

## **CIVIL LIABILITY INSURANCE OF VEHICLE OWNERS IN EUROPEAN UNION COUNTRIES AND THE RUSSIAN FEDERATION: COMPARATIVE LEGAL ANALYSIS**

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**Abstract:** This article sets out to review the distinguishing features of the civil liability insurance of vehicle owners in European countries. It examines main regulations of European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles. It covers the specific features of the structure and objectives of European and National bureau of Green Card System. The article analyses certain provisions of European Union directives on compulsory civil liability insurance principles and terms. It pays particular attention to the limits of the civil liability insurance. The difference in insurance rates in various European countries is noted, and in turn they are compared with insurance indemnities prescribed by normative legal acts in our country. The particular problems of civil liability insurance of vehicle owners in Russia are discussed, as well as the issues of establishment and operation of united civil liability insurance in EurAsEC. Suggestions are made on development of Russian civil liability insurance of vehicle owners legislation.

**Keywords:** Compulsory insurance, contract of insurance, insurance, insurance policy, limits of insurance, insurance coverage, insurance rates, insurance market.

### **INTRODUCTION**

#### **Introducing the Problem**

Globalization of foreign economic relations covers different directions of state activity, including insurance issues. The increase in goods transportation, the expansion of tourism industry, free movement of vehicles through various countries required rapid development in the area of civil liability insurance (Kuzakhmetova et. al., 2016; Sitdikova et. al., 2016). Due to the high risk of vehicles operation, the vehicle owners are obliged by national legislations to insure their civil liability. In addition, the active development of international relations makes resolving of the compulsory insurance system problems on the international level absolutely imperative.

#### **Importance of the Problem**

The goal of this scientific research is to review main regulations of European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles, the organizational structure and objectives of European and National

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bureau of Green Card System. The analysis of certain provisions of European Union directives on compulsory civil liability insurance's principles and terms is also included. Particular problems of civil liability insurance of vehicle owners in Russia are noted, as well as the issues of establishment and operation of united civil liability insurance in EurAsEC

The subject of the research is public relations, arising in the process of civil liability insurance of vehicle owners. The object of the research are the features of civil liability insurance of vehicle owners in European countries and the Russian Federation.

### **Hypotheses and Their Correspondence to Research Design**

The authors of this research set out to analyze main regulations of European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles, certain provisions of European Union directives on compulsory civil liability insurance's principles and terms and to propose on Russian civil liability insurance of vehicle owners legislation.

### **METHOD**

Methodological foundations of this research is the complex of scientific methods, such as system, statistic, historical, legal, comparative legal, logical, dialectical and other research methods. The authors analyzed the materials and key sources of key scientific literature on the proposed subject, the regulatory legal acts of the Russian Federation, the main regulations of European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles, certain provisions of European Union directives on compulsory civil liability insurance's principles and terms.

The authors explored the publications of leading authorities on the subject, such as: Bodner G.D., Druzin R.V., Gancevich S.V., Kolesnikov D.V., Isho K.D., Sokol P.V., Fogelson U.B., and examined the most relevant problems of the essence, the contents and the procedure of the civil liability insurance of vehicle owners in European countries and the Russian Federation. Some aspects of the problem are discussed in the articles of Volkova et. al., 2015, Sitdikova & Shilovskaya, 2015., etc.

### **RESULTS**

Implementation of the Green Card System started on January, 1, 1953, though the recommendation on of Motorist Insurance Against Third Party Risks was approved by United Nations Economic and Social Council as early as 1949. Under this Agreement having the motor third party liability insurance registered in countries which the National Bureau are the signatories to the Agreement is valid in other countries - members of the Green Card System. The Green Card System is officially recognized and consists of almost 50 members. The most of Green Card System

members are European countries, but Asian and African countries gradually join this System as well (Morocco, Tunisia, Iran, Turkey and Israel). Russia joined the Green Card System in 2009. Similar to Russian civil liability insurance policy of vehicle owners, “Green Card” secures the liability insurance of vehicle owners against the road accidents in countries – members of Green Card System. Later, similar agreements were approved in African countries (“Pink card” and “Brown card”) and Arabic countries in Africa and Asia (“Orange card”).

## **DISCUSSION**

### **The Compulsory Insurance Frameworks**

Under this Agreement, if a vehicle registered in one of the Green Card System countries causes damages to a legal entity or an individual in another country of Green Card System these damages are subject to reimbursement by the compulsory insurance frameworks. For that purpose, firstly, it is stipulated that the vehicle owners are obliged to insure their civil liability concerned with vehicle operation. Secondly, under the insurance contract the owner of vehicle gets “Green Card” as well as home insurance policy to confirm civil liability of cross-border road traffic accidents in Green Card System countries. Thirdly, in case of insured accident the damage will be compensated in the country of accident. The special organization - The National Insurers’ Bureau will settle the claim and then can recover all the compensation paid from the Bureau of the country where the responsible vehicle comes from.

### **The Organizations Responsible for Compulsory Civil Liability Insurance of Vehicle Owners**

In each Green Card System member country organizations responsible for compulsory civil liability insurance of vehicle owners are incorporated in The National Insurers’ Bureau which is entitled to issue “Green Cards”. All National Insurers’ Bureaus are incorporated in The Council of Bureaus that coordinates and drafts common documentation, represents the insurers in the international organizations and operates under the umbrella of the Principal Working Party on Road Transport of the Inland Transport Committee of the Economic Commission for Europe of the United Nations.

In accordance with the Constitution of the Council of Bureaus (The International Association of National Motor Insurers’ Bureaus), adopted in Lisbon, on 29-30th May 2008, The Association shall serve an international public purpose on a non-profit making basis with a view to:

- (a) administer and operate the International Motor Insurance Card System (also known as the Green Card System), which is subordinated to the Principal

Working Party on Road Transport of the Inland Transport Committee of the Economic Commission for Europe of the United Nations;

- (b) provide protection to victims of accidents who are not residents of the state visited;
- (c) offer services to other international organisations involved in activities within the framework of third party motor insurance (Kolesnikov, 2013).

The National Insurers' Bureau signs the Multilateral Agreements, that stipulate the following:

- A Green Card issued by the National Insurers' Bureau of the country of the vehicle is recognized by the National Insurers' Bureau of the visited country;
- all claims arising from the accident are handled by National Insurers' Bureau of the country of accident according to the existing legislation on compulsory civil liability insurance of vehicle owners of the visited country;
- in turn, National Insurers' Bureau of the country of accident will exercise its recourse right against the National Insurers' Bureau of the country of the vehicle.
- The insurer of the liable motorist reimburses the costs of National Insurers' Bureau of the country of accident. If the insurer does not have opportunity to pay, it is paid by National Insurers' Bureau of the country of the vehicle. For this cause the special guarantee fund is founded.

Russian Association of Motor Insurers performs the functions of Russian National Insurers' Bureau.

### **Legal Regulation of Compulsory Civil Liability Insurance of Vehicle Owners**

Since the purpose of the insurance is to protect the interests of the participants of the civil circulation, the law, while regulating insurance relationships, should, naturally, first and foremost guarantee the achievement of this particular goal in effective manner. (Fogelson, 2015).

EU Directives are an important part of legislation of the Green Card system member countries as well as any country in European Union. They harmonize and unify the legal norms of any legal systems, identify the main course and ensure that the rights of a victim of road accident caused by a visiting motorist are effectively guaranteed (Isho, 2015).

The system of legal regulation of compulsory civil liability insurance of vehicle owners consists of 5 EU Motor Insurance Directives (1972, 1983, 1990, 2000 and 2009) that are to unify the civil liability insurance legislation of Member States and to make compulsory signing of such insurance contracts. Firstly, 5 EU Motor Insurance Directives were established in order to enhance the protection system

of road traffic victims further (Sitdikova et. al., 2015). It is also necessary to note that these Directives outline the minimum requirements to civil liability insurance of vehicle owners contract for EU countries. The issues that are not covered by EU acts are to be regulated by national legislation of Member States (Sokol, 1993). The minimum amounts of insurance coverages that are compulsory for all Member States are established by the Second Council Directive 84/5/EEC of 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles. The limits of liability should cover each and every victims and each and every vehicles. The minimum amounts for compulsory insurance are: Personal injuries: EUR 350 000 in the case of one victim and EUR 500 000 per claim in the case of more than one victim; Personal injuries and damage to property: EUR 600 000 per claim.

The fifth Directive №2009/103/EC of European Parliament and of The Council 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 (codified version) changed the minimum amounts for compulsory insurance established by Directive №84/5/EEC. In the case of personal injury, a minimum amount of cover is of EUR 1 000 000 per victim or EUR 5 000 000 per claim, whatever the number of victims are. For the gradual process of transition to the new minimum amounts of cover Member States may establish a transitional period. The minimum amounts of cover shall be periodically reviewed in line with the European Index of Consumer Prices.

### **The Limits of Liability in European Countries**

Meanwhile, it is necessary to note that the limits of liability for each victim and for each vehicle are not established in every Green Card Member State. For example, there are no limits of liability in Austria, Germany, Finland, France, Great Britain, Cyprus and other countries. The limits on all victims are not set in Belgium, France, Norway, Ireland. There is a minimum amount of cover per victim in Estonia (EUR 5 000 000), Bulgaria (EUR 1 000 000) and the Czech Republic (EUR 1 350 000). Some countries have low limits (Montenegro – EUR 250 000, Albania – EUR 140 000, Moldavia – EUR 20 000, Belarus – EUR 10 000), because their insurance funds on compulsory civil liability insurance of vehicle owners are not as advanced as the funds of more developed European countries. Besides these countries have low-level insurance market and national insurance companies could not compete with the major insurers of Green Card System such as Allianz (Germany), Assicurazioni Generali (Italy), AXA (France), Prudential Plc (Great Britain) etc.

There are higher limits of liability for all victims of accidents in legislation of some countries, such as Spain (EUR 70 000 000), Andorra (EUR 50 000 000), Sweden (EUR 34 400 000), Denmark (EUR 14 800 000), Germany (EUR 7 500 000), Liechtenstein (EUR 5 600 000), Italy, Slovakia, Slovenia, Portugal, Poland

(EUR 5 000 000). The only European country that has no limits for all victims and all vehicles is Luxemburg.

### **The Limits of Liability in Russia**

Unfortunately Russia is on the last place among the Member States, with the lowest minimum amount of insurance coverage per one victim (RUB 500 000) and per one vehicle (RUB 400 000), according to Federal law “On compulsory civil liability insurance of vehicle owners” (hereinafter referred to as “Federal law on MTPL”), which at the rate of exchange ruling at 11.08.2016 constitute EUR 6 410 and EUR 5 125 respectively. This minimum is lower than, for example, in Belarus, Ukraine, Moldova and Iran.

One of the reasons for such low insurance rates in Russia is that the insurance companies often consider car insurance unprofitable. Because of the low insurance rates set by Russian legislation, the income from civil liability insurance of vehicle owners premiums covers only half of the expenses incurred. At the same time, insurers in every possible way try to rise the income with subsidiary kinds of insurance such as life insurance of vehicle owners or vehicle insurance that they claim is compulsory but in fact is illegal (Pochemu dorozhaet avtostrahovanie?).

The new edition of Federal law on MTPL INSURANCE pays particular attention to the responsibility of insurers for violating the rights of victims.

The legislators excludes the application of the provisions of law on the protection of the customers’ rights to the insurers and while providing security on insurer liability to a victim, determines the following forms of responsibility:

- In case of any delay beyond the stipulated period of insurance indemnities payments the insurer is obliged to pay forfeits (interest fines) at the rate of 1 per cent of the insurance indemnities value according to Federal law on MTPL INSURANCE for each day’s delay;
- In case of any delay beyond the stipulated period of providing motivated decision on the refusal to pay the insurance indemnities the insurer is obliged to pay forfeits at the rate of 0.05 per cent of the insurance sum according to Federal law on MTPL INSURANCE for each day’s delay (paragraph 21 of article 12);
- In case of the failure to pay insurance indemnities voluntarily according to the procedure the following fine is imposed on the insurer: 50 per cent of the difference between total amount of insurance indemnities determined by the court and the amount of insurance indemnities paid by the insurer voluntarily (paragraph 3 of article 16.1);

Also the victim shall retain the right to compensation of moral damage caused by the violations of insurance customers’ rights according to article 15 of :law on

the protection of the customers' rights (paragraph 2 of article 16.1) (Gancevich, 2015; Kirillova et. al., 2016; Shilovskaya, 2016).

### **Current Problems in the Russian Market of Car Insurance**

At present time in spite of some progress in indicators of vehicle owners compulsory civil liability market there are a lot of unresolved problems in Russia. Many insurers find the price of MTPL too expensive (Insurance in Russia).

The growth of MTPL insurance rates since 1th of April 2015 causes 30 % rise in the price of insurance policy. In the opinion of governing body of the Central Bank of the Russian Federation the rise in rates allows to stabilize the crisis in insurance market. The insurers also think that the rise in MTPL INSURANCE rates is necessary because of the fall of ruble exchange rate that causes the increase in the price of maintenance, spares and parts for the cars. Moreover, Russian insurance market is at the stage of formation and the competition between insurers is low.

Last year, for example, in Priamurie region only one insurance company operated for several months. Nowadays large insurance companies such as "RESO-garantiya", "Ingostrah", "MAKS" etc. dominate the car insurance market. Taking it into consideration State Duma Committee on financial market endorsed Belgian amendments proposed for the second reading of the bill on the organization of National reinsurance company. Under these amendments, the Central Bank of the Russian Federation gets the right to found the state corporations dealing with MTPL INSURANCE. The director of insurance market department of Central Bank of the Russian Federation I. Zhuk explained that after the enacting the amendments the Central Bank of the Russian Federation will be able to found the company dealing with MTPL INSURANCE within the framework of special law on reinsurance. Ministry of Finance supports this initiative as well. Aleksei Moiseev, Vice-minister of Finance, told at Committee meeting: "We support the vesting of the Central Bank of the Russian Federation with the authority to found such a company" (CB RF moget poluchit parvo sozdanii goslopanii po MTPL INSURANCE).

Thus the state intends to control the most problematic type of compulsory insurance. But in this case different kinds of problems might arise, such as, for example, it would be more difficult to adapt to current European system of compulsory civil liability insurance of vehicle owners. The reason for that is the fact that in Europe this kind of insurance is operated by private companies only, whereas the state is to control and regulate their business and not to participate directly.

According to the survey of "Ekspert RA" foreign insurance companies keep leaving Russian market. In Russia the accumulative insurance develops slowly, but the hull insurance indemnities especially in MTPL insurance, grow faster than the fees for these types of insurance. The insurers demand the increase in MTPL insurance rates and tightening of market regulation. They threaten to boycott the

compulsory types of insurance (mainly, MTPL insurance), if negative tendency persists (Bodner, Druzin, 2014).

### **The Problems of Integration of Russian Car Insurance in Eurasian Economic Community (EurAsEc).**

It is hard to imagine the Russian state companies in EurAsEc insurance market, approved by the Protocol of the EurAsEC Interstate Council at 27th of November 2009 in Minsk. According to the Treaty on the establishment of the Eurasian Economic Community signed on 10th of October 2000 and developing the provisions of Agreement on cooperation in insurance within EurAsEc signed on 27th of April 2003 the goals of the Protocol are to create the common insurance market and to develop and implement the measures to protect the rights and legal interests of common insurance market participants (Official site of Eurasian Economic Community) within EurAsEc.

Under the abovementioned Protocol, Member States are to establish the common principles of licensing for the insurers, the common approaches to the MTPL insurance, the unified requirements for the procedures for formation of the statutory capital and insurance reserves, classifications of the types of insurance and the procedures of the transfer of risks to the reinsurance for non-residents. Member States have to have the common principles of the requirements definition of the solvency and financial stability of the insurers and the unified requirements for the protection of the insurance customers' rights. The coordination of realization of the Protocol falls on Council of Heads of insurance supervision and regulation of insurance business to the Integration Committee of Eurasian Economic Community. However, the foundation of Russian state reinsurance company can cause the situation when the whole insurance market of EurAsEc (car insurance market included) will consist of state companies of Member States only. For example, the largest insurer in the Republic of Belarus is "Belgosstrah" (Belarusian republican unitary insurance company), or in Kazakhstan - "State annuity company".

### **CONCLUSION**

Presumably, the increase in tariffs, at least by 20-25 per cent this time, is to stabilize the situation on the Russian car insurance market. It is possible when the car prices are rising, but nowadays because of the falling ruble the car prices are decreasing, and such an increase in tariffs will cover only the losses of insurance companies while there will be no increase in the efficacy of this type of insurance. Moreover, the new requirements to the limits of liability in the Green Card System oblige to amend Article 7 of Federal law on MTPL insurance concerning the forming of the insurance amount, within which the insurer is obliged to cover the victim's damages after each insurance case and that should be increased at least up to RUB



1 000 000 and concerning the redress of injury inflicted on the life or health of each victim and on the property of each victim. The problems of unification of national legislation concerning the insurance, i.e. the creation of the common insurance market within the Customs Union, are still very important, civil liability insurance included, since the development of international business cooperation and the increase in international road transportations and the mutual road tourism demand the coordinated efforts to solve the problems of insurance protection of citizens both within and beyond the resident country. The new methodical approaches to the regulation of the limits of civil liability insurance of vehicle owners are also needed, they should be advanced to the European standards to some extent.

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