

## International Sharing Agreement between Liability and Own Damage Insurers

### Introduction: Principle of Shared Settlement

Subrogated recovery by the « own damage » insurers from the liability insurer of the driver responsible can be a complicated, long and above all costly operation when the sums involved have to be recovered from a foreign insurer.

This Agreement is intended to make such recovery simpler, quicker and less costly.

Subrogated recovery depends on the liability of the third party as laid down by the law in the country of the accident. In the scope of the Agreement recovery will be a fixed proportion of the indemnity paid by the « own damage » insurer to his insured, depending on the number of vehicles insured by members of the Agreement.

Application of the above is not absolute but subject to the following exceptions:

- where more than two vehicles are involved in the same « collision », there shall be as many contributions as there are vehicles involved eg if there are 3 vehicles, a third for each of the two liability insurers involved, and a third being paid by the « own damage » insurer,
- where there is no impact between a vehicle and the other vehicles involved, the Agreement applies but the insurer of that vehicle is exempt from any contribution up to the limit of the Agreement,
- when the damage caused to any vehicle is less than the lower limit, there shall be no recovery in respect of such damage. When the damage caused to any vehicle exceeds the upper limit, recovery is limited to the appropriate proportion of the upper limit,

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<sup>1</sup> Cancels and replaces doc. CEA 4.383 of April 1989.

- when more than two vehicles are involved in the same « collision » and one of them is covered for liability by an insurer who is not a member of the Agreement, the « own damage » insurer shall exercise his subrogation rights as a priority against that insurer. The Agreement is then applied between members for the balance.

These clear and simple rules guarantee subrogation recovery by the « own damage » insurer against a foreign liability insurer. Recovery is limited to a proportion of the « own damage », regardless of legal liability (subject always to the limits of the Agreement).

Since recovery under the framework of the Agreement is standardised and simplified as indicated above, it is consequently quicker and less costly provided signatories keep each other informed about their cover and about progress on their respective cases as soon as they become aware of the involvement of another member.

A special form must be used to notify other members of a potential recovery<sup>2</sup>.

Finally:

- the Agreement only creates legal relationships (rights and obligations) between members (signatory insurers).
- this Agreement takes precedence over any national agreements which may be in force.
- since the Agreement is based on the principle of the willingness of the signatory parties, they may agree *in specific cases* to waive application of it. This waiver, in writing is irrevocable and definitive.
- « own damage » (or casco) insurance shall be taken to mean under the terms of the Agreement any insurance covering damage to the vehicle, even if the insurance contract is not, strictly speaking, a « motor » insurance contract e.g. fire insurance, theft insurance, auto glass insurance covering damage to the vehicle.
- membership by an insurer of the Agreement means he is committed as a « motor third party liability » insurer and/or as a « motor own damage » insurer.
- however, insurers writing frontier insurance must specifically state when signing the Agreement that it shall also apply to « frontier » insurance written by them. Insurers writing « frontier » insurance alone must indicate this fact when joining the Agreement.
- the unit of account is the counter-value of 1 ECU in the national currency of the insurance contract concerned, fixed at 31 October the previous year. Exchange rates published in the EC Official Journal are circulated each year by CEA to the national insurance associations of the different countries in which member companies of the Agreement are established. This value is used to fix the limits of the Agreement.

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<sup>2</sup> See annex II

## Article 1: Scope

This Agreement shall apply to recovery between motor insurers operating in Europe, on the basis of insurance contracts covering vehicles registered in different countries, insofar as the damage occurs in a country for which all the contracts in question are valid.

If, in addition to a foreign vehicle, several national vehicles are involved in an accident, the provisions of the Agreement and the rules on sharing in article 11 shall also apply to member insurers of the same nationality.

## Article 2: Definition of vehicle

The term « vehicle », for the purpose of this Agreement, shall mean all motor vehicles running on the ground, including motor cycles of all types, their trailers but excluding vehicles running on rails.

A vehicle with a trailer shall be considered to be one single vehicle. The term « trailer » shall also be taken to mean a vehicle pulled by another vehicle.

## Article 3: General principle

In the event of material damage occurring following a collision with a vehicle(s) insured for liability, the liability insurer(s) shall reimburse the appropriate proportion(s) of the « own damage » insurer's outlay (subject to Articles 6, 7 and 8).

## Article 4: Collision clause

« Collision » shall mean any impact between vehicles or with persons, things or animals transported at the time of the collision on or in the vehicle.

The very fact that there is a collision shall make application of the following provisions obligatory without need to establish whether the damage to the vehicles occurred immediately before or after the collision during one and the same event.

In the absence of impact the « own damage » insurer shall waive recovery up to the upper limit of this Agreement.

For the rest, it shall be up to the « own damage » insurer to decide whether to pursue outside the scope of this Agreement, common law recourse against the person liable or his liability insurer.

## Article 5: Application of the Agreement in the event of fire

This Agreement shall apply in respect of fire damage to any vehicle provided that:

- the fire results from a collision, and
- the « own damage » insurance contract includes the fire risk, whether or not the contract has been taken out with a motor insurer.

## Article 6: Aim of recovery and indemnity to be taken into consideration

The basis of recovery by the liability insurer is the amount which the « own damage » insurer paid under the terms of his insurance contract in respect of material damage suffered by the vehicle, including the costs necessary for breakdown and transport, or which he would have had to pay if his insured had approached him.

The amount payable to be taken into consideration by the liability insurer may not however exceed the amount which the latter would, in the case of total liability, have had to pay to the injured party if that party had not been insured for « own damage » within the law of the country of the accident.

The « own damage » insurer shall waive his claim against the liability insurer or the persons insured with that insurer for liability for any supplementary amount to which he may legally claim.

If the liability insurance provides for an excess and this can be deducted from that payable to the victim, it shall be deducted from the amount to be taken into account (in accordance with sub-paragraph 2 of this Article).

Total payments by each insurer shall be limited to the maximum amount of their cover taking into account amounts already paid and to be paid for the same claim.

## Article 7: Upper Limit

This Agreement shall apply to the outlay of the « own damage » insurer up to 6000 UC<sup>3</sup> in respect of damage to the vehicle.

Similarly, any recovery sought by the liability insurer from the « own damage » insurer shall be limited to the appropriate proportion of the maximum outlay of 6000 UC in respect of damage to the vehicle.

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<sup>3</sup> Unité du compte = unit of account

## Article 8: Lower limit (minor damage)

If the indemnity paid by the « own damage » or the liability insurer does not exceed 400 UC, recovery will be waived.

## Article 9: Administrative expenses

The « own damage » insurer shall waive any rights of recovery in respect of reimbursement of expenses incurred in determining the indemnity to be paid under his policy.

## Article 10: Prior claims

Before making a claim under this Agreement, the « own damage » insurer must mitigate his loss and exhaust all reasonable possibilities of recovery which are open to him outside the Agreement.

External expenses incurred in pursuing such recoveries for the mutual benefit of members shall be shared in accordance with the provisions of this Agreement.

## Article 11: Cases involving several vehicles or insurers

When a « collision » involves several vehicles, each vehicle shall be deemed to have participated therein.

The Agreement shall apply even if the vehicles involved in the « collision » with the vehicle insured for « own damage » are not all insured for liability with companies who have joined the Agreement. The « own damage » insurer must exercise prior recovery against non-subscribing companies in accordance with article 10.

The remaining « own damage » amount must be shared proportionately according to the number of vehicles insured with members of the Agreement. Each insurer must be responsible for a share of the damage corresponding to the number of vehicles involved in the claim which are insured by him.

If there are several « own damage » claims, the share of each insurer in each claim must be calculated separately.

If it is impossible to identify the liability insurer of a vehicle involved in the « collision » as understood in the present article, combined with articles 3 to 6, the « own damage » amount shall be apportioned without taking account of that vehicle.

## Article 12: Direct settlement - reimbursement to liability insurer

1. If the damage suffered by the vehicle insured for « own damage » has been settled by the liability insurer, the liability insurer shall be reimbursed by the « own damage » insurer. That reimbursement will exclude the amount which the latter would have borne under the Agreement if the « own damage » insurer had settled the claim initially within the framework of its « own damage » cover.

This provision shall also apply in cases where the « own damage » insured does not approach his « own damage » insurer.

If the liability insurer undertakes settlement and the « own damage » indemnity does not exceed 400 UC, he shall waive the rights he has under this article.

2. Upon being informed of a claim likely to give a rise to the application of the Agreement, each member insurer shall indicate to the other insurers involved - on his own initiative or in response to requests to him - the nature of the cover (liability or « own damage ») issued to his insured under which he will intervene.

In the absence of a reply within one month from the faxing of a request for information on cover, the insurer at fault will pay a penalty of 100 UC.

## Article 13: Exchange of documents

The liability insurer may ask the « own damage » insurer for copies of the following documents:

- a) Proof of payment, eg repair account and (only in countries where a formal waiver is necessary) proof of the formal waiver by the insured in favour of his insurer of the rights he has against third parties arising out of the damage he has suffered, up to the amount of the « own damage » settlement.
- b) Engineer's report to include damage assessment and estimated repair costs; and, where appropriate, pre-accident condition and market value, including salvage value.
- c) Or, otherwise, a bill for the cost of repairs, spare parts, etc..
- d) Detailed account of the indemnity paid in accordance with the annex to this Agreement.

Neither the liability nor the « own damage » insurer may dispute the assessment which has served as the basis of settlement except, in the case for the « own damage » insurer, of repairs which are not covered in his insurance contract or, for the liability insurer, in the absence of a direct relationship between the repairs carried out and the « collision ».

If, however, the indemnity paid by the « own damage » insurer does not exceed 600 UC, copies of the following documents shall be sufficient.

- proof of the formal waiver by the insured in favour of his insurer in countries where this is necessary
- detailed account.

In addition, but only in special cases, the liability insurer may call for a copy of the « own damage » Policy.

## Article 14: Payment provisos

Reciprocal claims introduced by the « own damage » and/or liability insurers under the terms of the present Agreement may be exercised from the 30th day following the receipt of the documents by the party against which the recourse is exercised.

If the claim has not been settled within three months of the receipt of a valid claim for contribution under the Agreement, an annual rate of interest of 12% shall be added to the total sums due, calculated since the date of the first demand until the date of settlement of the claim.

All rights shall be waived if a request for contribution has not been made within two years of the date of the accident. An insurer who has sought recovery outside the scope of the Agreement (article 10) and is unable to assess the amount at issue may have this two year period extended from year to year only if legal proceedings are involved.

No sums due under the Agreement for two different claims shall be reimbursed.

## Article 15: Exceptions available to insurers

The exceptions open to the liability insurer with regard to invalidity, non-insurance or expiry of the liability contract shall only be admissible in so far as these exceptions would be available to the liability insurer both against his insured and the victim.

Exceptions open to insurers arising because the insured has not fulfilled the obligations devolving on him in the event of an accident with regard to the declaration of the accident shall not be admissible.

## Article 16: Arbitration

Any dispute between parties to this Agreement as to its interpretation and application to a particular case shall be submitted to an arbitrator whose decision shall be final and not subject to appeal. Subject to the provisions of the last sentence of subparagraph 5 of this Article, the dispute shall not be referred to the courts.

Failing agreement between the parties on the choice of an arbitrator, the latter shall be nominated, at the request of one of the parties, within a period of three months by the Chairman or, in his absence, by one of the Deputy Chairmen of the Motor Committee of the Comité Européen des Assurances (CEA). The arbitrator shall, within a month of his appointment, invite the parties to furnish in writing their views on the dispute in question.

The parties shall supply the arbitrator with the information requested and put at his disposal any documents he may require.

Within a period of three months following the day on which he invited the parties to let him have their views, the arbitrator shall issue an award in writing including a summary of the case and shall notify it to the parties and to the Chairman of the CEA Motor Committee. An award made by the arbitrator outside this time limit shall not be binding upon the parties.

If the arbitrator does not issue his award within the period provided for in the preceding sub-paragraph, a second arbitrator shall immediately be nominated by the Chairman of CEA Motor Committee. If both arbitrators do not adhere to the prescribed time limits, parties shall no longer be bound by the provision of this Article.

The arbitrator shall not be obliged to follow any particular procedure. He shall perform his duties in an honorary and unpaid capacity.

## Article 17: Signature of the Agreement

Any insurer wishing to become a signatory to this Agreement must inform the national association of his country in writing. His membership shall only take effect from the 1st day of the month following the expiry of a 30-day period after submission of his request. The national association shall notify the Secretary General of the Comité Européen des Assurances who shall inform the national associations, who, in turn, shall inform their members.

Thus, once membership becomes effective, the new member shall be bound by the same conditions as the other signatories to this Agreement as regards any accident occurring from that moment.

## Article 18: Withdrawal from the Agreement

Notice of withdrawal from the Agreement must be given in writing to the national association concerned to take effect on the first day of the calendar quarter following expiry of the three-month period after the notification of withdrawal.

The national association shall notify the Secretary General of the CEA who shall inform national associations who, in turn, shall inform their members.

Claims which occur before the notice of withdrawal becomes effective shall be settled in accordance with the provisions of the Agreement, notwithstanding that notice of withdrawal has been given.

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