARD**

*Any request for confirmation of the validity of an identified Green Card sent in accordance with the terms and conditions decided at the General*

*Assembly<sup>87</sup> to a Bureau by the Bureau of the country of accident or by any agent appointed for the purpose shall be given a definitive answer within six weeks<sup>88</sup> of the request. In the event of no such response then on expiry of that period, the Green Card shall be deemed to be valid.*

#### ARTICLE 8: Confirmation of the validity of a Green Card<sup>89</sup>

When the Bureau of the country of the accident receives a claim based on the existence of a Green Card, it must identify the card.

In accordance with Article 8 of the Internal Regulations<sup>90</sup>, the following information is indispensable for the **identification** of the Green Card:

- i) the name of the Bureau or country code;
- ii) the insurer's name and/or code and
- iii) the serial number of the Green Card.

These elements are all compulsory. If one is missing, the Green Card cannot be considered as identified.

If the Bureau is in possession of the original Green Card or a (digital or hard) copy thereof, the card shall be considered as identified. (This is without prejudice to the reasons to deny the guarantee in accordance with Article 9.) If neither document is available, the Bureau may collect the above information from any document such as a European Accident Statement, a simple declaration of the parties or a statement of a police officer, etc.

Data recorded on the Green Card is a preferred means of identification of the insurance company as the Green Card includes the name and address of the insurance company in box 10 and the code of the insurance company in box 4. This identification code must appear on the Green Card<sup>91</sup>. It allows for the full identification of the insurer (name, address, telephone number, fax, etc.) due to the member lists that each Bureau regularly updates and makes available to other Bureaux<sup>92</sup>.

The Bureau of the country of accident has to make sure that the Green Card was valid on the date of and for the country of the accident on which the claim is based. Hence, the Bureau (or its agent) shall send a request for confirmation of the validity of the identified Green Card to the Bureau under the authority of which the Green Card is purported to be issued.<sup>93</sup> In such a request, it shall specify the complete number (basic

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<sup>87</sup> 2017 – General Assembly, Decision N° 4-2;

<sup>88</sup> 2010 – General Assembly, Decision N° 6-4; Applicable to accidents occurred on 1<sup>st</sup> January 2011 or after

<sup>89</sup> 2015 – General Assembly, Decision N° 5-1 – The text under Article 8 has been thoroughly revised. Explanations inserted by previous decisions which are still in force can be traced back from the footnotes in this section.

<sup>90</sup> 2004 – General Assembly, Decision N° 4

<sup>91</sup> 1999 – General Assembly, Decision N° 5.7

<sup>92</sup> 2005 – General Assembly, Decision N° 7

<sup>93</sup> For accidents occurred before 1<sup>st</sup> July 2010, the Explanatory Memorandum provides for certain exceptions from the rule to request confirmation of the validity of the Green Card. For the respective rules, please consult an earlier version of the Internal Regulations.

data of identification) of the Green Card, the date and the country of the accident and the registration number of the vehicle (and if this is not available, the VIN, chassis or engine number, insurance plate or any distinguishing sign according to the case). It shall also submit all relevant information in its possession and, if available, a copy of the Green Card in order to facilitate the research of the Bureau to which the request is addressed.

The request shall be sent in accordance with the terms and conditions defined by the CoB General Assembly and the model letter of the CoB shall be used for this purpose.<sup>94</sup>

The Bureau to which the request was addressed has six weeks<sup>95</sup> as from the date of the request to provide a final and conclusive answer via the same means of communication as the request had been received. The deadline is to be counted from the date of despatch of the electronic request, irrespective of the date of any attached documentation. If, within this six week period the Bureau of the country of accident acquires new information regarding the Green Card in question, it shall transfer it to the other Bureau without delay. Should this new information lead the requesting Bureau to the identification of a different Green Card than referred to in the original request, it shall without delay inform the Bureau(x) concerned, and send a new request. In this case the 6 week time limit starts running again. If, on the basis of the information in its possession, the Bureau to which the request was addressed is unable to confirm the validity of the Green Card as identified by the requesting Bureau and decides to deny the request, it shall do so in a reasoned reply. If, after this negative reply, the Bureau of the country of accident becomes aware of additional information or acquires a copy which allows it to identify the Green Card in question, it may send the request for confirmation once more to the other Bureau. In this case, the 6 week time-limit starts running again.

If the Bureau to which the request was addressed finds that the Green Card is false or unauthorised, it shall express its position about its guarantee in accordance with the procedure described further below (in the explanatory text under Article 9).

In the event that no definitive reply or no reasons to deny the validity of the Green Card are received within six weeks, the Green Card shall be deemed to be valid or, in case the card turned out to be false or unauthorised, the guarantee of the Bureau addressed (the one under the authority of which the Green Card purports to be issued) shall be deemed to be given. This means that if the Bureau of the country of the accident then decides to settle the claim of the injured party in accordance with the provisions of Article 3, it shall be reimbursed by the Bureau to which the request for confirmation of validity was sent and under the authority of which the Green Card purports to be issued.

If the Bureau of the country of accident is not able to identify the Green Card (i.e. any of the three elements mentioned above is missing), it may still contact the Bureau of the country where the vehicle involved in the accident is registered, in accordance with the terms and conditions decided at the General Assembly (i.e. via the CoB online platform).<sup>96</sup> However, in this case the procedures here above (i.e. contact form and deadlines) do not apply. Nonetheless, the involved Bureaux remain responsible for investigating and

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<sup>94</sup> This Model letter can be found on the CoB extranet.

<sup>95</sup> 2010 - General Assembly, Decision N° 6-4. As regard accidents occurred before 1<sup>st</sup> January 2011, this time limit is three months.

<sup>96</sup> 2017 – General Assembly, Decision No 4-2. The amendments shall enter into force on 1<sup>st</sup> January 2018 and shall be applicable to accidents occurred on or after that date.

attempting to identify or verify the validity of the Green Card as promptly as possible, in line with the spirit of cooperation in good faith, existing between members of the System.

In cases in which no Green Card can be identified, the Bureaux may exchange information about potential insurance cover of the involved vehicles. The said information does neither induce insurance cover nor the guarantee of the Bureau which gave the information, as long as no Green Card validity has been confirmed according to the procedure under Article 8 or no guarantee has been provided under Article 9.

#### **ARTICLE 9 – FALSE OR UNAUTHORISED GREEN CARDS**

*9.1 Any false or unauthorised Green Card presented in a country in which these Internal Regulations are applicable, purporting to be valid and issued under the authority of a bureau, shall be guaranteed by that bureau.*

*9.2 However, the bureau's guarantee shall not apply where a false Green Card relates to a vehicle which is not legally registered in that bureau's country, with the exception of the circumstances specified in Article 7.3.<sup>97</sup>*

ARTICLE 9: False and unauthorised Green Cards<sup>98</sup>

9.1. The concept of a presented false or unauthorised Green Card

As a main rule, false or unauthorised Green Cards have to be guaranteed by the Bureau which – on the basis of the data of the card – is deemed to have authorised them.

The first paragraph of Article 9 provides that the Bureau shall guarantee that any Green Card presented in a CoB member country is deemed to have been issued under its authority even if it transpires that it is false or unauthorised .

**False Green Cards** are either illegally altered genuine Green Cards (including stolen genuine templates completed illegally) or counterfeited cards which intend to (re)produce or replace an original Green Card or give that impression. However, a genuine and valid Green Card stolen together with a vehicle to which it applies and used later in relation to the same vehicle cannot be considered as a false Green Card, consequently it falls under the regime of Article 8.

**Unauthorised Green Cards** are genuine Green Cards issued in breach of the Internal Regulations, even if by mistake (e.g. a member company issues a Green Card to a vehicle registered in a country where there is a Bureau). It includes cases of genuine Green Cards issued without authorisation to a vehicle registered in a country where no Bureau exists (e.g. a member company was authorised to issue Green Cards for

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<sup>97</sup> 2017 – General Assembly, Decision No 4-2; Entry into force: 1<sup>st</sup> January 2018, applicable to accidents occurred on or after this date.

<sup>98</sup> 2017 – General Assembly, Decision No 4-2 – The explanatory text under Article 9 has been thoroughly revised. The amendments shall enter into force on 1st January 2018 and shall be applicable to accidents occurred on or after that date.

Georgia and issued them by mistake to vehicles registered in Armenia) or cases where an insurer issues a Green Card even though it has no authorisation to issue Green Cards at all (i.e. it does not operate in the Green Card branch). In these situations, the Bureau is also responsible for possible mistakes of its member insurers. The Bureaux may recommend to their member companies to pay more attention to and eventually to check the delivery of Green Cards to avoid possible mistakes; the Bureau should take measures against their defaulting members, if necessary. The wording „presented“ assumes the physical existence at the time and the location of the accident of a document which apparently has the characteristics of a Green Card issued in accordance with Article 7.

Hence, in order to apply the guarantee provided under this article, the document „Green Card“ shall be available in original or in copy. A „copy“ may be any (other than handwritten) reproduction of the Green Card, either hard copy or digital. If the data of the Green Card can only be ascertained from a Police Report, then the following rule applies: if the Police Report contains the essential details of the Green Card, that is to say: the name or country code of the Bureau, the insurer’s name and/or code and the serial number of the Green Card together with the period of validity (inception/expiry date), the card shall be deemed to have been physically presented in original.

The procedure to be followed

If the Bureau addressed under Article 8 (request for the confirmation of the validity of the Green Card) has doubts about the authenticity of the Green Card, it shall examine the possibility to provide its guarantee and confirm or deny it in accordance with the terms and conditions defined by the CoB General Assembly within six weeks from the receipt of the request. The deadline is to be counted from the date of despatch of the electronic request, irrespective of the date of any attached documentation. In case of denial, the Bureau shall give a reasoned reply, based on the conditions described here below.

In case of no definitive reply, the guarantee of the Bureau under the authority of which the Green Card purports to be issued shall be deemed to be given.

In case the Bureau is contacted in respect of a non-identified Green Card, the deadline mentioned above does not apply (c.f. procedural rules under Article 8).

#### 9.2. The exceptions to the main rule of guarantee

The second paragraph of Article 9 lays down the exceptions to the main rule of guarantee. It introduces a rule according to which the Bureau’s guarantee applies solely to false Green Cards issued for vehicles which are legally registered in the Bureau’s country. . However, this rule does not apply to cases referred to in Article 7.3 (see further below).

Regarding temporary registration plates, the guarantee applies only if

- the accident giving rise to the Green Card claim occurred prior to the expiry of 6 months following the expiry of the temporary plate and
- the vehicle was not re-registered in another country prior to the date of the accident.

Regarding cancelled permanent registration plates, the guarantee applies only if

- the accident giving rise to the Green Card claim occurred within a period of 6 months following the de-registration and

- the vehicle was not re-registered in another country prior to the date of the accident.

The vehicle is considered as “not legally registered” in the country of the presumed guaranteeing Bureau if

- its registration plate was issued or purports to have been issued under the authority of another country;
- it bears no registration plate despite the obligation to have them in the country of the presumed guaranteeing Bureau;
- the registration plate does not correspond or no longer corresponds to the vehicle;
- it has never been registered in that country.

The Bureau in the name of which the Green Card purports to be issued is entirely responsible for providing evidence according to the means in place in its country for this purpose, that the vehicle is not legally registered in its country.

This Bureau shall also assist the handling Bureau or its agent as much as possible in the investigation on the Green Card.

#### Guarantee of Green Cards purporting to have been issued in accordance with Article 7.3

Under Article 7.3, the Bureaux may authorise their Members to sell Green Cards to vehicles from a country where no Bureau exists. In this case the Bureau has to guarantee any Green Card purporting to be issued for vehicles bearing the registration plate of countries other than that of the Bureau, even if they are false or were not issued in the authorised way. The Bureau may not deny the guarantee on the basis that the vehicle is “not legally registered” in the Bureau’s country.

As far as frontier insurance purporting to be issued in accordance with Article 7.3 is concerned, the situation varies between EEA and non-EEA Bureaux since the frontier insurance delivered to a vehicle registered in a non-EEA country to enter into or to circulate in EEA territory may only contain a Green Card which has to cover the whole EEA territory. However, on such a Green Card, the non-EEA countries are usually crossed out as the EEA frontier insurance operators are usually not obliged to cover a non-EEA territory.

Hence, the Bureau’s guarantee will never apply in the event of a false, or unauthorised Green Card which may be identified as covering frontier insurance only, purporting to have been issued for a vehicle registered in a country where no Bureau exists<sup>99</sup>.

#### Exceptional reasons to deny the guarantee

Experience has shown that there are some obvious cases of falsification where the guarantee could be denied on that basis. Those false documents not considered as Green Cards and which, consequently, do not engage the responsibility of the Bureau in the name of which they purport to have been issued:

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<sup>99</sup> 2010 – General Assembly, Decision N° 6-6

- purported Green Cards from which the identity of the Guaranteeing Bureau cannot be clearly ascertained (e.g. the name of the Bureau does not correspond to the country code);
- purported Green Cards the format of which does not correspond to (whether in terms of size or layout or both) the model recognised by the Working Party on Road Transport of the Inland Transport Committee of the UNECE;
- purported Green Cards not having one of the following data: vehicle identification data (registration plate or V.I.N. number), the territorial validity or the period of validity.

In the listed cases the Bureau may deny its guarantee in accordance with the procedure outlined above. Under these exceptional circumstances, the guarantee may also be denied for “Green Cards” purporting to have been authorised under Article 7.3.

#### Specific situation resulting from the European Motor Insurance Directives

Article 15 of Directive 2009/103/EC (the codified Motor Insurance Directive) provides that when a vehicle is despatched within the EEA from one Member State to another Member State, the insurance risk moves to the Member State of destination for a period of 30 days, even if the vehicle remains normally based in the Member State of origin. Hence, in case the despatched vehicle bears a false or unauthorised Green Card, the guarantee of the Bureau of destination of the country where the Green Card is purporting to have been issued cannot apply during those 30 days since the vehicle remains registered in the Member State of origin<sup>100</sup>.

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<sup>100</sup> 2009 – General Assembly, Decision N°5-3



## Section III – Specific Rules Governing Contractual Relations Between Bureaux Based on Deemed Insurance Cover

*The provisions of this section apply when the relations between Bureaux are based on deemed insurance cover, with certain exceptions.*

### **ARTICLE 10 – OBLIGATIONS OF THE BUREAUX**

*The Bureaux to which the provisions of this section apply shall guarantee, on a full reciprocity basis, the reimbursement of all amounts payable under these Regulations arising out of any accident involving a vehicle normally based in the territory of the State for which each of these Bureaux is competent, whether the vehicle is insured or not.*

#### ARTICLE 10 - Obligations of the Bureaux

This article sets out the principle according to which each Bureau shall guarantee that all amounts disbursed by other Bureaux as a result of accidents involving vehicles normally based in its territory shall be reimbursed, whether these vehicles are insured or not.

### **ARTICLE 11 – THE NORMALLY BASED CONCEPT**

*11.1 The territory of the State in which the vehicle is normally based is determined on the basis of any of the following criteria:*

*11.1.1 The territory of the State of which the vehicle bears a registration plate; whether this is permanent or temporary.*

*11.1.2 Where no registration is required for the type of vehicle but the vehicle bears an insurance plate, or a distinguishing sign analogous to a registration plate, the territory of the State in which the insurance plate or the sign is issued;*

*11.1.3 Where neither registration plate nor insurance plate nor distinguishing sign is required for certain types of vehicles, the territory of the State in which the person who has custody of the vehicle is permanently resident.*

## ARTICLE 11: The “normally based” concept

11.1 This sub-article states the criteria determined by article 1 (4) of the 72/166/EEC directive (currently article 1.4 a), b), c) of the 2009/103/EC directive) on the basis of which is determined the territory of the State where the vehicle is normally based.

Specific questions examined by the Signatories of the Multilateral Agreement relating to the normally based concept:

### **Genuine registration plates obtained fraudulently**

Can a genuine registration plate obtained from the Licensing Authorities on the basis of false particulars be used as a criterion to determine where a vehicle is normally based or should it be regarded as a false registration plate?

It was agreed by the Signatories that, provided the Licensing Authorities took the necessary steps prior to issuing a registration plate, this plate had to be regarded as the identification of the country, in which the vehicle to which it was allocated was "normally based", even if the application for that registration plate was discovered to have been based on false particulars or documentation<sup>101</sup>.

### **Vehicle bearing a Trade Plate**

Can Trade Plates borne by a vehicle allow to identify the country in which this vehicle is normally based?

The Signatories had agreed that, provided the Trade Plate was affixed to the vehicle by the authorised user of the vehicle, or the authorised user's agent, then this should be accepted, for the purposes of the Multilateral Agreement, as evidence to identify the country in which the vehicle concerned was "normally based"<sup>102</sup>.

### **Frontier Insurance**

How must we handle the situation of a vehicle that is not insured in the country where it is normally based and whose Bureau is a Signatory of the Multilateral Agreement, while it is covered under the Frontier Insurance of another country?

The Signatories have agreed that, since the Frontier Insurer has received a premium, the latter should be responsible for Third Party claims if the contract was applicable in the country of the accident<sup>103</sup>.

### **Solutions to certain specific situations described here after**

1<sup>st</sup> situation: unidentified car, unidentified driver, but vehicle believed to be from a particular country; evidence of country based on:

- 1) registration number which, although recognizable as being from a pattern used in a particular country, had been incorrectly recorded; nationality letters confirmed evidence of nationality; or

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<sup>101</sup> 1985 – General Assembly, point 2B (ii)(c)

<sup>102</sup> 1958 – General Assembly, point 2B

<sup>103</sup> Signatories Committee 21.11.91, point 5.i

2) as in (1) above but no evidence of nationality letter(s);

Solution adopted by the Signatories: the Multilateral Agreement should not be regarded as applicable in any of these situations because, in the absence of precise particulars of the registration number, the country of origin could not be positively established<sup>104</sup>.

2<sup>nd</sup> situation: identified car; unidentified driver (false name and address given); registration number false; no evidence of insurance available.

Solution adopted by Signatories: Multilateral Agreement should not be applicable<sup>105</sup>.

*11.2 If a vehicle required to bear a registration plate bears no plate or bears a registration plate which does not correspond or no longer corresponds to the vehicle has been involved in an accident, the territory in which the accident occurred shall, for the settlement for any resulting claim, be deemed to be the territory where the vehicle is normally based.*

11.2 This sub-article addresses the problem arising from accidents caused by vehicles bearing false registration plates. The solution that has been adopted conforms to the text of the 5<sup>th</sup> European Motor Insurance Directive (text currently laid down in the Article 1.4) d) of the 2009/103/EC Directive) and implies that accidents caused by vehicles bearing false registration plates shall be dealt with by the Guarantee Fund of the country of accident.

Interpretation of Article 11.1.2 in case of an expired insurance plate (or another distinguishing sign) or a plate which does not correspond or no longer corresponds to the vehicle:

If a vehicle, not required to bear a registration plate but an insurance plate or another distinguishing sign, bears an expired plate or bears a plate which does not correspond or no longer corresponds to the vehicle, Article 11.1.3 shall be applicable.

The question has arisen how to deal with the situation of a vehicle that bears an expired insurance plate at the date of an accident in a MGA country other than that in which the plate was delivered.

Contrary to the situation of an expired (or otherwise non corresponding) registration plate, for which Article 11.2 provides a solution, there is no similar provision for vehicles under Article 11.1.2. The history of Article 1 of the Motor Insurance Directive, which provides the legal basis for Article 11 of the Internal Regulations, is not crystal clear either, nor does the jurisprudence of the EU Court of Justice provide an answer.

The Signatories have agreed that, in the absence of conclusive Court decisions, Article 11 is to be interpreted as a cascade system. If no valid insurance plate is available, Article 11.1.3 comes into view and the Member

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<sup>104</sup> 1974 – General Assembly, point 3B modified in 2008

<sup>105</sup> 1974 – General Assembly – point 3B modified in 2008

State in which the vehicle is normally based is the Member State of permanent residence of the custodian of the vehicle<sup>106</sup>.

*The provisions of this section do not apply to:*

#### **ARTICLE 12 – EXEMPTIONS**

*12.1 vehicles registered in countries other than the countries of the Bureaux subject to the provisions of this section and for which a Green Card has been delivered by a member of any of these Bureaux. In the event of an accident involving a vehicle for which a Green Card has been issued the Bureaux concerned shall act according to the rules set out in Section II.*

#### **ARTICLE 12 – Exemptions**

12.1 This sub-article applies when a Member of a Bureau issues Green Cards to their insureds under the conditions foreseen by Article 7.3.

*12.2 vehicles belonging to certain persons, if the State in which they are registered has designated in the other States an authority or body responsible for compensating injured parties in accordance with the conditions prevailing in the country of accident.*

*12.3 certain types of vehicles or certain vehicles bearing a special plate of which the list is determined by each Member State and communicated to other Member State and to the Commission.*

*The list of vehicles referred to under Articles 12.2 and 12.3 as well as the list of authorities or bodies appointed in the other States shall be drawn up by each State and communicated to the Council of Bureaux by the Bureau of that State.*

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<sup>106</sup> 2012-General Assembly, Decision N° 5-2

12.2 and 12.3 The wording of these sub-articles is directly inspired by the text of Article 4 of the 1<sup>st</sup> European Directive as modified by the 5<sup>th</sup> Directive (currently laid down in Article 5 of the 2009/103/EC Directive).

### **2008 General Assembly, Decision No 3.5**

The text of Art.12 has been modified in light of the need to place it in conformity with the 5<sup>th</sup> MID.

#### **ARTICLE 13 – CONFIRMATION OF THE TERRITORY IN WHICH A VEHICLE IS NORMALLY BASED**

*Any request for confirmation of the territory in which a vehicle is normally based sent by fax or e-mail to a Bureau by the Bureau of the country of the accident or by any agent appointed for the purpose shall be given a definitive answer within six weeks of the request. In the event of no such response being received then on the expiry of that period there shall be deemed to be confirmation that the vehicle is normally based in that Bureau's territory.*

#### **ARTICLE 13: Confirmation of the territory in which a vehicle is normally based**

This article introduces into the Internal Regulations the rule already adopted by the Multilateral Guarantee Agreement Signatories at their meeting in Bled on 9<sup>th</sup> September 1999 according to which each Bureau is given a period of three months to confirm that the vehicle in question is normally based in its territory.

In accordance with the Signatories' Committee's decisions adopted in May 2010, this period has been shortened to 6 weeks for accidents occurring as from 1<sup>st</sup> January 2011. However, it is admitted that for a duration of 2 years (until 1st January 2013), a delayed information on the registration of the vehicle from the national registration authorities is a qualified reason for not giving a definitive answer within 6 weeks to the request for confirmation of the territory in which the vehicle is normally based. However, such a definitive answer shall be provided within two months at the very latest. Any Guaranteeing Bureau which has not received the needed information from its national registration authorities within the period of 6 weeks since the date of the loss adjuster's request has to inform the loss adjuster accordingly within this period of time. Without this information, it shall be deemed to be confirmation of the normally based territory on the expiry of the 6 week period<sup>107</sup>.

As agreed by the 1999 Signatories' meeting and reconfirmed in 2001, the use of the 'Model' letter of enquiry<sup>108</sup> by the Bureau of the country where the accident took place in order to send it to a potential

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<sup>107</sup> Signatories Committee 27.5.10, Decision N° 5-1

<sup>108</sup> 2013 – General Assembly, Decision N° 4-3 – The model letter can be found on the CoB extranet.

Guaranteeing Bureau to determine whether a vehicle is 'normally based' in that country shall be obligatory for Signatories Bureaux (available on the CoB website - extranet).

This 'Model' letter shall include date and location of accident, make and type of vehicle, name and address of the parties - if known. It is recommended to enclose to this 'Model' letter, all essential documents such as "*constat amiable*", etc ... in order to facilitate the identification of the vehicle.

The purpose of the reply to this 'Model' letter is:

- to confirm that the vehicle involved in a specific accident is normally based in the territory of the replying Bureau

and/or

- to indicate the possible insurer of the liable vehicle.

The reply to this 'Model' letter shall be sent by fax or e-mail. Any reply sent by other means of communication may be disregarded by the handling Bureau.<sup>109</sup>

If it is impossible for a Bureau to fulfil both of the above-mentioned purposes, this should not preclude it from already fulfilling one of them. A Bureau can first indicate the possible insurer of the liable vehicle, without confirming that the said vehicle is normally based in the territory of that Bureau. If however, after a 6-week period following the request, the Bureau has not denied that the vehicle is normally based in the territory of the Bureau, the vehicle will be considered as normally based in that territory<sup>110</sup>.

In case a potential Guaranteeing Bureau is at that particular time not in a position to confirm the normally based territory due to missing information, it should inform the loss adjuster about this situation and it should provide all missing information as soon available, bearing in mind that if no definitive answer is given within the time limit to confirm the normally based territory (see recommendation 5.1 for details), it shall be deemed to be confirmed that the vehicle is normally based in that Bureau's territory.

Therefore, the Bureau of the country of accident is authorised to handle and settle the claim immediately after:

1. the confirmation of the cover by the insurer, or;
2. the confirmation via fax or e-mail<sup>111</sup> by the Guaranteeing Bureau of the territory where the vehicle is normally based, or;
3. at the expiry of the time limit to confirm the normally based territory (see recommendation 5.1 for details) if no definitive answer to the 'Model' letter has been provided<sup>112</sup>.

#### **ARTICLE 14 – DURATION OF THE GUARANTEE**

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<sup>109</sup> 2014 – General Assembly, Decision N° 6-1

<sup>110</sup> 2013 – General Assembly, Decision N° 4-2

<sup>111</sup> 2014 – General Assembly, Decision N° 6-1

<sup>112</sup> Signatories Committee 27.5.10, Decision N° 5-2

*14.1 The Bureaux may limit in time the duration of the guarantee due in accordance with Article 10 for all vehicles, on the basis of reciprocal agreement signed with other bureaux and communicated to the Council of Bureaux.*

ARTICLE 14: Duration of the guarantee

14.1 This article allows for the continuation of the agreement concluded between some Bureaux known as the "Luxembourg Protocol" (now cancelled) and other agreements concluded to meet the same end.

**2008 General Assembly, Decision No 3.5**

The text of Article 14 has been modified in light of the need to place it in conformity with the 5<sup>th</sup> MID.

**ARTICLE 15 – UNILATERAL APPLICATION OF  
GUARANTEE BASED ON A DEEMED INSURANCE  
COVER**

*Save legal provisions to the contrary, Bureaux may agree on any unilateral application of this section within the context of their bilateral relations.*

ARTICLE 15: Unilateral application of guarantee based on deemed insurance cover

This article addresses the situation arising when a Bureau of a non-EEA country joins the Multilateral Agreement and, during the transitional period to be provided pending the adoption of changes in legislation allowing the guarantee to be applied on a reciprocal basis.

The application of this Article shall be mentioned in a suspensive clause according to Annex 3 of the Agreement between the National Insurers' Bureaux of the Member States of the European Economic Area and other Associate States.

## SECTION IV - RULES GOVERNING AGREEMENTS BETWEEN NATIONAL INSURERS' BUREAUX

### ARTICLE 16 – BILATERAL AGREEMENTS – CONDITIONS

*16.1 Bureaux may conclude bilateral agreements between themselves whereby they undertake within the context of their reciprocal relations to abide by the mandatory provisions of these Internal Regulations, as well as the optional provisions specified herein.*

*16.2 Such agreements shall be signed in triplicate by the contracting Bureaux, each of whom shall retain a copy. The third copy shall be sent to the Council of Bureaux which shall, after consultation with the concerned parties, inform them of the date commencement of their agreement.*

*16.3 Such agreements shall include clauses providing:*

*16.3.1 identification of the contracting Bureaux, mentioning their status as Members of the Council of Bureaux and the territories for which they are competent.*

*16.3.2 their undertaking to abide by the mandatory provisions of these Internal Regulations.*

*16.3.3 their undertaking to abide by such optional provisions as mutually chosen and agreed.*

*16.3.4 reciprocal authorities granted by these Bureaux, in their own name and on behalf of their members, to settle claims amicably or to accept service of any extra-judicial or judicial process likely to lead to the payment of compensation resulting from any accident within the scope and purpose of these Internal Regulations.*

*16.3.5 unlimited duration of the agreement, subject to the right of each contracting Bureau to terminate it on twelve months notice simultaneously notified to the other party and to the Council of Bureaux. 16.3.6 automatic cancellation or suspension of the agreement*



*if either contracting Bureau ceases to be a Member of the Council of Bureaux or has its membership suspended.*

**16.4** *A model of this agreement is appended. (Annex III).*

#### ARTICLE 16: Bilateral agreements – conditions

These provisions set out binding obligatory conditions that must be fulfilled by Bureaux concluding a bilateral agreement. In contrast to Sections II and III, which set out optional provisions depending upon whether the contractual relationship between Bureaux is based on a Green Card or deemed insurance cover, Section IV lists all essential information that must be included in a bilateral agreement and a model of such an agreement is appended. This agreement must include a binding undertaking to abide by the mandatory provisions and also by such optional provisions as are mutually chosen and agreed as specified in the agreement.

#### **ARTICLE 17 – EXCEPTION**

**17.1** *By derogation to Article 16, the Bureaux of Member States of the European Economic Area shall, in conformity with Article 2 of the European Directive of 24th April 1972 (72/166/EEC) signify their reciprocal acceptance of these Internal Regulations by a multilateral agreement the commencement date of which is determined by the Commission of the European Union in collaboration with the Council of Bureaux.*

#### ARTICLE 17: Exception

Article 17.1 provides for an exception to the general bilateral nature of the agreement cited in Article 16 insofar as the Bureaux of Member States of the EEA and Switzerland shall conclude a multilateral agreement with a common date of entry into force to be fixed by the European Commission in collaboration with the Council of Bureaux.

**17.2** *The Bureaux in non-member States of the European Economic Area may commit to this multilateral agreement by respecting the conditions*

*fixed by the competent committee as acknowledged in the Constitution of the Council of Bureaux.*

Article 17.2 enables non-Member States of the EEA to join the Multilateral Agreement.

## **SECTION V - PROCEDURE FOR AMENDING THE INTERNAL REGULATIONS**

### **ARTICLE 18 – PROCEDURE**

*18.1 Any amendment to these Regulations shall fall within the exclusive competence of the General Assembly of the Council of Bureaux.*

*18.2 By derogation to the above:*

- a) any amendment to the provisions set out in Section III shall fall within the exclusive competence of the committee as acknowledged in the Constitution of the Council of Bureaux. Those provisions are binding on Bureaux which, although not members of this committee, have elected to apply Section III in their contractual relations with other Bureaux, and
- b) any amendment to Article 4.2 shall fall within the exclusive competence of the Bureaux of the European Economic Area.

### **ARTICLE 18: Procedure**

Any amendments to the Internal Regulations are within the sole and exclusive competence of the General Assembly. However any amendment to the provisions set out in Section III is the exclusive prerogative of the committee, as acknowledged in the Constitution of the Council of Bureaux, as the Articles relating to registration plates are of no effect on Bureaux whose relationships are based exclusively on Green Cards.

## SECTION VI – RESOLUTION OF DISPUTES BETWEEN BUREAUX

### **ARTICLE 19 – RESOLUTION OF DISPUTES BETWEEN BUREAUX**

*Any dispute arising out of these Internal Regulations or related to them shall be resolved by mediation or by arbitration.*

*The rules of the mediation and the arbitration are dealt with in a separate regulation approved by the General Assembly of the Council of Bureaux.*

#### ARTICLE 19: Mediation rules and arbitration clause

Mediation<sup>113</sup> and arbitration<sup>114</sup> rules are dealt with in a separate regulation (available on the CoB website - extranet). Arbitration refers to the Arbitration Rules established by UNCITRAL (United Nations Commission on International Trade Law).

When two or several Bureaux involved in the handling of a claim for compensation submitted by an injured party or his/her dependents, come into conflict on the application of the Internal Regulations their duty is to make all useful contacts, including referring the matter to the Secretary General of the Council of Bureaux, with a view to resolving the issue amicably. If these actions fail, the parties concerned shall submit the dispute to arbitration in accordance with the conditions provided in Article 19 of the Internal Regulations. The arbitration procedure cannot, however, apply to those matters which are the subject of a Court decision rendered against the Bureau in the country of the accident at the request of the injured party or his/her beneficiaries<sup>115</sup>.

## SECTION VII – ENTRY INTO FORCE

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<sup>113</sup> The mediation rules were brought into effect as of the 1st of July 2008 (2008 – General Assembly, Decision N° 10.1 Mediation) They have been modified during the General Assembly of 26 May 2011 (Decision N° 9-3). These modifications have come into force the day of their adoption.

<sup>114</sup> The arbitration rules are applicable to notices of arbitration received by the Respondent Bureau on or after 1<sup>st</sup> July 2014, irrespective of the date of accident (2014 – General Assembly, Decision N° 4-2 - Mediation & Arbitration Rules, part II: Regulation of the arbitration procedure).

<sup>115</sup> CoB 5/6.6.97, revised in 2007

## **ARTICLE 20 - ENTRY INTO FORCE**

Article 20: Entry into force

1. The provisions of the current Internal Regulations will come into force on the 1<sup>st</sup> of July 2008. On this date, it will supersede the version of the Internal Regulations adopted in Rethymno on the 30<sup>th</sup> of May 2002.

2. By way of derogation from Article 20.1, Article 11, Article 12.3 and Article 14 come into force retrospectively for accidents occurring from the 11<sup>th</sup> of June 2007 onwards.

3.<sup>116</sup> The following provisions of the Internal Regulations have been amended since the entry into force of the text revised in 2008:

- Article 3.2.2. – Entry into force: 1<sup>st</sup> January 2017
- Articles 4.1 - 4.3. – Entry into force: 1<sup>st</sup> January 2018
- Articles 4.7 - 4.9. – Entry into force 1<sup>st</sup> January 2014
- Article 5.1.4. and 5.4. – Entry into force: 1<sup>st</sup> January 2017
- Article 5.2. – Entry into force: 1<sup>st</sup> January 2014
- Article 6.1. – Entry into force: 1<sup>st</sup> January 2014
- Article 8 – Deadline applicable to accidents as of 1<sup>st</sup> January 2011; Entry into force of the amended text: 1<sup>st</sup> January 2018
- Article 9 – Entry into force: 1<sup>st</sup> January 2018, applicable to accidents occurred on or after this date
- Article 13 – Entry into force: 1<sup>st</sup> January 2014.

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<sup>116</sup> Inserted with the revisions in 2017

