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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 Council of Bureaux**

This document, submitted by the Council of Bureaux, provides the CoB President's report to SC.1.

# **114<sup>th</sup> Session of the Working Party on Road Transport of the Economic Commission for Europe**

**16<sup>th</sup>-18<sup>th</sup> October 2019 – Geneva**

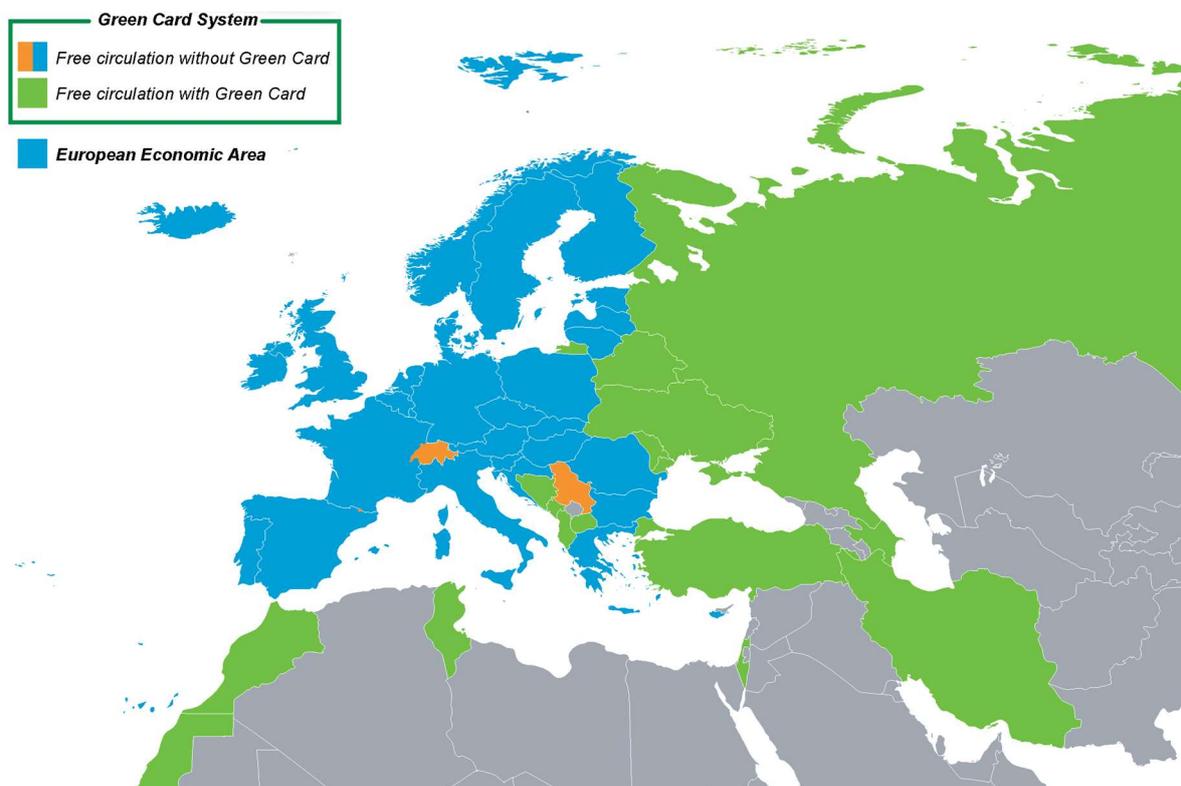
## **Report of the Secretary General of the Council of Bureaux**

**Ms Greet FLORÉ**

# Report of the Secretary General of the Council of Bureaux to the 114<sup>th</sup> Session of the Working Party on Road Transport of the Economic Commission for Europe

This year, the 53<sup>rd</sup> General Assembly of the Council of Bureaux (CoB) was held on 14<sup>th</sup> June, in Marrakesh, Morocco. The main issues addressed over the last 12 months are presented below.

## 1. Some Key Figures



The system covers 48 countries and has 47 Members.

Over 450 million vehicle fleet (source: CoB Member Bureaux and other sources, 2013-2015).

Around 470 000 cross-border accidents annually (source: CoB Member Bureaux, estimate, 2017).

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).

Approximately 1.500 MTPL insurers are active through the whole system (source: CoB, 2017).

## 2. Financial Stability

As every year, the Council of Bureaux worked hard in the past year to safeguard and improve the financial stability of the Green Card system. The system unites 48 countries with diverse economic, legal, as well as cultural backgrounds: this diversity not only adds to the complexity of the relationships between National Bureaux, insurers transacting Green Card business and their partners (claims handling offices) and victims, but also creates challenges for the CoB and its Members in terms of maintaining the smooth and financially stable functioning of the system.

What is more, with continued economic integration and increasing cross-border traffic, regional interdependencies between the MTPL insurance markets of the Green Card system are becoming stronger and stronger; issues related to the financial health or the discipline of one market can potentially have a much stronger effect on other markets. Notably, the geographical scope of these inter-dependencies is also increasing over the years.

It is in this increasingly complex environment that the CoB had to deal with potential problems and threats for the financial stability of the Green Card system. It must be noted that most often these 'problematic' markets come from the same geographical region: South-Eastern Europe and the neighbouring countries.

A few illustrations of these trends and the challenges faced by the CoB follow below.

An important indicator of the financial performance (discipline) of the Green Card member countries' markets is the system of guarantee calls, which are a formal way to invoke the guarantees provided by the Green Card system. 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. During the past year, the CoB has been confronted with a massive increase in guarantee calls, making the year exceptional for the whole system. For illustration, throughout 2018 handling Bureaux issued over 7200 guarantee calls representing a total value of more than EUR 26 Mio, compared to annual volumes of roughly 1500-1800 guarantee calls amounting to EUR 5-7 Mio annually. By around mid-2019, the figures for 2019 had surpassed 4500 guarantee calls and the amount of EUR 16 Mio.

Notably, these guarantee calls were, for their vast majority, related to one single market – that of Bulgaria – where lack of discipline (and/or failure to perform financial obligations on time) from individual insurers resulted in a disproportionate strain on the Bulgarian Bureau, 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).

The Bulgarian case, where the lack of discipline and/or financial capacity of an individual insurer (or insurers) puts a considerable strain on the national Bureau of that market and adversely affects the liquidity of other Bureaux, is unfortunately not an isolated one. The CoB has observed similar trends in the guarantee call

statistics for Romania in the past months, albeit not in the same magnitude and comparatively more recently. Concerns about the efficient functioning of the Green Card system, and the potential financial consequences thereof, have continued to be the point of attention for the CoB in other member countries as well, such as Moldova.

Last but not least, the CoB and the Green Card system as a whole continue to face difficulties with respect to risks originating from the Islamic Republic of Iran: due to the international sanctions which the country is subject to, the Bureau of Iran often finds itself in the impossibility to make international transfers to reimburse other Bureaux or claim handlers for compensations paid to victims of traffic accidents caused by Iranian vehicles abroad. Due to the nature of the problem, other member Bureaux would face similar issues if they were to reimburse any amounts to the Iranian Bureau (against compensations of Iranian victims as a result of accidents in Iran caused by vehicles originating from other Green Card countries). This prolonged and overarching restraint hinders the smooth and timely execution of financial transactions between the Iranian Bureau and other member Bureaux, thereby compromising the efficient functioning of the Green Card system as far as the I.R. of Iran is concerned.

It is evident that the CoB and the Green Card system continue to face important challenges, including market-level dysfunctions, which need to be corrected in order to safeguard the interests of the victims and the whole system. With the important efforts of the Monitoring Committee as the focal point within the CoB, as well as the Management Committee, we continue to follow up these situations closely, where possible by imposing additional financial safeguards to prevent any adverse developments or systemic disruptions.

Unfortunately, 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' of the system are, in some cases, limited.

In cooperation with its competent committees, the CoB also works towards the strengthening of the pre-requisites of the financial stability of the system: we have recently developed and made available guidelines for business continuity management for national Bureaux and recommendations for the control (monitoring) of correspondents; each year, we update and improve our technical recommendations for the reinsurance of Member Bureaux as well as support interested Bureaux and Guarantee Funds in obtaining efficient reinsurance cover for their risks; we have recently revised and improved the procedure for the authorisations necessary to issue Green Cards for vehicles registered outside the system (currently available for vehicles registered in Georgia and Kazakhstan as well as the vehicles of the EULEX mission in Kosovo).

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

CoB not only handles the so-called Green Card system (Green Card pillar), but also provides secretarial and administrative support to Guarantee Funds and Compensation Bodies of the EEA countries in the framework of the protection of foreign visitors as foreseen in the Motor Insurance Directive (Protection of Visitors pillar).

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.

This important project goes along with a revision of the CoB Constitution and the organisational as well as the managerial structures of the CoB. In 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.

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 during the General Assembly.

In 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.

This important reorganisation proved to be more complex than initially thought, a proper balance had to be pursued on several fronts: between EEA and non-EEA countries, between Green Card Bureaux and Guarantee Funds/Compensation Bodies.

The project is in its final phase and the current members, Green card Bureaux, will be asked to vote on the new 'Articles of Association' and the 'Standard operational Procedure' of the CoB in January 2020 during an extraordinary General Assembly.

As soon as the Articles of Association are published in the Belgian Official Journal, the Guarantee Funds will become Members during the subsequent General Assembly.

## 4. Membership Issues

### 4.1. Armenia

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.

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 separated 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.

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

## 4.2 Algeria

Nothing changed since our last years' update. Last year the Algerian Bureau informed the CoB that they are preparing a documentation file for their Supervisory Authority regarding the possible future participation of Algeria in the Green Card system. Since then no new information reached the CoB. This brings us to the conclusion that the accession of the Algerian Bureau is not to be expected in the very near future.

## 4.3 Georgia

In the course of the last working year, the Georgian Bureau has worked on the introduction of a general compulsory MTPL insurance (not only for foreign vehicles but also for vehicles registered in Georgia). They reconfirmed their interest to become member of the Green Card system.

## 4.4. Kazakhstan

CoB has not received any correspondence from Kazakhstan last year.

## 4.5 Cooperation with other Card systems

Notwithstanding the willingness of the CoB to assist other card systems in their further developments, we have not received any request for further cooperation, neither from the Orange Card system (Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates and Yemen), the White Card System (ECO - Afghanistan, Azerbaijan, Iran, Kazakhstan, Kyrgyz Republic, Pakistan, Tajikistan, Turkey, Turkmenistan, and Uzbekistan) nor from the Brown Card system (Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo).

Although they all requested at a certain moment for closer cooperation.

## 5. Brexit – impact on the functioning of Green Card Bureaux

Following the activation of Article 50 of the Treaty on the European Union, the United Kingdom has started the process to leave the European Union. The political developments following the activation of this provision have resulted in a continuous lack of clarity on when and under which circumstances the country will leave the European Union.

The Council of Bureaux has created a 'Brexit Working Group' in order to examine the consequences of Brexit for both the Green Card system and the operation of the European Motor Insurance Directive.

Although the lack of clarity on the political level makes it difficult to make the right preparations, the following achievements have been reached:

### **5.1. Green Card system**

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

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.

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

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.

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.

### **5.2. Motor Insurance Directive**

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.

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

- Pending claims that are not finalised at the date of Brexit;
- The consequences of accidents caused by uninsured or unidentified vehicles.

## 6. Data Protection

### 6.1. Data exchange between EEA insurers and non-EEA Bureaux

The CoB Working Group on Data Protection prepared a document with the aim to describe the solutions offered by the EU General Data Protection Regulation (GDPR) related to the transfer of data to non-EEA countries. This paper was presented to the CoB Membership during the 2019 International Motor Insurance Convention. This paper only constitutes an attempt in finding legally justified reasons allowing the exchange of personal data between an EEA insurer and a non-EEA national Bureau.

The exchange of personal data directly between insurers and Bureaux is inevitable. What is more, a general solution to be adopted by all stakeholders involved (i.e. more than 1500 insurers) via a multilateral agreement was not feasible, thus a systematic solution was necessary in order to avoid requests of hundreds or thousands different MTPL insurers in Europe each trying to find a solution by way of an individual agreement.

Therefore, this paper analyses the derogations put forward by the GDPR, when other legal bases are not available (i.e. no adequacy decision pursuant to Article 45(3) of the GDPR or appropriate safeguards pursuant to Article 46 of the GDPR).

The paper prepared by the CoB does not provide tailor made solutions as each transfer must be analysed individually, on an ad-hoc basis, by the involved parties in a given transfer. In other words, the data exporter shall ensure that the transfer is occasional and not repetitive and shall also perform a necessity test for the chosen legal basis.

#### 1. Article 49 (1) § 1 GDPR

According to Article 49(1) § 1 of the GDPR, transfer of data shall only take place under an exhaustive number of circumstances, including but not limited to:

- consent of the data subject;
- the transfer is necessary for the performance of a contract concluded in the interest of the data subject or the transfer is necessary for the establishment;
- exercise or defence of legal claims.

The external legal advisor of the CoB showed preference for the 2<sup>nd</sup> bullet point mentioned above as legal basis.

#### 2. Article 49 (1) § 2 GDPR

Further, when a transfer could not be based on a provision in Article 45 or 46, and none of the derogations for a specific situation are applicable under Article 49 (1) § 1 of the GDPR, the GDPR allows for another derogation as last resort to the derogation available under Article 49 (1) § 2 GDPR. This last resort option is dependent on a significant number of conditions expressly laid down by law, including but not limited to:

- the transfer is not repetitive;
- concerns only a limited number of data subjects;

- Necessary for the purposes of compelling legitimate interests pursued by the controller which are not overridden by the interests of rights and freedoms of the data subject;
- The controller has assessed all the circumstances surrounding the data transfers and, based on that assessment, has provided suitable safeguards with regard to the protection of personal data;
- inform the supervisory authority of the transfer;
- in addition to providing the information referred to in Articles 13 and 14, inform the data subject of the transfer and on the compelling legitimate interests pursued.

## **7. International Insurance certificate – Green Card – moving towards an electronic version**

### **7.1. Decision regarding the colour of the “Green Cards”**

The 2019 General Assembly decided to authorise National Insurers' Bureaux, on a voluntary basis, to resort to the possibility offered by the Working Party on Road Transport of the Inland Transport Committee of the United Nations Economic Commission for Europe, during their 113<sup>th</sup> session held in Geneva on 16<sup>th</sup> – 18<sup>th</sup> October 2018 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, who can later print it in black on white.

Insurance markets wishing to keep the issuing of the IMICs on green ground-colour will not be hindered in doing so. However, the countries of the markets wishing to keep their green coloured IMICs, should accept the printed black on white IMICs from visiting motorists. The National Bureaux of those insurance markets wishing to adhere to this voluntary system of issuing IMICs in black and white shall inform the Secretary General, who will subsequently inform the Membership about these changes.

These changes shall enter into force as of 1<sup>st</sup> July 2020.

### **7.2. Adjustments to the Internal Regulations and to the format of the IMICs**

The work related to the colour of the IMICs, required some modifications to the Internal Regulations, in particular in relation to the technological development in both the insurance industry but also in the society we live in. Since there is an increasing demand for forwarding issued IMICs in an electronic format (PDF – Portable Document Format) to clients so they can have this document “immediately” at their disposal, the Internal Regulations had to be amended accordingly. The necessary adjustments to the Internal Regulations were made in such a way that the same guarantees would apply for an IMIC irrespectively whether it would be printed on a white or a green paper.

Further, in connection to printing a Green Card by an individual consumer, to insist on printing even the rear page is not realistic. Thus, in the era of modern communication, the CoB considers that there is no need to list the contact details of National Bureaux on the rear page of the Green Card as this list is also available on

the website of the CoB. In addition, given the wide-spread phone communications of clients with their insurers, the rear page of a Green Card is losing the level of importance it had in the past. For these reasons, it was decided that the rear page should remain optional only.

## 8. MID – REFIT

The European Commission published on the 28<sup>th</sup> July 2017 a public consultation regarding the REFIT review of Directive 2009/103/EC on motor insurance.

The CoB, as a technical organisation in the field of International Motor traffic, participated in the consultation and formulated replies to questions of interest, related to:

- Uninsured driving and the measures to be taken at European Level
- Protection of injured parties when a cross border insurer is insolvent
- Minimum amounts of cover
- Deemed Insurance cover and insurance checks
- Protection of visitors
- Scope of protection provided under the MID
- Autonomous vehicles
- Transfer of vehicles from one MS to another

In the meantime, on 24<sup>th</sup> May 2018, the European Commission (EC) published its proposal for an amendment of the MID. 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 a few, small technical deficiencies that could jeopardise the application of the MID in daily practice. For this reason, the CoB has formulated observations and submitted these to the EC in July 2018.

Subsequently the EC proposal has been forwarded to the European Parliament. On 13<sup>th</sup> February, the plenary of the European Parliament adopted amendments to the EC proposal and referred the proposal for inter-institutional negotiations (trialogues).

Currently, a technical committee from the CoB is considering a position paper on the EP's amendments.

Greet FLORÉ, Secretary General

October 2019