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Facilitation of international road transport

International Motor Insurance System (Green Card)

Facilitation of international road transport

Report from the Secretary-General of the Council of Bureaux (CoB)

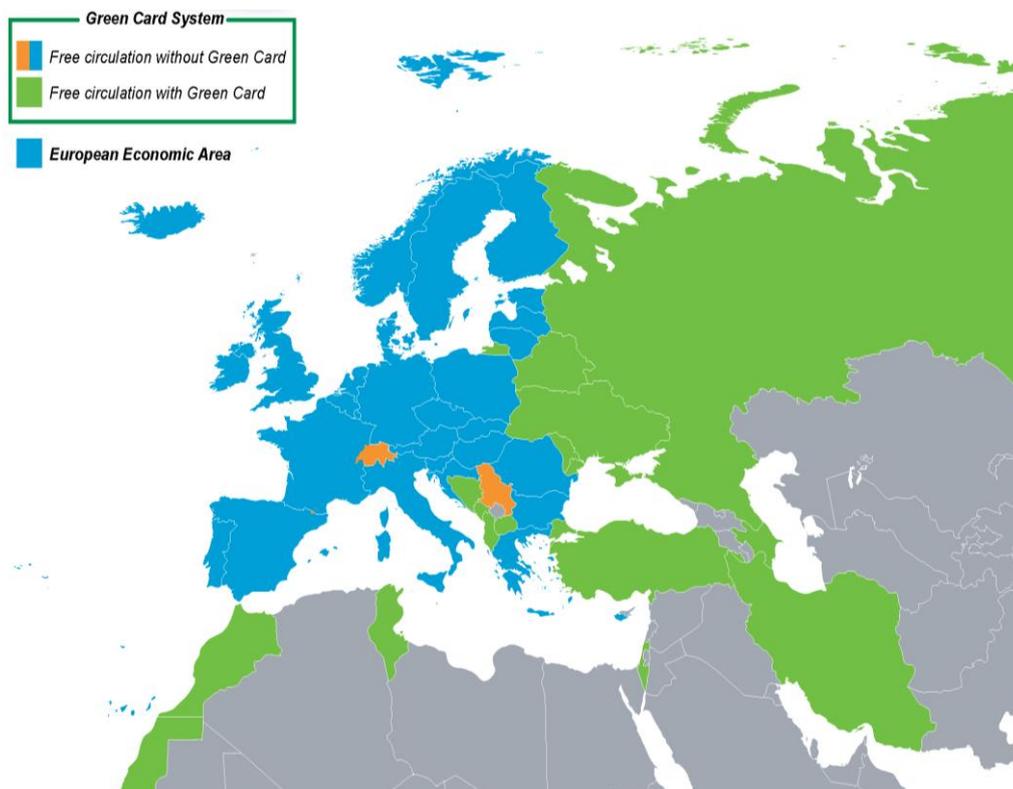
Submitted by the Council of Bureaux

This document, submitted by the COB, contains the COB Secretary General's annual report to SC.1.

Report of the Secretary General of the Council of Bureaux

1. This year, the fifty-fourth General Assembly of the Council of Bureaux (CoB) was foreseen to take place in Belgrade on 4th and 5th June but had to be rescheduled due to the Covid 19 measures and will be organised on the 24th September 2020 via electronic way. This report is based on the written reports of the different Committees and Working Groups. The main issues addressed over the last 12 months are presented below:

I. Some Key Figures



2. The system covers 48 countries and has 47 Members.
3. Over 450 million vehicle fleet (source: CoB Member Bureaux and other sources, 2013-2015).
4. Around 470 000 cross-border accidents annually (source: CoB Member Bureaux, estimate, 2018).
5. Cash flow turn-over: circa 1.5 billion EUR (rough estimate, based on the number of Green Card accidents reported by Member Bureaux and estimates of average claim cost).
6. Approximately 1.500 MTPL insurers are active through the whole system (source: CoB, 2017).

II. Financial Stability

7. One of the important tasks of the Council of Bureaux in the past year continued to remain the safeguarding of the financial stability of the Green Card system. The system's inherent diversity, regional inter-dependencies between markets, and the ever-deepening level of integration, coupled with certain market developments in individual countries, made this a complex and challenging task.

8. Across several member countries, insolvencies or financial difficulties experienced by individual MTPL insurers continued to create frictions in the smooth functioning of the system and the ultimate protection of cross-border road traffic victims. These challenges were

especially pronounced in cases where, within the European Economic Area, an insurer finding themselves in financial difficulties operated in more than one market on the basis of the freedom of establishment or freedom to provide services. In these situations, it often appears that the principle of ‘home country supervision’ limits the flexibility and reactivity of ‘host’ countries for a more efficient oversight of the entities active in their territory on the basis of these freedoms, especially where the entity in question does not transact (significant) business in the ‘home’ country and the overwhelming majority of its portfolio comes from the ‘host’ country(ies).

9. While the phenomenon described above had no specific geographical concentration and affected, *inter alia*, some “mature” European markets, most of the other, larger-scale challenges for the financial stability of the Green Card system were concentrated in one geographical region: South-Eastern Europe and the neighbouring countries.

10. In our report for the previous year, we described the guarantee call system operating between Green Card Member Bureaux – a formal way to invoke the guarantees provided by the Green Card system – as an important indicator of the financial performance (discipline) of the member countries’ market players. Upon the occurrence of a cross-border accident involving a foreign liable vehicle, the claim handling party in the country of the accident (the “handling” Bureau or the foreign “correspondent” of the insurer of the liable vehicle) will compensate the victim and request reimbursement of the compensated amounts from the liable insurer (in the absence of the latter, the “guaranteeing” Bureau of the country where the liable vehicle originates from). If the insurer fails to reimburse the compensations paid, the handling party is entitled to invoke the guarantee of the Bureau of which the insurer is a member by issuing a guarantee call.

11. The past years have been rather exceptional in terms of the volumes of these guarantee calls, which reported a massive increase already in 2018 and the trend continued in 2019 and 2020. While the annual volumes of guarantee calls before 2018 fluctuated between roughly 1500-2000 guarantee calls amounting to EUR 5-7 Mio, in 2018 they reached unprecedented levels of over 7500 guarantee calls representing a total value of more than EUR 27 Mio. In 2019, these figures surpassed 10000 in number and EUR 33 Mio in amount; by around mid-2020, handling Bureaux had already issued over 5000 guarantee calls worth a total of more than EUR 22 Mio.

12. These guarantee calls were, for their vast majority, related to two markets in South-Eastern Europe: Bulgaria and Romania (since 2019). Lack of discipline (and/or failure to perform financial obligations on time) from individual insurers in these markets – notably, insurers with significant MTPL market shares on each of their local markets – resulted in a disproportionate strain on these Bureaux, but also prolonged difficulties on the part of numerous other Bureaux in recovering amounts due (the Bureaux of Germany, Italy, and Belgium – to name only a few – were among the largest creditors of the Bulgarian Bureau in the vast majority of these cases of delayed or unpaid reimbursements).

13. In the Bulgarian case, having regard to the prolonged duration of the issues as well as their potential systemic nature, the Council of Bureaux placed the Green Card Bureau of Bulgaria under “Monitored” status, which entails continued close follow-up of the financial situation of the Bureau and their discipline, as well as additional requirements for financial guarantees: a bank guarantee in favour of the CoB which can be used to cover unpaid debts of the Bureau *inter alia* towards other Bureaux, as well as a common reinsurance treaty covering the whole market in relation to Green Card liabilities, with strict requirements in respect to the structure of the treaty and the participating reinsurers. As of the time of preparing this report, the reinsurance cover is in place; in view of the large amount of unpaid and overdue liabilities of the Bulgarian Bureau towards other Bureaux (namely in respect of guarantee calls), the Council of Bureaux is currently discussing the possibility of making use of the bank guarantee of that Bureau to reimburse these unpaid amounts to counterpart Handling Bureaux.

14. The measures taken by the CoB so far in respect of the Romanian Bureau have been less consequent, as the Monitoring Committee of the CoB has judged that this Bureau has satisfactory liquidities and risk management mechanisms in place at the moment. This is also evidenced by the relative discipline of the Bureau in paying guarantee calls in a more timely

manner and a smaller share of unpaid overdue liabilities. The situation however continues to be worrying, and the CoB continues to closely follow the performance of the Bureau and the market developments.

15. As we have already highlighted in the past reports, the instruments at the disposal of the Council of Bureaux to re-establish financial discipline and to force different players involved in the system to always 'play by the rules' are, unfortunately, limited. We heavily rely in this respect on the potential and willingness of markets to self-regulate and on the power and initiative of national supervisory authorities.

16. Last but not least, we have to repeat our concerns with respect to the (largely unchanged) international situation related to the Islamic Republic of Iran, where difficulties persist in effectuating cross-border transfers between the Bureau of this country and other Green Card Member Bureaux (or claim handlers) due to the international sanctions which the country is subject to. Timely and frictionless cross-border monetary transfers being at the heart of an efficient functioning of the Green Card system, the prolonged lack of improvement in this respect continues to be an unwelcome limitation for the organisation as a whole.

III. Revision of the structure of the Council of Bureaux to optimise cooperation between Green Card Bureaux, Guarantee Funds and Compensation Bodies

17. During an extra-ordinary General Assembly of the Green Card Bureaux on the 15th January 2020 the Articles of Association, Standard Operating Procedures and Transitional Provisions were adopted.

18. Since the object of the Association changed, the new Articles of Association required the approval by the Minister of Justice and new members (Guarantee Funds, Compensation Bodies and Information Centers) can only be admitted during the subsequent General Assembly which is planned to take place on the 24th September 2020.

19. In order to better understand this important step in the history of the Council of Bureaux, we would like to recall the following:

20. Over the last years the CoB did not only handle the so-called Green Card system (Green Card pillar), but also provided secretarial and administrative support to Guarantee Funds, Compensation Bodies and Information Centres of the EEA countries in the framework of the protection of foreign visitors as foreseen in the Motor Insurance Directive (Protection of Visitors pillar).

21. In order to increase the efficiency of these tasks and to facilitate even better international road traffic and the protection of victims of cross-border accidents, the CoB started working on the integration of these bodies as members of the CoB structure.

22. This important project made a revision of the Constitution unavoidable as well as of the organisational and managerial structures of the CoB. In the future, the Supervisory Board, the decision-making body beside the General Assembly, will no longer be composed solely of Green Card Bureaux but also by Guarantee Funds.

23. However, in the new structure, the respective bodies (Green Card Bureaux and Guarantee Funds) will not jointly decide on files, specific to one of the two pillars.

24. In the future, the organisation will no longer be led by one President elected by the Green Card Bureaux but by a Presidential college consisting of a representative of the EEA-Bureaux, a representative of the non-EEA Bureaux as well as a representative of the Guarantee Funds.

IV. Membership Issues

A. Armenia

25. The candidacy of the Armenian Motor Insurers' Bureau to become a Member of the Council of Bureaux is challenged by the difficulties resulting from the particular position of Nagorno-Karabakh. The Council of Bureaux wishes to respect the United Nations' view on the region of Nagorno-Karabakh as an entire part of the territory of Azerbaijan.

26. Following numerous communication exchanges with the Armenian Bureau and the advice received from the United Nations, the Council of Bureaux has decided that the application process of Armenia can be continued, provided the following conditions are respected:

- The vehicle registration databases for vehicles originating from Armenia must be distinguished from the one for vehicles originating from Nagorno-Karabakh;
- The separate databases must make it impossible that Green Cards are issued under the authority of the Armenian Bureau to vehicles originating from Nagorno-Karabakh;
- The Council of Bureaux must have the possibility to check the separation of the databases;
- The exclusion that Green Cards can be issued under the authority of the Armenian Bureau to vehicles originating from Nagorno-Karabakh must be a factor of specific attention during the transitional Membership period of the Armenian Bureau.

27. The Council of Bureaux continues discussing the issue with the Bureau of Armenia. A mere separation of databases may turn out not to be the ideal solution since the separated databases can be merged again at all times. Therefore, the main target to be achieved is the absolute exclusion of the possibility that Green Cards be issued to vehicles originating from Nagorno-Karabakh.

28. Based on the preconditions mentioned above, the CoB will continue cooperating with the Armenian Bureau in view of the possible future participation of Armenia in the Green Card system.

B. Other Candidate members

29. The Bureaux of three other countries have expressed their willingness to participate in the Green Card system and to become a member of the Council of Bureaux:

- Algeria;
- Georgia;
- Kazakhstan.

30. No important steps of progress have been identified in relation to these countries' accession process during the last twelve months.

V. Brexit – impact on the functioning of Green Card Bureaux

31. Following the activation of Article 50 of the Treaty on the European Union and a long period of difficult negotiations, the United Kingdom left the European Union on 31st January 2020. At that moment, a transition period started during which European Union law will continue to apply in and to the United Kingdom. This transition period will end on 31st December 2020. The United Kingdom could have requested for an extension of that period but failing to do so before 1st July 2020, the transition period will inevitably end on the last day of 2020. If the European Union and the United Kingdom fail to agree on a Free Trade Agreement before that date, we may face a so-called 'hard Brexit'.

32. Soon after the result of the Brexit referendum was known, the CoB created a ‘Brexit Working Group’, examining the impact on the functioning of the Green Card system and the European Motor Insurance Directive. In their activities, the Working Group always started from a worst-case scenario and analysed what will be the impact of a possible ‘hard Brexit’.

A. Impact on the Green Card system

1. Section II of the Internal Regulations – cooperation between Bureaux based on the existence of a valid Green Card

33. The cooperation between Motor Insurers’ Bureaux based on the existence of a valid Green Card is not expected to be strongly impacted by Brexit. Bureaux will continue their cooperation as before and victims will continue to be compensated.

34. Only the model of the Green Card will have to be adapted after Brexit. The United Kingdom will no longer appear in the ‘block’ of EEA countries. The Council of Bureaux has prepared the new model of the Green Card.

2. Section III of the Internal Regulations – cooperation between Bureaux based on deemed insurance cover

35. All signatory Bureaux of the Multilateral Agreement (the 31 states of the European Economic Area, Andorra, Serbia and Switzerland), including the Bureau of the United Kingdom, have declared their willingness to continue their cooperation based on the Multilateral Agreement and the mechanism of ‘deemed insurance cover’. This is definitely in the interest of road traffic victims.

36. The Council of Bureaux wishes to avoid that Brexit will result in unnecessary checks on MTPL insurance at the borders between the United Kingdom and countries of the European Economic Area. On this point, the Council is however dependent on the goodwill of the European Commission and the United Kingdom government. The latter have declared themselves willing to accept EEA vehicles entering the UK territory without any checks on a valid Green Card, but the European Commission has not taken any initiative on this point yet.

3. Impact on the European Motor Insurance Directive

37. After Brexit, visiting victims originating from the United Kingdom and suffering the consequences of an accident occurred in an EEA State will no longer benefit from the so-called ‘Protection of Visitors’-mechanism offered by the Motor Insurance Directive. The same will be true for visitors originating from the EEA and being confronted with the consequences of an accident in the United Kingdom.

38. Via the conclusion of specific agreements, the Council of Bureaux and the Motor Insurers’ Bureau of the United Kingdom will try to find a solution for at least:

- Pending claims that are not finalised at the end of the transition period (31st December 2020);
- The consequences of accidents caused by uninsured or unidentified vehicles.

VI. Data Protection

39. The CoB is constantly monitoring the current EU data protection rules and advises its Members accordingly in order to be at the forefront of data privacy. This ongoing work is performed by the CoB Data Protection Working Group.

A. Disclosure of information and documentation

40. The Data Protection Working Group concluded that data minimisation must be taken into consideration by all CoB bodies involved in claims handling. The General Data

Protection Regulation (GDPR) does not forbid the exchange of information containing sensitive data; however, this kind of data must be sent in a proportionate way. A balancing test must be performed by all entities on an ad hoc basis before disclosing / requesting for information that is categorised as sensitive data under Articles 9 and 10 of the GDPR.

41. The Working Group is currently working on a general recommendation to all CoB bodies regarding the limitation of information containing sensitive data during the claims handling process.

1. Fraud

42. The Data Protection Working Group recently started analysing the legal bases applicable to fraud fighting activities and the limitations related to the exchange of information between the "fraud contact persons" of the CoB bodies.

43. Before presenting the results of this analysis to the CoB members, we are waiting for the validation of an external lawyer.

2. E-mails sent by mistake

44. The Data Protection Working Group is aware that e-mails may be sent / received by mistake by CoB Bodies. Therefore, the Working Group had prepared a short advice for its Members to be taken into consideration in situations when a CoB Body receives an e-mail which appears to have been sent by mistake. Therefore, the receiving body must delete this message but should also inform the sender about the mistake. A short template proposal was also prepared that could be used by all CoB bodies involved in such an incident.

3. Brexit

45. The Working Group is also closely monitoring this issue. The CoB expects an adequacy decision to be issued by the European Commission on behalf of the United Kingdom. In case of absence of an adequacy decision, the CoB will opt for the signature of Standard Contractual Clauses issued by the European Commission between the EEA bodies and the United Kingdom. The Standard Contractual Clauses are the preferred option adopted so far by the CoB in relation to the exchange of information between EEA and non-EEA countries.

VII. International Motor Insurance certificate (IMIC) – moving towards an electronic version

A. Colour of the IMIC (better known as 'Green Card')

46. In 2019, the CoB's General Assembly decided to authorise National Insurers' Bureaux, on a voluntary basis, to issue the International Motor Insurance Certificates (IMICs) in black on white and allow the interested insurance markets inter alia to send PDF files directly and electronically by e-mail or any other facility to their policyholder. Subsequently, the policyholders can later print the IMIC in black on white in order to present it to the border or police authorities of the visited country. This possibility was the result of the decision of the Working Party on Road Transport of the Inland Transport Committee of the United Nations Economic Commission for Europe, during their 113th session held in Geneva on 16–18 October 2018.

47. Insurance markets wishing to keep the issuing of the IMIC on green ground-colour were not hindered in doing so. However, the foregoing countries must accept the printed black on white version of the IMIC from visiting motorists. It is important to mention that there are insurance markets which decided to issue IMICs in both green and black on white colour.

48. All National Bureaux confirmed and guaranteed the acceptance of all necessary changes (legal, organisational, informative etc.) by the competent national authorities in their

countries in order to avoid any issues at the borders. These changes entered into force as of 1st July 2020.

49. The CoB is aware that a number of 23 countries had already started to issue black on white IMICs as of 1st July 2020.

1. Ultimate goal

50. The ultimate goal remains the search for a solution to check the validity of insurance cover without any paper document but via electronic means. The CoB had recently prepared a comprehensive feasibility study regarding possible alternatives, their pros and cons, risks and costs in order to achieve this goal. The feasibility study was presented to the 2020 CoB's Strategy forum for further guidance.

51. The main conclusions reached were the following:

- Necessity for further investigation regarding the enlargement of the Multilateral Agreement. Therefore, the e-IMIC Working Group submitted to the Membership a questionnaire related to the possible adherence of all non-EEA countries to the Multilateral Agreement. The consultation is still running.
- To investigate whether it is possible to abolish the mandatory requirement to present the IMIC as a printed, paper document and whether it would be feasible to use a PDF version on electronic devices. In this respect, the CoB is currently in contact with UNECE on the procedure to be followed to request for an adaptation of Annex 1 of RE.4.
- To continue to investigate the possibility for "Motor insurance cross-border accessibility" (e.g. use of databases etc.). In addition, it was requested to create business cases which could also be attractive for insurers in order for the latter to invest. Also, to reflect on the additional information that would be necessary in relation to the particular IMIC information (i.e. scope and validity period).

VIII. MID – REFIT

52. On 24th May 2018, the European Commission (EC) published a proposal for an amendment of the Motor Insurance Directive. In General, the CoB is of the opinion that the proposal presents several important improvements, leading to a better protection for victims of national and cross-border road traffic accidents in the internal market. However, the CoB believed the EC's proposal contained some technical deficiencies that could jeopardise the application of the MID in daily practice. For this reason, the CoB formulated observations and submitted them to the European Commission.

53. On 13th February 2019, the plenary session of the European Parliament adopted amendments to the EC's proposal and on 13th December 2019 the Council of the European Union expressed their view on the proposed amendments. As a result, the proposal was submitted to inter-institutional negotiations (trialogues) between the three European Institutions involved in the legislative process (European Commission, European Parliament and Council of the European Union). During the summer of 2020, the dialogues were still in progress.

54. The CoB is consulted on a regular basis (mostly in an informal way) for technical advice on certain proposals.

55. The proposed amendments of the existing Directive relate to the following main points:

- The scope of the Directive and the definition of 'use of a vehicle';
- Checks on insurance and the fight against uninsured driving;
- Minimum amounts of cover;
- The protection of injured parties in case of insolvency of an insurer;

- The Guarantee Funds' competence for cases of terrorist acts and violent crimes;
 - Transfer of vehicles from one Member State to another;
 - Accidents in which trucks and trailers are involved;
 - Claims history statements;
 - Limitation periods.
-