



## **COUNCIL OF BUREAUX**

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*44<sup>th</sup> General Assembly – 27<sup>th</sup> & 28<sup>th</sup> May 2010 - Stockholm*

# ***Decisions & Recommendations***

## *Decisions & Recommendations of the 44<sup>th</sup> General Assembly of the Council of Bureaux*

### INTRODUCTION

This note summarises the decisions and recommendations of the 44<sup>th</sup> General Assembly upon which the minutes of the meeting will be based.

#### **Report 1 – President’s Report**

The General Assembly unanimously decided:

##### **Decision N° 1-1**

To approve the revision of a provision of the Internal Regulations only if this provision:

- a) has become incompatible with a provision of the International Law susceptible to apply to the relations between Bureaux;
- b) has become inapplicable because of a decision adopted by the General Assembly regarding a proposition of the Management Committee following a study carried out by one of the Internal Regulations’ Committees.

##### **Decision N° 1-2**

To approve the nomination of the TR Bureau as internal auditor to replace the L Bureau.

#### **Report 4 – Monitoring Committee Report**

The General Assembly unanimously decided:

##### **Decision N° 4-1**

1. To terminate the transitional membership of the Moldovan Bureau with effect from 01/08/2009
2. With the precondition that the Moldovan Bureau as full member retains for another 5 year period the bank guarantee and the reinsurance programme as required by the Financial Guarantee Criteria for the transitional members under the supervision of the Monitoring Committee.

## Report 5 – Specific Rules Committee

The Signatories unanimously decided:

### Decision N° 5-1

To shorten the 3 month period needed to confirm the normally based territory to 6 weeks. This 6 week period to confirm the normally based territory will apply to accidents occurring as from 1 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 Handling Bureau's request has to inform the Handling Bureau 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.

### Decision N° 5-2

To add into the Explanatory Memorandum (Art.13) the following wording:

“As agreed by the 1999 Signatories' meeting and reconfirmed in 2001, the use of the 'Model' letter of enquiry by the Bureau of the country where the accident took place in order to send it to a potential Guaranteeing Bureau to determine whether a vehicle is 'normally based' in that country shall be obligatory for Signatories Bureaux.

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 the normally based territory of the vehicle involved in a specific accident. It will thus activate the guarantee of the Bureau concerned.

The reply to this 'Model' letter may not be used to indicate the possible insurer of the liable vehicle and at the same time be accompanied with a statement that it cannot be considered as a confirmation of the normally based territory.

When answering to this 'Model' letter, the Guaranteeing Bureau can also indicate the possible insurer of the vehicle involved in the accident, but the subsequent invalidation of the insurance validity shall not affect the confirmation of the normally based territory, previously received from the Guaranteeing Bureau.

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

Handling Bureau 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 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"

### **Decision N° 5-3**

With regard to the affiliation of insurers acting in FOS or exercising the right of freedom of establishment in the field of motor insurance, only the insurance undertaking itself and not its branch office has to be a member of the Bureau of the Member State where the activities are undertaken. Hence, only the insurance undertaking itself can nominate a correspondent: its branch office has to work through the same correspondent as the undertaking itself.

## **Report 6 – General Rules Committee**

The General Assembly unanimously decided:

### **Decision N° 6- 1**

To add into the Explanatory Memorandum (Art. 5<sup>1</sup>) the following wording:

“Considering the practical difficulties to obtain information on the extent of the mandate delivered to the Claims Handling Agencies, it is recommended to the Handling Bureau for claims handled by Claims Handling Agencies to send the demand for reimbursement to the insurance undertakings”.

### **Decision N° 6- 2**

To add into the Explanatory Memorandum (Art.5.2) the following wording:

“Provision of Art. 5.2 of the IR relating to ‘free of cost’ shall be read in accordance with the relevant provisions of Directive 2007/64/EC (Payment Services Directive) as regards bank fees as from 1st June 2010. This implies that a share of bank fees between the Paying and Demanding Bureaux if both of them are within the European Economic Area 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 Bureaux of the Euro area are encouraged to use SEPA payment facilities for payment made in Euro. For bank transfer between EEA Bureaux implying a currency conversion for the Paying Bureau or for bank transfer from or to a non-EEA Bureau, the demanding Bureau shall receive the amount free of costs”

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<sup>1</sup> Amended after the General Assembly to conform to the numbering of the articles of the General regulations

### **Decision N° 6- 3**

To add into the Explanatory Memorandum (Art. 6<sup>2</sup>) the following wording:

“Both calculation methods (calculation method based on the Internal Regulations and calculation method based on the Explanatory Memorandum) are acceptable.

The choice of the calculation method lies with the Handling Bureau. This means that the Guaranteeing Bureau has to respect the calculation method chosen by the Handling Bureau. In that context, no dispute (via mediation or arbitration)

on the chosen calculation method will be allowed. Since the On-line Guarantee Call System developed by the Council of Bureaux is a system for evidences only and is not decisive for any individual case and its particulars, its calculation method is to remain unchanged”.

### **Decision N° 6- 4**

To shorten the 3 month period needed to confirm the Green Card cover to 6 weeks. This 6 week period to confirm the Green Card cover will apply to accidents occurring as from 1 January 2011.

### **Decision N° 6- 5**

With the exception of one Bureau which voted against, the General Assembly decided to replace Decision N°3 of the 2006 GA by the following wording:

“A Bureau can invoke Article 9.2 only when a Green Card which is false, unauthorized or illegally altered, relates to a vehicle which is not legally registered in that Bureau’s country. Under the concept “not legally registered vehicle”, the following should be understood:

#### **1. Either a vehicle bearing**

- 1) registration plates issued or purporting to be issued under the authority of another country;
- 2) no plates when such a vehicle is obliged to bear ones;
- 3) registration plates which do not correspond to this vehicle;
- 4) registration plates which no longer correspond to this vehicle.

#### **However in case of:**

- temporary registration plates only, the Bureau’s guarantee shall not apply for accidents occurring more than 6 months after the expiry date of these plates and provided that the vehicle was not reregistered in another country prior to the accident (this limitation of 6 months shall not apply in case of registration plates other than the temporary ones);
- permanent registration plates, the Bureau’s guarantee shall apply, when the registration of the vehicle was cancelled and if the vehicle was not re-registered in another country prior to the accident. This guarantee of the Bureau shall apply only for accidents occurring until 6 months after the cancellation of the registration of the vehicle;

#### **2. Or a vehicle that has never been registered in the country of the Guaranteeing Bureau.**

The Bureau in whose name the Green Card is purported 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.

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<sup>2</sup> Amended after the General Assembly to conform to the numbering of the articles of the General regulations

This Bureau shall also assist the Handling Bureau as much as possible in the claims handling.

This decision shall not apply retroactively but shall apply to accidents occurring after 1st July 2010 onwards”.

### **Decision N° 6- 6**

To add into the Explanatory Memorandum (Art.9) the following wording:

“1. No authorization to sell Green Card in a country where no Bureau exists according to Article 9 of the Internal Regulations (IR), the Bureau, which has not given authorization to its members to sell Green Cards in a country where no Bureau exists, is responsible for false, unauthorized or illegally issued Green Cards which were issued to vehicles registered in its country only. The Bureau’s guarantee will not apply for a false, unauthorized or illegally issued Green Card issued to a vehicle registered in another country than the country in question.

2. Authorization to sell Green Card in a country where no Bureau exists

The guarantee provided by a Bureau, which has given authorization to its member(s) according to Article 7.3 of IR to sell Green Cards in a country where no Bureau exists, will be wider since, this guarantee will apply:

- for Green Cards issued for a vehicle registered in the country of the Bureau;
- and for Green Cards issued to the vehicle registered in the country(ies) where the authorization has been given.

In those cases, the authorizing Bureau will then be responsible for all false, unauthorized or illegally altered Green Cards irrespective of the nationality of the registration plate of the vehicle covered by the Green Card.

Regardless of the situation referred to in points 1 or 2 here above<sup>3</sup>, the Bureau’s guarantee will also apply for other situations than false, unauthorized or illegally altered Green Cards such as for instance:

in case of a genuine Green Card issued by mistake by a member company to a vehicle registered in another country where a Bureau exists;

in case of a genuine Green Card issued to a vehicle registered in a country where no Bureau exists and where no authorization was given. For instance, a member company was authorised to issue Green Cards in Georgia and issued them by mistake to vehicles registered in Armenia.

This implies that in these situations, the Bureau is also responsible for possible mistakes of its member companies.

If they wish to do so, the Bureaux can recommend to their member companies to pay more attention to and eventually to check the delivery of Green Cards to avoid possible mistakes; it is also recommended to the Bureau that they should have sufficient measures to be taken against their defaulting members, if necessary.

### **3. Frontier Insurance**

As far as frontier insurance 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 an EEA territory may 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 it is not permissible to issue frontier insurance policies with Green Cards outside the EEA territories and Switzerland. The EEA frontier insurance operators are thus not obliged to cover non-EEA territory.

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<sup>3</sup> Text added after the General Assembly in order to avoid any confusion on the scope of the following text

Hence, the Bureau's guarantee will thus never apply in the event of a false unauthorized or illegally issued Green Card which may be identified as covering Frontier Insurance only, purporting to have been sold with or without the authorization of the Bureau to sell Green Cards in a country where no Bureau exists".

## Report 8 – Internal Auditors

The General Assembly unanimously decided:

### Decision N° 8-1

To adopt the 2009 Annual Report and Audited Accounts as prepared by the External Auditor and approved by the Management Committee at its meeting in La Valetta on 25<sup>th</sup> March 2010.

## Report 11 – Election of the new President

The General Assembly decided with the exception of one Bureau which abstained to vote:

### Decision N° 11-1

to nominate Mr. Mariusz W. Wichtowski as President of the Council of Bureaux for a mandate of 5 years starting from the 27<sup>th</sup> May 2010.

## Report 13 – Working Group on Data Protection

The General Assembly unanimously decided:

### Decision N° 13-1

to accept the tool kit and the guidelines it contains.

The WG also recommends that personal data are preferably transferred by encrypted e-mail according to the specifications of the technical report which will be presented during the General Assembly and provided shortly afterwards to the membership.

The WG also recommends that Bureaux refrain from using unencrypted fax messages for the transfer of personal and special categories of personal data (health).

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