



# Explanatory Memorandum to Internal Regulations

## INTERPRETATION OF THE INTERNAL REGULATIONS

**2004 General Assembly, Decision 3:** Any interpretation of the Internal Regulations as approved by the General Assembly shall be recorded in the Explanatory Memorandum in preference to changing the text of the Internal Regulations.

## SECTION I - GENERAL RULES

### ARTICLE 1: Purpose

The purpose of these Internal Regulations is to govern the relations between National Insurers' Bureaux in 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 or correspondents can only enforce rights arising from the Internal Regulations via the Bureaux.

### ARTICLE 2: Definitions

When compared with the two previous agreements this Section includes some new definitions (Insurer, Correspondent, Accident, Injured Party, Council of Bureaux) and other definitions no longer appear (Handling Bureau, Paying Bureau, Servicing Bureau).

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 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 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 In compliance with Recommendation n°5 the definition of a Member does not distinguish between insurers authorised to provide 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 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 The definition of a Vehicle is to be construed in accordance with the legal provisions in force in the visited country and not those prevailing in the country of origin.

- 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. The definition covers every accident irrespective of the number of vehicles involved, including cases where only one vehicle is involved.
- 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.
- 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 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 Insurance Policy is defined as a motor third party liability insurance contract issued by a member of a Bureau.
- 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 A Green Card is defined as the international certificate of motor insurance approved by the Council of Bureaux in any of its ‘model’ formats. 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 The definition of the Council of Bureaux does not need any specific explanation and is addressed in the Constitution of the Council of Bureaux.

### **ARTICLE 3: Handling of claims**

This article depicts 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.

- 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. It specifically points out its obligation to provide information to the insurer or to the other Bureau involved. 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 CoB Constitution.

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 CoB Constitution.

- 3.2 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 appointed him.

However, if no Correspondent has been appointed 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.

- 3.3 Pursuant to this provision Bureaux adhering to the Internal Regulations authorise each other to deal with and, if necessary, to amicably settle claims with Injured Parties by legally binding agreement 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 on two levels: firstly by application of the provisions of Articles 3.4 and 3.5, secondly by those provisions applicable in the country of accident as described in Article 3.4. Although the concept of “in the best interest” is mentioned in Article 3.4, it has to be construed as an integral part of the limitation or guidelines for the execution of the legal powers.

- 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. In particular, when cases referred to it are serious, the Bureau or agent has a duty to provide, as soon as feasible, a realistic estimate of the total cost of the claim with a view to establishing adequate technical reserves.

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.

**2004 General Assembly, Decision 8:** On application of Article 3.4, 1<sup>st</sup> paragraph of the Internal Regulations the Bureau (or its Agent) shall inform as soon as possible the insurer who issued the Green Card or policy of insurance or, if appropriate, the Bureau concerned, of 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 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. 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.

- 3.5 Should the expected settlement of the claim exceed the conditions or limits applicable under the compulsory motor civil liability insurance law in force in the country of accident whilst being covered by the insurance policy the Bureau shall first consult the insurer in relation to that part of the settlement which exceeds those conditions or limits. The consent of the insurer to the proposed settlement is required except in cases where the Bureau is bound by its governing law to abide by higher contractual guarantees.
- 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.

## ARTICLE 4 : Correspondents

4.1 The first paragraph of this sub-article 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 (for example, prohibition of accrediting of 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 that each Bureau shall produce a document able to be accessed (for reasons of transparency it would be desirable to display it on the website of each Bureau) by all candidates for the position of Correspondent established in its country. This document should describe all the qualifications required to perform this function. It is not for the Council of Bureaux to prescribe the contents of such a document. You may be well advised to remember that the “Green Card System” was established by the insurers and that it is therefore important for Bureaux to respond to their wishes whilst abiding by their national law.

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 (for example, 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.

In this document each Bureau shall address the matter of the withdrawal of this 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 any 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 agree upon common conditions bilaterally or multilaterally.

The second paragraph of sub-article 4.1 addresses a restriction of the independence of every Bureau in so far as any legally recognised establishment of a foreign insurer approved to transact motor insurance in accordance with the law in the country where the approval is requested shall be automatically approved. This confirms the pre-existing situation (Article 9 (a) of the Uniform Agreement).

4.2 This sub-article only concerns the Bureaux of the EEA Member States and Switzerland. These new provisions result from the requirements of the 4<sup>th</sup> European Motor Insurance Directive. 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 can be reasonably expected that the insurers would want their representative to at the same time perform the function of Correspondent approved by the Bureau of the country where this representative is established. In future

EEA Bureaux and Switzerland shall be obliged to approve as Correspondent of the insurer any representative appointed by this insurer under the 4<sup>th</sup> Directive.

- 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 by fax or e-mail so that the period of three months available to the recipient Bureau to decide on the request for approval may be verified. This request shall be supported by proof that the proposed Correspondent has agreed to the requested approval.

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.

- 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 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 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, 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 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 by those agreed between the insurer and the Correspondent.

The second paragraph provides that the Bureau having approved a Correspondent shall reimburse him for any sum (i.e. compensation, costs and charges relating to the compensation of injured parties, excluding the handling fee) that the Correspondent may have advanced and for which he fails to obtain reimbursement. Prior to making any such reimbursement the Bureau shall ascertain that payment has indeed been made in compliance with the provisions of Article 4.4. In other words, the Bureau shall ascertain that the Correspondent has taken all the steps which would have been taken if the Bureau had handled the claim itself. The Bureau shall subsequently be reimbursed in accordance with the conditions set out in Article 5 by the Bureau that sent the request for approval.

- 4.8 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 Bureau having granted the approval to determine the date on which the activity of the Correspondent shall end.

## **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 incurred by an insurer in the country of accident under similar circumstances,
    - c. for a handling fee to cover all other charges and calculated in accordance with the rules approved by the Council of Bureaux.

**2004 General Assembly, Decision 7:** Subject to the clarification that the Insurer should be requested to pay additional interest in the first instance, it is permissible under the provisions of the Internal Regulations article 5 to demand reimbursement for interest only.

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.

**2004 General Assembly, Confirmation** that a minimum handling fee is payable if a claim is made which is defended and settled without compensation by the handling bureau .

- 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.

Contrary to the above, 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.

- 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 may not therefore be included in any demand for reimbursement.
- 5.4 Supporting documentation, including proof of payment, shall not form part of the demand for reimbursement. The Bureau demanding the reimbursement is obliged to communicate such documentation promptly, if requested by the other party to do so. However, 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.
- 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 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.
- 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 If, for whatever reason, no claim is made the Bureau claiming reimbursement has no right to ask for a handling fee. The activities of a Bureau in a 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 between Bureaux.

**2004 General Assembly, Confirmation that no handling fee may be claimed if no claim for compensation is made.**

#### **ARTICLE 6: Obligation of guarantee**

- 6.1 Each Bureau shall guarantee the reimbursement by its members of any amount claimed by the Bureau of the country of accident or by the agent appointed by it. The demand for reimbursement shall be made in compliance with the provisions in Article 5. In case of non-compliance with this article the Bureau shall be released 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, in its place, 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 guarantor Bureau responsible for the amounts claimed under the following conditions:

The guarantor Bureau shall pay the amount claimed within one month of the date of the guarantee call. To avoid double payment it would be advisable for the guarantor 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 guarantor Bureau within the period of one month, late interest at 12% per annum shall automatically become due by rights from the guarantor 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.

The procedure therefore develops in two stages.

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 guarantor 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 guarantor 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 guarantor Bureau shall be liable to pay to the Bureau of the country of accident or to its agent:

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;

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:

Late interest as referred to in a) cannot accrue for more than twelve months.

No guarantee call shall be admissible if made to the guarantor Bureau more than two years after the date of the first demand for reimbursement sent to the insurance company.

To expedite the procedure and provide legal evidence the guarantee call shall, in all circumstances, be sent by fax or e-mail. 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 become 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 any guarantee from the Bureau of which the insurer responsible is a member.

**2004 General Assembly, Decision 7:** Subject to the clarification that the Insurer should be requested to pay additional interest in the first instance, in the event of a failure to pay interest according to Article 5, on the part of the Guaranteeing Bureau, this would justify the launching of the Guarantee Call procedure as per Article 6 of the Internal Regulations.

- 6.2 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.

## **SECTION II: SPECIFIC RULES GOVERNING CONTRACTUAL RELATIONS BETWEEN BUREAUX 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 10.1 of the Constitution of the Council of Bureaux, which binds the Bureaux of the EEA Member States and to which the Bureaux of non EEA Member States have been associated. It also governs the relations between the Bureaux which have signed the Agreement between EEA Bureaux and the Associate Bureaux in the following circumstances:

Firstly, in the event that a vehicle being used in the country of one Signatory Bureau is exempted from compulsory motor insurance but is required to hold a Green Card when entering the country of another Signatory Bureau.

Secondly, in the event that a vehicle coming from a country, the Bureau of which is not a signatory of the Multilateral Agreement, holds a Green Card issued by one of the Signatory Bureaux and causes an accident in the territory of another Signatory Bureau.

**ARTICLE 7: Issue and delivery of Green Cards**

- 7.1 This sub-article deals with the responsibility of a Bureau for printing Green Cards. A Bureau may authorise its members to print Green Cards conforming to the model approved by the Council of Bureaux. Bureaux should instruct their members accordingly. Whatever the method selected, the Bureau bears the ultimate responsibility for the printing of Green Cards.
- 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 valid for the EEA countries and Switzerland in accordance with the decision of the 1995 General Assembly.

- 7.3 This sub-article follows Article 4 of the Uniform Agreement. Any insurer may, with the authorisation of the Bureau of which it is a member, 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.
- 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 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 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**

This new provision provides for a procedure similar to that applying to the confirmation of territory in which a vehicle is "normally based", as previously agreed by the signatories of the MGA (henceforth known as the "Multilateral Agreement") and transposed in the provisions of Section III, Article 13.

If the Bureau of the country of accident or its agent request confirmation of the validity of an identified Green Card the reply should be sent within three months of the date of the request. The Bureau that sends the request for confirmation should supply all the information in its possession for identifying the Green

Card. This information may consist of any particulars of the Green card, for example: the card number or any proof of confirmation of cover as approved by the 1999 General Assembly. The request for confirmation should be sent by fax or e-mail. In the event of no reply being received within three months the Green Card shall be deemed to be valid.

**2004 General Assembly, Decision 4:** In accordance with Article 8 of the Internal Regulations the following minimum information shall be provided to enable a Green Card to be identified:-

- i) The name or the international letters of the Bureau, and
- ii) The Insurer's name and/or code, and
- iii) The number of the Green Card

Should more information be desired it should be provided when available. Should the information not be available to the bureau of the country from which the Green Card originated, this bureau remains responsible for investigating and attempting to identify the Green Card in line with the spirit of cooperation existing between members of the System.

#### **ARTICLE 9: False, unauthorised or illegally altered Green Cards**

The first paragraph 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, unauthorised or illegally altered. The decisions of the General Assembly regarding the validity of Green Cards shall apply to these cases.

The second paragraph introduces a new rule according to which the Bureau's guarantee applies only to Green Cards attached to vehicles which are legally registered in its country. The purpose of this rule is to exclude illegally altered Green Cards issued to vehicles which are not registered in the country of the Bureau from the Bureau's guarantee unless the Bureau agrees to extend its guarantee to them. However, this rule does not apply to cases referred to in Article 7.3.

### **SECTION III: SPECIFIC RULES GOVERNING CONTRACTUAL RELATIONS BETWEEN BUREAUX BASED ON DEEMED INSURANCE COVER**

#### **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 This sub-article reaffirms the definition of the territory in which a vehicle is normally based as established by the 1<sup>st</sup> European Motor Insurance Directive.
- 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 draft of the 5<sup>th</sup> European Motor Insurance 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. Bureaux, which are unable to apply this rule before the implementation of the 5<sup>th</sup> European Directive may suspend the application of Article 11.2.

Any exemption from Article 11.2 shall be mentioned in a suspensive clause to be shown in Annex 3 of the Agreement between the National Insurers' Bureaux of the Member States of the European Economic Area and other Associate States. Such suspension implies that accidents caused by vehicles bearing false registration plates will be addressed in conformity with the "Agreement between Bureaux of the Multilateral Guarantee Agreement concerning vehicles with false registration plates" signed in Stockholm on 17<sup>th</sup> September 1993.

**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 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. The list of classes of vehicles cited under Article 12.2 and 12.3 as well as the list of authorities or bodies appointed in the other States is shown in Annex 2 of the Agreement between the National Insurers' Bureaux of the Member States of the European Economic Area and other Associate States.

**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.

**ARTICLE 14: Duration of the guarantee**

- 14.1 This sub-article refers to vehicles bearing temporary plates as currently listed in the Annex to the Multilateral Agreement.

14.2 This sub-article allows for the continuation of the agreement concluded between some Bureaux known as the "Luxembourg Protocol" and other agreements concluded to meet the same end.

#### **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.

**2004 General Assembly, Decision 11:** The Signatories of the Multilateral Agreement unanimously decided that:

- i) The Internal Regulations are to be interpreted thus: that a Bureau in the country of the accident has under all circumstances to address its request for reimbursement to the Claims Representative of the insurance company acting in FOS nominated in the country where the vehicle is normally based, or if appropriate to the Bureau in that country;
- ii) The Freedom of Services Agreement will regulate relations between the Bureau of the country where the vehicle is normally based, or under whose authority the Green Card was issued and the Bureau of establishment of the FOS insurer, where the Bureaux of EEA countries have signed the agreement.

## **SECTION IV: RULES GOVERNING AGREEMENTS BETWEEN NATIONAL INSURERS' BUREAUX (MANDATORY PROVISIONS)**

#### **ARTICLE 16: Bilateral agreements – conditions**

These provisions are new and 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**

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.

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

## **SECTION V: PROCEDURE FOR AMENDING THE INTERNAL REGULATIONS (MANDATORY PROVISIONS)**

### **ARTICLE 18: Procedure**

Under the previous system any change to the provisions of the Uniform Agreement or Multilateral Guarantee Agreement necessitated a re-signing of new agreements by the Bureaux. This was unwieldy and time-consuming. Article 18 provides a much simpler means for amending the detailed provisions of agreements without a new round of signatures. Any such 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.

### **ARTICLE 19: Arbitration clause**

Rules currently in force shall be substituted by an arbitration clause referring to the Arbitration Rules established by UNCITRAL (United Nations Commission on International Trade Law).

These Internal Regulations clearly provide for settlement of disputes between parties using a method laying down specific rules to be applied to any difficulty that may arise in the course of arbitral proceedings, particularly those arising from one of the parties failure to cooperate.

Application of the method based on the appointment of three arbitrators and an appointing authority (as provided in Article 19 of the Internal Regulations):

The arbitral proceedings commence on the date on which the “claimant” (party initiating recourse to arbitration) gives to the “defendant” (the other party) a notice of arbitration including the information specified in Article 3 of the Rules and, in particular, the relief or remedy sought. This notification may also include the name of the arbitrator appointed by the “claimant”.

The Rules provide that each party shall appoint one arbitrator and that the two arbitrators thus appointed shall choose the third arbitrator, who shall act as the presiding arbitrator of the tribunal. If within thirty days the “defendant” has not appointed an arbitrator, this second arbitrator shall, on request of the “claimant”, be appointed by the appointing authority (President of the Council of Bureaux or, if not available, the Chairman of the Nomination Committee). If within thirty days the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the appointing authority, who shall secure the appointment of an independent and impartial arbitrator.

To ensure impartiality of arbitrators the Rules provide a procedure for challenging arbitrators (Articles 10 to 12).

As regards arbitral proceedings per se the Rules provide that *“the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate provided that the parties are treated with equality*

*and that, at any stage of the proceedings, each party is given every opportunity of presenting its case.*” This is a fundamental principle which, if not fully complied with, may cause the award to be challenged in Court.

The place of arbitration is determined by the parties. If no agreement can be reached, the place of arbitration shall be determined by the arbitral tribunal.

The arbitral tribunal fixes the period of time within which the “claimant” shall communicate his statement of claim to the “defendant” and to the arbitrators (unless the statement of claim is included in the notice of arbitration). This statement shall include a statement of the facts, the points at issue and the relief or remedy sought. The “defendant” shall communicate his statement of defence in writing to the “claimant” and to the arbitrators within the period of time fixed by the arbitral tribunal. Special circumstances excepted these periods should not exceed forty-five days.

The Rules also contain various provisions relating to production of evidence, organisation of hearings (when requested by the parties), interim measures of protection (when necessary in respect of the subject-matter of the dispute), appointment of experts as well as failure by the parties to abide by the periods of time allowed. All of these provisions are directly inspired by Court rules of proceedings and enable arbitrators to perform their function in the best conditions whilst preserving the rights of the parties to the dispute.

As regards the award, the Rules provide that it shall be made by a majority of the arbitrators. It shall be made in writing and shall be final and binding on the parties. It is made by application of the law designated by the parties as applicable to the substance of the dispute or, failing this, the law determined by the conflict of laws rule which the arbitral tribunal considers applicable to the case.

Finally, the Rules address the question of costs which, in principle, shall be borne by the unsuccessful party. These costs are fixed in the award. They include arbitrators’ fees and expenses (travel, experts etc.) Arbitrators’ fees shall be reasonable in amount, taking into account the disputed sum, the complexity of the subject matter and the time dedicated to it. It is also provided that the appointing authority may contribute to the fixing of the arbitrators’ fees (Article 39). The arbitration clause of the Internal Regulations of the Council of Bureaux provides that it shall decide upon the fees of arbitrators and the claimable costs. These provisions, when made public, shall be binding on arbitrators unless otherwise agreed by the parties.

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