



Agreement between Insolvency Bodies in the framework of Article 10a of the European Motor Insurance Directive

**Protection of injured parties in respect of damage
resulting from accidents occurring in their Member
State of residence in the case of the insolvency of an
insurance undertaking**

Parties to the Agreement

The following bodies, signatories to this Agreement:

A	Austrian Insolvency Body	<i>Fachverband der Versicherungsunternehmen, represented by Verband der Versicherungsunternehmen Österreichs (VVO)</i>
B	Belgian Insolvency Body	<i>Fonds Commun de Garantie Belge / Belgisch Gemeenschappelijk Waarborgfonds (FCGB-BGWF)</i>
BG	Bulgarian Insolvency Body	<i>Bulgarian Guarantee Fund</i>
CY	Cypriot Insolvency Body	<i>Cyprus Motor Insurers' Fund</i>
CZ	Czech Insolvency Body	<i>Czech Insurers' Bureau</i>
D	German Insolvency Body	<i>Verkehrsoferhilfe e.v. (VOH)</i>
DK	Danish Insolvency Body	<i>Danish Guarantee Fund for Non-Life Insurers</i>
E	Spanish Insolvency Body	<i>Consortio de Compensación de Seguros (CCS)</i>
EST	Estonian Insolvency Body	<i>Estonian Motor Insurance Bureau</i>
F	French Insolvency Body	<i>Fonds de Garantie des Assurances Obligatoires de dommages (FGAO)</i>
FIN	Finnish Insolvency Body	<i>Finnish Motor Insurers' Centre</i>
FL	Liechtenstein Insolvency Body	<i>Swiss National Guarantee Fund (NGF)</i>
GR	Greek Insolvency Body	<i>Greek Guarantee Fund</i>
H	Hungarian Insolvency Body	<i>Hungarian Motor Insurance Bureau</i>
HR	Croatian Insolvency Body	<i>Croatian Insurance Bureau (Hrvatski Ured Za Osiguranje)</i>
I	Italian Insolvency Body	<i>CONSAP, as Fondo di Garanzia per le Vittime della Strada</i>
IRL	Irish Insolvency Body	<i>Motor Insurers' Bureau of Ireland</i>
IS	Icelandic Insolvency Body	<i>ABÍ</i>
L	Luxembourgish Insolvency Body	<i>Fonds d'insolvabilité en Assurance Automobile (FIAA)</i>
LT	Lithuanian Insolvency Body	<i>Motor Insurers' Bureau of the Republic of Lithuania</i>
LV	Latvian Insolvency Body	<i>Motor Insurers' Bureau of Latvia</i>

M	Maltese Insolvency Body	<i>Protection and Compensation Fund (PCF)</i>
N	Norwegian Insolvency Body	<i>Norwegian Motor Insurers' Bureau (Trafikkforsikringsforeningen, TFF)</i>
NL	Dutch Insolvency Body	<i>Motor Traffic Guarantee Fund (Waarborgfonds Motorverkeer)</i>
P	Portuguese Insolvency Body	<i>Fundo de Garantia Automóvel (FGA)</i>
PL	Polish Insolvency Body	<i>Polish Insurance Guarantee Fund (Ubezpieczeniowy Fundusz Gwarancyjny, UFG)</i>
RO	Romanian Insolvency Body	<i>Policyholders Guarantee Fund of Romania (Fondul de Garantare a Asiguraților, FGA)</i>
S	Swedish Insolvency Body	<i>Swedish Motor Insurers (Trafikförsäkringsföreningen)</i>
SK	Slovak Insolvency Body	<i>Slovak Insurers' Bureau (Slovenská kancelária poisťovateľov)</i>
SLO	Slovenian Insolvency Body	<i>Slovenian Insurance Association (Slovensko zavarovalno združenje, GIZ)</i>

Preamble

Whereas

1. The European Union has, between 1972 and 2005, adopted five different Directives relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability ('the Motor Insurance Directives');
2. The five Motor Insurance Directives were codified in one single text: Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ L 263, 7.10.2009, p. 11) ('the Codified Motor Insurance Directive');
3. On 24th November 2021, the European Union adopted a new, Sixth Motor Insurance Directive: Directive 2021/2118 of the European Parliament and of the Council of 24 November 2021 amending Directive 2009/103/EC relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ L 430, 2nd December 2021, p. 1) ('the Sixth Motor Insurance Directive');
4. The Sixth Motor Insurance Directive provides for a new Article 10a to be inserted in the Codified Motor Insurance Directive with the title 'Protection of injured parties in respect of damage resulting from accidents occurring in their Member State of residence in the case of the insolvency of an insurance undertaking';
5. The new Article 10a of the Codified Motor Insurance Directive requires the Member States to set up a new body or to authorise an existing body ('Insolvency Body'), with the task of providing compensation to Injured Parties resident within their territory for damage to property or personal injuries caused by a Vehicle insured by an insurance undertaking subject to bankruptcy or winding-up proceedings ('Insolvent Insurance Undertaking');
6. In accordance with the new Article 10a of the Codified Motor Insurance Directive, the Insolvency Bodies of the different Member States have to provide compensation to Injured Parties, not only where the Home Member State of the Insolvent Insurance Undertaking is the same as the Member State in which the Injured Party is resident but also where that Home Member State is different from the Member State in which the Injured Party is resident;
7. In the latter case, where the Home Member State of the Insolvent Insurance Undertaking is different from the Member State in which the Injured Party is resident, the Sixth Motor Insurance Directive provides that the Insolvency Body of the Injured Party's Member State of residence, after having compensated the Injured Party, shall be entitled to claim full reimbursement of the sum paid by way of compensation from the Insolvency Body in the Insolvent Insurance Undertaking's Home Member State;

8. The Sixth Motor Insurance Directive requires the Insolvency Bodies to have sufficient funds available to compensate Injured Parties. Having regard to the reimbursement obligations between Insolvency Bodies, imposed by the Sixth Motor Insurance Directive, the funds available should also allow respecting these reimbursement obligations in case the Insolvent Insurance Undertaking performs insurance activities in other Member States by way of freedom of establishment or freedom to provide services. National insurance supervisory authorities should therefore be able to provide Insolvency Bodies with information on the activities and risks of insurance undertakings, not only in these insurance undertakings' Home Member States, but also in other Member States. Additionally, the cooperation between Insolvency Bodies mutually should also allow the Insolvency Body in an insurance undertaking's Home Member State to be informed about market operations of insurance undertakings in other Member States;
9. The Sixth Motor Insurance Directive requires all the Insolvency Bodies to strive to conclude an agreement on the implementation of the new Article 10a of the Codified Motor Insurance Directive, containing provisions relating to the Insolvency Bodies' functions and obligations and the procedures for reimbursement resulting from that Article 10a;
10. The Insolvency Bodies, set up or authorised by the Member States in accordance with the new Article 10a of the Codified Motor Insurance Directive who become signatories of this Agreement wish to comply with the obligation as provided for in the new Article 10a of the Codified Motor Insurance Directive

have concluded this Agreement:

Provisions of the Agreement

ARTICLE 1 – Definitions

For the purposes of this Agreement:

- 'Administrator' means a person or body appointed by the administrative or judicial authorities of a Member State for the purpose of administering reorganisation measures;
- 'Claimant Insolvency Body' means the Insolvency Body having compensated Injured Parties in accordance with Article 10a of the Codified Motor Insurance Directive;
- 'COB' means the AISBL Council of Bureaux, registered under Belgian law with the official name 'Association Internationale des Bureaux Nationaux d'Assurance Automobile' under Enterprise Number 0877.104.682;
- 'Codified Motor Insurance Directive' means Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure

against such liability (OJ L 263, 7.10.2009, p. 11) as amended by the Sixth Motor Insurance Directive;

- 'Debtor Insolvency Body' means the Insolvency Body in the Insolvent Insurance Undertaking's Home Member State;
- 'Green Card System' means the international motor third party liability insurance system, based on Recommendation N° 5 adopted on 25 January 1949 by the Road Transport Sub-committee of the Inland Transport Committee of the United Nations Economic Commission for Europe, superseded by Annex 1 of the Revised Consolidated Resolution on the Facilitation of Road Transport (R.E.4) adopted by the Inland Transport Committee at the sixty-sixth session which was held from 17 to 19 February 2004;
- 'Home Member State' means the Member State in which the head office of the Insolvent Insurance Undertaking is situated;
- 'Injured Party' means any person entitled to compensation in respect of any loss or injury caused by Vehicles;
- 'Insolvency Body' means the body set up or authorised by a Member State in accordance with Article 10a of the Codified Motor Insurance Directive, with the task of providing compensation to Injured Parties resident within their territory, at least up to the limits of the insurance obligation, for damage to property or personal injuries caused by a vehicle insured by an insurance undertaking from the moment when (a) the insurance undertaking is subject to bankruptcy proceedings; or (b) the insurance undertaking is subject to winding-up proceedings as defined in Article 268(1), point (d) of Directive 2009/138/EC;
- 'Insolvent Insurance Undertaking' means an insurance undertaking subject to bankruptcy proceedings or subject to winding-up proceedings as defined in Article 268(1), point (d) of Directive 2009/138/EC;
- 'Liquidator' means a person or body appointed by the administrative or judicial authorities of a Member State or by the governing bodies of an insurance undertaking for the purpose of administering winding-up proceedings;
- 'National Insurers' Bureau' means a professional organisation which is constituted in accordance with Recommendation N° 5 adopted on 25 January 1949 by the Road Transport Sub-committee of the Inland Transport Committee of the United Nations Economic Commission for Europe and which groups together insurance undertakings which, in a State, are authorised to conduct the business of motor vehicle insurance against civil liability;
- 'Sixth Motor Insurance Directive' means Directive 2021/2118 of the European Parliament and of the Council of 24 November 2021 amending Directive 2009/103/EC relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ L 430, 2 December 2021, p. 1);

- 'Vehicle' means
 - (a) any motor vehicle propelled exclusively by mechanical power on land but not running on rails with:
 - a maximum design speed of more than 25 km/h; or
 - a maximum net weight of more than 25 kg and a maximum design speed of more than 14 km/h;
 - (b) any trailer to be used with a vehicle referred to in point (a), whether coupled or uncoupled.

Without prejudice to points (a) and (b), wheelchair vehicles exclusively intended for use by persons with physical disabilities are not considered to be vehicles referred to in this Directive.

This Agreement shall also apply to any motor equipment used on land for which motor insurance is required in the Member State where the accident occurred in accordance with Article 28(1) of the Codified Motor Insurance Directive.

ARTICLE 2 – Scope of the Agreement

This Agreement shall be applicable in case a Claimant Insolvency Body compensates an Injured Party resident in the Claimant Insolvency Body's Member State, as a result of an accident occurred in the Injured Party's Member State of residence and caused by a Vehicle insured by an Insolvent Insurance Undertaking, the Home Member State of which differs from the Injured Party's Member State of residence.

This Agreement shall **not** be applicable to -among others- the following cases:

- where the Vehicle having caused the accident is insured by an Insolvent Insurance Undertaking, the Home Member State of which is the same as the Injured Party's Member State of residence. In this case, the Injured Party may address a claim to the Insolvency Body in accordance with Article 10a of the Codified Motor Insurance Directive but there is no reason for reimbursement procedures in line with this Agreement;
- where the accident occurred in a Member State other than the Injured Party's Member State of residence. In this case, the Agreement between Insolvency Bodies in the framework of Article 25a of the Sixth European Motor Insurance Directive may apply;
- where the accident occurred in a country outside the European Economic Area. In this case, the Agreement between Insolvency Bodies in the framework of Article 25a of the Sixth European Motor Insurance Directive may apply, provided that certain conditions are fulfilled;
- where the Vehicle having caused the accident is normally based in a country outside the European Economic Area, the National Insurers' Bureau of which has joined the Green Card System. In this case, the rules of the Green Card System may apply.

Even if this Agreement is not applicable, Insolvency Bodies commit themselves to provide each other, upon request, with all assistance, information and documents they have available or can obtain, relating to an accident and relating to the law on insurance, liability and compensation of damage as well as any advice on the technical reserves related to a claim.

ARTICLE 3 – Compensation of the injured party

When compensating Injured Parties, Insolvency Bodies shall have particular attention for the provisions of Article 10a of the Codified Motor Insurance Directive and for the confirmation of insurance cover for the Vehicle having caused the accident.

When compensating the Injured Party, the Claimant Insolvency Body shall contact the Insolvent Insurance Undertaking, the Administrator or the Liquidator to obtain the information necessary to correctly compensate the Injured Party, including information about the sums that may already have been paid to the Injured Party.

ARTICLE 4 – Right to claim full reimbursement

In accordance with Article 10a(10) of the Codified Motor Insurance Directive, where the Home Member State of the Insolvent Insurance Undertaking is different from the Member State in which the Injured Party is resident, the Claimant Insolvency Body which has compensated the Injured Party, shall be entitled to claim full reimbursement of the sum paid by way of compensation from the Debtor Insolvency Body in the Home Member State of the Insolvent Insurance Undertaking.

ARTICLE 5 – Cooperation and information exchange

In accordance with Article 10a(5) of the Codified Motor Insurance Directive, the Claimant Insolvency Body shall, upon receipt of a claim from the Injured Party, inform:

- the Insolvency Body of the Insolvent Insurance Undertaking's Home Member State, where that Member State differs from the Injured Party's Member State of residence;
- the Insolvent Insurance Undertaking, its Administrator or Liquidator, also in view of obtaining confirmation of insurance cover.

In addition, but without prejudice to

- the Insolvency Body's obligation to compensate the Injured Party in accordance with the Codified Motor Insurance Directive;
- applicable rules on data protection,

the Claimant Insolvency Body may, upon receipt of a claim from the Injured Party, also inform:

- the National Insurers' Bureau of the Injured Party's Member State of residence, where the Vehicle having caused the accident is normally based in a Member State other than the

Injured Party's Member State of residence. This National Insurers' Bureau shall -where appropriate- be asked to inform the correspondent appointed by the Insolvent Insurance Undertaking in the Injured Party's Member State of residence in accordance with the rules of the Green Card System;

- the National Insurer's Bureau of the Member State where the Vehicle having caused the accident is normally based if that Member State differs from the Injured Party's Member State of residence;
- the representative (in accordance with Article 152 of Directive 2009/138/EC) of the Insolvent Insurance Undertaking in the Member State where the Vehicle having caused the accident is normally based, in case the Insolvent Insurance Undertaking was operating in that Member State by way of freedom to provide services.

In line with the spirit of cooperation and partnership between Insolvency Bodies:

- The Debtor Insolvency Body shall provide, on request and as soon as possible, to the Claimant Insolvency Body, all necessary assistance, information and documents it has available relating to the (insolvency) law of the Member State of the Debtor Insolvency Body or concerning the procedure of bankruptcy or winding-up of the Insolvent Insurance Undertaking;
- The Claimant Insolvency Body shall keep the Debtor Insolvency Body, the Insolvent Insurance Undertaking and its Administrator or Liquidator informed about the technical reserves related to claims received, distinguishing between damage to property and personal injuries per Injured Party;
- The Claimant Insolvency Body shall provide the necessary information and documents to the Debtor Insolvency Body to allow the Debtor Insolvency Body to recover any sums after having reimbursed the Claimant Insolvency Body;
- Insolvency Bodies shall assist each other, upon request, with obtaining information -upon availability- about market operations of insurance undertakings, operating in other Member States than their Home Member State, by way of freedom of establishment or freedom to provide services. This assistance may relate to premium income, market shares, technical reserves and other information, allowing the Debtor Insolvency Body to have sufficient funds available, as required by Article 10a(2) of the Codified Motor Insurance Directive and to respect the reimbursement obligations arising from this Agreement;
- Insolvency Bodies shall, in view of transparency, increasing efficiency and sharing best practices, disclose, on request of COB, their principles of funding;
- Insolvency Bodies shall inform other Insolvency Bodies as soon as they have reasons to believe that they don't have sufficient funds available to compensate Injured Parties or to reimburse Claimant Insolvency Bodies in accordance with Article 10a of the Codified Motor Insurance Directive.

Cooperation and information exchange as mentioned in this Agreement shall be in compliance with rules on data protection, amongst others with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

For the purpose of all communication exchange (including but not limited to demands for reimbursement), all Signatory Insolvency Bodies shall provide one e-mail address to the Secretariat of COB. COB shall publish these e-mail addresses on an internal website or electronic communication platform. All communication sent to that e-mail address shall be accepted as in line with the provisions of this Agreement. Insolvency Bodies may, on a bilateral or multilateral basis, agree on other ways of communication, provided that these will only be binding upon those Insolvency Bodies that have agreed to them.

ARTICLE 6 – Demands for reimbursement

Not later than six months after the first payment made by a Claimant Insolvency Body in accordance with Article 10a of the Codified Motor Insurance Directive, this Claimant Insolvency Body shall address a demand for reimbursement to the Debtor Insolvency Body, containing the following information for each claim received and paid by the Claimant Insolvency Body:

- i. the amount paid in compensation to Injured Parties, specifying the amounts paid for damage to property and for personal injuries;
- ii. the sums paid for external services related to the claims handling process, such as for example experts', lawyers' or doctors' fees, with the exclusion of costs for the act of the claims handling process itself (which should be part of the handling fee under point iii. below);
- iii. a handling fee calculated in accordance with the rules on calculating handling fees between National Insurers' Bureaux in the framework of the Green Card System. The calculation of the handling fee shall be made in relation to the aggregate of all payments (interim and final) made for claims resulting from the same accident.

After the first demand for reimbursement, the Claimant Insolvency Body shall provide the Debtor Insolvency Body at least every six months with a demand for reimbursement, for as long as reimbursements are still due.

In case the time delays within which demands for reimbursement must be addressed in accordance with this Article are not respected, the Debtor Insolvency Body shall be released from the obligation to pay a handling fee in accordance with point iii. above.

Demands for reimbursement shall be accompanied by supporting documents. In view of further recovery procedures, the Debtor Insolvency Body may request additional documentary evidence, without however delaying the reimbursement obligations.

ARTICLE 7 – Reimbursement

The amounts due to the Claimant Insolvency Body shall be payable in the country and in the national currency of that Claimant Insolvency Body, at first demand and free of costs.

The reimbursements shall be payable within a period of three months from the date of issuance of the demand for reimbursement. On expiry of that period, late interest at 12% per annum on the amount due shall apply automatically from the date of the demand for reimbursement until the date of receipt of the remittance by the bank of the Claimant Insolvency Body.

ARTICLE 8 – Challenge of reimbursements

The amount to be reimbursed may only be disputed by the Debtor Insolvency Body in one of the following cases:

- the Claimant Insolvency Body has ignored objective material information given to it;
- the Claimant Insolvency Body has not observed the rules of applicable law;

ARTICLE 9 – Use of language

The signatory Insolvency Bodies shall use, in their mutual communication, the English language unless they agree on the use of a different language.

Supporting documentation may be provided in the original language of the documents.

ARTICLE 10 – Dispute settlement

Any dispute arising out of or in connection with this Agreement shall first be submitted to the Managing Director of COB. Within four weeks of the receipt of the submission, the Managing Director shall invite the Signatories concerned to present their points of view. The Signatories concerned shall present their points of view in writing and within a delay of six weeks after receipt of the Managing Director's invitation. Within a period of 30 days after having received the points of view of all the Signatories involved in the dispute, the Managing Director shall send an invitation to the Signatories concerned for a mediation meeting in view of reaching an amicable settlement. The Managing Director or any other neutral person to whom the Managing Director may delegate this task shall act as mediator.

If the mediation process does not result in any amicable settlement of the dispute, the dispute shall be finally settled under the CEPANI Rules of Arbitration by one or more arbitrators appointed in accordance with the said Rules.

When three arbitrators are foreseen, each party shall nominate its arbitrator listed on the COB website in, respectively the request for arbitration and the answer to the request, for the confirmation by the Appointments Committee or the President of CEPANI.

Prior to the appointment or confirmation, the proposed arbitrator shall sign a statement of acceptance, availability and independence. Where a party refrains from nominating its arbitrator or if the latter is not confirmed, the Appointments Committee or the President of CEPANI shall appoint the arbitrator.

COB has a list of arbitrators who have technical and practical knowledge of the cooperation system between the different members of COB as well as about MTPL insurance questions in a cross-border context. This list is published on the COB website and updated twice a year.

The third arbitrator, who will act by right as chair of the Arbitral Tribunal, shall be appointed by the Appointments Committee or the President of CEPANI.

In all cases, the Appointments Committee or the President of CEPANI is free to choose from outside the list.

The seat of arbitration shall be Brussels.

The arbitration shall be conducted in the English language.

Except for the Belgian Insolvency Body, the Signatories expressly exclude any application for setting aside the Arbitral Award.

ARTICLE 11 – Governing law

This Agreement shall be subject to and interpreted in accordance with rules of Belgian substantive law.

ARTICLE 12 – New Members

This Agreement is open for signature by all Insolvency Bodies set up or authorised in accordance with Article 10a of the Codified Motor Insurance Directive.

In case of new Member States of the European Union or of new States participating in the European Economic Area, the Managing Director of COB shall enquire the European Commission and the country in question to learn which body or organisation will be set up or authorised to operate as Insolvency Body. The Managing Director shall invite the body or organisation in question to become a signatory to the Agreement.

ARTICLE 13 – Term of the Agreement and withdrawal

This Agreement shall be concluded for an indefinite period.

If a signatory Insolvency Body ceases to be authorised as the Insolvency Body in the Member State where it was set up or authorised or finds itself unable to carry out this competence, it shall immediately notify the Managing Director of COB, who shall inform the European Commission and the other Signatories without delay. If possible, the Insolvency Body in question shall inform the



Managing Director about the identity of the body or organisation that will take over the competences of Insolvency Body in the Member State in question.

Should a signatory Insolvency Body cease to be authorised as the Insolvency Body in the Member State where it was set up or authorised or finds itself unable to carry out this competence or withdraws from this Agreement, this shall not affect the rights and obligations of the remaining Insolvency Bodies, who shall remain bound by all the provisions of this Agreement.

When an Insolvency Body withdraws from this Agreement, the withdrawal shall only take effect after a twelve months' notice. The withdrawing Insolvency Body shall remain fully liable for any obligation resulting from this Agreement prior to the withdrawal taking effect.

ARTICLE 14 – Entry into force

This Agreement will enter into force on 23 December 2023 and will be applicable to insolvencies occurring on or after that date, which means that the application of the Agreement extends to all claims (past, current and future) relating to motor third party liability insurance contracts subscribed by the Insolvent Insurance Undertaking.