

REVIEW OF LEGAL AND INSTITUTIONAL INSTRUMENTS
TO FACILITATE INTRA-REGIONAL TRANSPORT AND TRADE
WITHIN SUB-SAHARAN AFRICA

ANNEX VI-16

**PROTOCOL ON THE ESTABLISHMENT OF A THIRD PARTY
MOTOR VEHICLE INSURANCE SCHEME (COMESA)**

PREAMBLE

WHEREAS it is provided in sub paragraph (e) of Article 85 of the Treaty that the Member States shall adopt minimum requirements for the insurance of goods and vehicles;

AND WHEREAS it is desirable to prescribe by means of this Protocol a third party motor vehicle insurance scheme.

NOW THEREFORE it is hereby agreed as follows:

PART ONE

GENERAL PROVISIONS

ARTICLE 1

Interpretation

For the purposes of this Protocol, the following terms and expressions shall have the meaning hereby assigned to them:

"accident" means a happening related to a motor vehicle causing personal injuries or material damage or both and therefore engages the third party liability of the policy holder;

"Council of Bureaux" means the Assembly of National Bureaux which shall co-ordinate and supervise the activities of the National Bureaux;

"Common Market" means the Common Market established by the Treaty;

"insurance policy" means a document issued by the insurer evidencing an agreement to insure and containing the conditions of the agreement concluded whereby the insurer undertakes for a specific fee to indemnify the insured for the losses arising out of the perils and accidents specified in the contract;

"motor vehicle" means any motor vehicle which is constructed or adapted for the use of carriage of persons or goods by road, and any trailer or semi-trailer designed to be drawn by such a vehicle;

"National Bureau" means a government designated agency in each Member State that shall be responsible for the management and control of the Common Market Yellow Card;

"policy holder" means a legal or a natural person holding an insurance policy on account of premium paid for the coverage of the liability in respect of the insured motor vehicle;

"the yellow card" means the insurance card that shall be issued by the National Bureaux of the Member States and shall be evidence of a third party liability cover obtained in accordance with the laws and regulations in force in the country where the accident occurred;

"Treaty" means the Treaty for the Establishment of the Common Market for Eastern and Southern Africa.

ARTICLE 2

Objective

By this Protocol there is hereby established a compulsory third party motor vehicle insurance scheme providing at least minimum guarantees as those required by the laws in force in the Member States when the vehicles insured are transiting the territories of other Member States.

ARTICLE 3

Structure of the Scheme

1. The third party motor vehicle liability insurance scheme established by this Protocol shall have, as its legal technical and financial basis, the guarantees which are afforded to motorists proceeding to the Member States by taking out an insurance policy on the usual terms with an insurer authorised to undertake this type of business in the country which is the point of departure for the journey.
 2. The scheme shall be based materially on a Common Market Yellow Card hereinafter referred to as the "Yellow Card" and as defined in Article 6 of this Protocol.
 3. The Yellow Card shall be issued by a National Bureau in accordance with the provisions of Article 13 of this Protocol. The Yellow Card shall be issued to motorists through the insurers with whom they have taken out a valid liability insurance policy when driving in their own country.
 4. Each National Bureau shall settle, on behalf of its member insurers, claims arising from accidents caused abroad by holders of the cards it has issued and shall also handle claims arising from accidents caused in its country by holders of cards issued by the National Bureaux of the Member States.
- The legal, administrative and financial operation of the scheme established by this Protocol shall be co-ordinated and supervised by the Council of Bureaux of which all the National Bureaux of the Member States shall be members in accordance with the provisions of Article 16 of this Protocol.

PART TWO

REGULATIONS CONCERNING THE YELLOW CARD

ARTICLE 4

Participants in the Scheme

1. The Member States shall participate in the scheme as principal participants.
2. Insurers, irrespective of their legal or financial structure, which are authorised by the competent authorities of their countries of activity to undertake insurance operations against liability risks in respect of motor vehicle accidents, shall participate in the scheme as subsidiary participants. The participation of such insurers in the present scheme shall be subject to their membership in the National Bureau of their countries of activity.

ARTICLE 5

Obligations of the Participants

1. The responsibilities of a Member State shall be, *inter-alia*:
 - (a) to recognise the validity of the Yellow Card in its territory and to enact laws and regulations for the establishment of the card scheme, and particularly for the designation of its National Bureau;
 - (b) to ensure that its National Bureau is established and functions in accordance with the provisions of this Protocol and that it joins the Council of Bureaux and complies with its decisions;
 - (c) to guarantee the solvency of its National Bureau; and
 - (d) to ensure that either its government or the National Bureau deposits with its Central Bank or a designated Commercial Bank a minimum of ESACU 200,000 in the form of either a letter of credit or security, to guarantee its performance.
2. The obligations of a subsidiary participant shall be:
 - (a) to issue to its policy holders Yellow Cards guaranteeing such policy holders adequate cover against motor vehicle third party risks they incur in the countries which they visit;
 - (b) to undertake, by way of reimbursement to the National Bureau, payment of compensation for damages and any accessory or related expenses; and
 - (c) to contribute to the operation of the National Bureau and, through the Bureau, to the operating expenses of the Council of Bureaux of Bureaux.

ARTICLE 6

The Common Market Yellow Card

1. The Yellow Card is hereby established.
2. The Council of Bureaux shall determine from time to time matters of form related to the Yellow Card which shall be uniform.
3. The Yellow Card shall include but not be limited by the following particulars:
 - Name and address of the issuing National Bureau;
 - Name and address of the insurer;
 - Identification of the vehicle;
 - Name and address of the policy holder;
 - Date of issue and of expiry of the card;
 - Name and address, in each contracting party, of the National Bureau which the policy holder is to notify in the event of an accident;

- Number of the insurance policy;
 - Serial number of the card;
 - List of countries in which it is valid;
 - Signature and stamp of the insurer; and
 - Signature of the policy holder.
4. The Yellow Card which shall be the means of effecting a compulsory motor vehicle third party insurance scheme within the Common Market, shall be printed in the English, French and Portuguese languages.
 5. The guarantee provided by the Yellow Card shall cover the liability incurred by the holder of the card in accordance with the laws of each member country which he visits.
 6. Notwithstanding the terms of the insurance policy under which it is issued, the Yellow Card shall provide all the guarantees required by the laws or regulations governing compulsory motor vehicle insurance in the country in which the accident occurred.
 7. The Yellow Card shall be recognised as a valid certificate of insurance in the territories of the Member States in which the production of such a certificate is required either within the national territory or at its frontiers, as a condition for circulation of motor vehicles.
 8. For a Member State in whose territory insurance is not compulsory by law, the guarantee provided by the Yellow Card shall correspond to the third party liability on the motorist in accordance with the laws and regulations in force in the Member State where the accident occurred.

ARTICLE 7

Validity of the Yellow Card

1. The Yellow Card shall be issued for a period of time determined in advance, irrespective of the number of journeys to be performed, the period in question not exceeding one year.
2. The Yellow Card shall be valid for one specific vehicle and shall in no circumstances be transferable to another vehicle.
3. During the period of its validity, the Yellow Card shall constitute proof of the existence of an insurance policy.

PART THREE

THE NATIONAL BUREAU

ARTICLE 8

Designation of the National Bureau

The designation of each National Bureau shall be determined by the legal provisions in force in the territory of each Member State. Its mode of operation shall be determined by the legal instrument by which it is designated.

ARTICLE 9

Composition of National Bureau

In accordance with paragraph 2 of Article 4 of this Protocol, each National Bureau shall be composed of insurers authorised by the local supervisory authorities for insurance against motor vehicle liability risks. In a Member State where one single State-owned insurance company has the monopoly of insurance operations, that Member State may designate that company to act as the National Bureau of that country.

ARTICLE 10

Financing of the National Bureau

The National Bureau shall be financed by the contributions of its members. The amount and method of payment of contributions shall be determined by the National Bureau at the time of admission to membership.

The members shall undertake to place at the disposal of the National Bureau as advances, at its request, the sum necessary for its operation.

ARTICLE 11

Withdrawal of Designation and Replacement of the National Bureau

The withdrawal of designation of a National Bureau shall be at the initiative of the Member State. Provided that before the withdrawal becomes effective, the Member State shall notify the Council of Bureaux at least six months prior to such withdrawal; and the notification shall be accompanied by the conditions and modalities of such withdrawal and replacement of the National Bureau with a new designated one.

ARTICLE 12

Functions of the National Bureau

The National Bureau shall undertake the functions of issuing and handling agencies.

ARTICLE 13

The National Bureau as the Issuing Agency

As an issuing agency, the National Bureau:

- (a) provide the Yellow Card forms to insurers which are members of the National Bureau and which request them; the National Bureau shall arrange for the printing of the cards and shall allot to each of them a serial number. The insurers shall keep a record of card holders and shall undertake not to issue cards to persons other than their own policy holders;
- (b) arrange with each of the National Bureau of the Member States for the receipt of statements and claims concerning accidents caused in the territory of another Member State by its policy holders, to proceed with the investigation of such accidents and to pay compensation on request, supported by the usual documents of proof. In the case of claims for damages expected to exceed the amount to be determined by the Council of Bureaux the National Bureau shall obtain prior authorisation from the issuing Bureau before agreeing to any settlement;

- (c) shall reimburse free of transfer or exchange charges a handling agency which has paid compensation in the currency of its own country;
- (i) the total amount paid by way of damages, expenses and disbursement or, where the settlement is made by amicable agreement, the amount agreed in the settlement including agreed expenses. Fines shall on no account be reimbursed;
 - (ii) the expenses actually incurred in the investigation and settlement of the claim; and
 - (iii) the handling fee which shall be determined in advance and for all cases by the Council of Bureaux; and
- (d) may use the services of the Clearing House of the Common Market to effect such transfers.

ARTICLE 14

The National Bureau as a Handling Agency

As a handling agency, the National Bureau shall perform the following operations:

- (a) It shall act in the best interests of the issuing Bureau as soon as it is informed of an accident caused in its country by the holder of a Yellow Card issued by the National Bureau of a Member State. In processing the claim, it shall undertake necessary verification concerning the circumstances of the accident and, on the basis of the findings, take any administrative or non-judicial action that it deems necessary. As provided by paragraph (b) of Article 13 of this Protocol, it may without the prior authorisation of the issuing Bureau, settle claims up to a limit to be fixed by the Council of Bureaux. It shall, in any case, advise the Issuing Bureau of any claims it is handling on the latter's behalf. At the judicial level, the Bureau, in its capacity as the handling agency, shall be entitled to take any steps to institute or to contest any legal action. In the case of claims for damages below a certain amount established by agreement with each of the other issuing Bureaux, the Bureau may agree to a settlement out of court.
- (b) It shall not knowingly entrust or relinquish the handling of a claim to one or more persons having interest in the settlement of the claim without the written consent of the issuing Bureau; and
- (c) When the compensation is equal or higher than the amount expected to be fixed by the Council of Bureaux, the handling Bureau can instruct the issuing Bureau to request its Bank to place immediately at its disposal an amount corresponding to the figure of compensation.

PART FOUR
THE COUNCIL OF BUREAUX

ARTICLE 15

Creation of a Council of Bureaux

The contracting parties agree to set up a body to be known as the Council of Bureaux whose functions are defined in Article 18 of this Protocol.

ARTICLE 16

Composition of the Council of Bureaux

1. The Council of Bureaux shall consist of one representative and alternate representative designated by each National Bureau.
2. The Chairman and Vice-Chairman of the Council of Bureaux shall be elected in rotation among the members of the Council of Bureaux for a term of one year.

ARTICLE 17

Meetings of the Council of Bureaux

1. The Chairman shall convene the meetings of the Council of Bureaux.
2. The Council of Bureaux shall meet not later than 2 months after the entry into force of this Protocol.
3. The Council of Bureaux shall meet once a year. Extraordinary meetings shall be held at the request of any one of the National Bureaux.
4. Half the number of members of the Council of Bureaux shall constitute a quorum for both ordinary and extraordinary meetings.
5. The items to be proposed for the agenda shall be submitted in writing to the Chairman not later than 20 days before the meeting. Only items on the agenda shall be discussed.
6. The Secretariat of the Common Market shall provide secretarial services to the Council of Bureaux until such time as the Council of Bureaux shall have decided to have its own secretariat.
7. Each member of the Council of Bureaux shall have one vote and the decisions of the Council of Bureaux shall be by simple majority.

ARTICLE 18

Functions of the Council of Bureaux

The Council of Bureaux shall:

- (a) have, as general function, the orientation, co-ordination and supervision over the whole of the insurance scheme established by this Protocol;
- (b) orientate, co-ordinate and supervise the legal, technical administrative and financial operations of the National Bureaux;

- (c) prepare an Inter-Bureaux Agreement which shall be signed by all the National Bureaux and which the Council of Bureaux shall be entitled to amend. This Agreement shall in particular determine the maximum amounts for the delegation of the powers of settlement by one National Bureau to another, and the minimum handling fee payable for each case handled by them;
- (d) settle disputes between two or more National Bureaux as to the implementation of the provisions of this Protocol. The decisions of the Council of Bureaux shall be notified to the National Bureaux and the Council of Bureaux shall see to the execution. The decisions of the Council of Bureaux shall be taken by simple majority. If no agreement is reached, the matter shall be referred for settlement in accordance with the provisions of Chapter Five of the Treaty;
- (e) on its own initiative or on the initiative of any of the Member States, consider and, if it deems it advisable, propose changes in the laws or regulations of the Member States with a view to improving the functioning of the Yellow Card Scheme, or to harmonising the systems of compensation for damages occasioned by road traffic accident, or to improving accident prevention; and
- (f) establish its annual budget and shall fix the annual contributions to be paid by members which shall be an equal amount among its members.