

PROCEEDINGS

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COMPULSORY AUTOMOBILE INSURANCE IN EUROPE*

BY

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A study of this subject must be complex in view of the number of countries involved with differing civil codes and political ideologies. A patchwork result inevitably emerges but an effort will be made to paint a broad picture of the present legislative situation and to observe how each country has in its own way tackled the social problem of ensuring the compensation of the victims of accidents on the roads. The first to embark on legislation was Denmark in 1918, followed by other Nordic countries in the nineteen twenties, at which time laws also took effect in New Zealand and the state of Massachusetts in the U.S.A. Legislation has since become effective or is pending in many European countries and elsewhere. It is proposed to examine in some detail the British legislation and its practical application and development and thereafter to review more briefly the situation on the continent of Europe.

GREAT BRITAIN

Following the rapid increase in automobile traffic after the first world war, various attempts were made to introduce compulsory third party insurance in Great Britain following criticism by the judiciary and the public when injured third parties were unable to recover damages through motorists either having insufficient funds or being uninsured, but legislation did not reach the statute book until 1930. This followed recommendations of a Royal Commission on Transport¹ one of which was that every owner of a motor vehicle should be required to provide security by insurance or otherwise against legal liability to pay damages on account of the death of, or personal injury to, third parties sustained in connection with the use of motor vehicles on the roads. The Road Traffic Act of 1930 dealt with many aspects of the use of the roads and became effective on

* This paper presented by invitation.

¹ Report of Royal Commission on Transport, 1929.

the 1st January, 1931. Security in respect of third party automobile liability in Great Britain is now subject to the provisions of Part II of this Act, as amended by subsequent legislation contained in the Road and Rail Traffic Act, 1933, and the Road Traffic Act, 1934.

The 1930 act provides that it is unlawful for any person to use or to cause or permit any other person to use a motor vehicle on a road unless there is in force in relation to such use an insurance policy or security against third party risks which complies with the act. Excluded from this obligation are local authorities and police authorities or any person who keeps deposited the sum of £15,000² with the Supreme Court. It is not apparent why a deposit procedure, which amounts to limited self insurance, should be permitted whilst insurance must be unlimited in amount.

An insurance policy, in order to comply with the act, must be issued by an "authorised insurer" as defined in the Assurance Companies Act and cover the insured in respect of legal liability incurred for death or bodily injury caused by or arising out of the use of the vehicle on a road, with the exception that cover need not be provided in respect of accidents to third parties arising out of and in the course of their employment by the insured person, accidents to guest passengers and any contractual liability.

A security, in order to comply with the act, must be given either by an "authorised insurer" or by some body of persons which carries on in the United Kingdom the business of giving securities of a like kind and which has deposited with the Supreme Court the sum of £15,000³ in respect of that business. The givers of the security undertake to make good (up to £25,000⁴ in the case of public service vehicles and up to £5,000⁵ in any other case) failure to discharge any liability as is required to be covered by an insurance policy. This procedure is in effect a guaranteeing of financial responsibility in respect of liability for bodily injury to third parties. In practice, the security procedure is rarely employed.

Neither an insurance policy nor a security is of effect for the purposes of the Act unless the insurer or the person granting the security delivers a "certificate of insurance" or a "certificate of security" in the prescribed form. Failure to hold a policy or security and certificate is punishable by a fine not exceeding £50⁶ and/or imprisonment up to three months. The certificate must be produced to the police on demand and to the licensing authorities when applying to license an automobile. No elaborate central record of certificates is maintained, but the insurer must maintain a record and, in the event of dispute as to the validity of the cover, may be called to give evidence in court.

² \$42,000.

³ \$42,000.

⁴ \$70,000.

⁵ \$14,000.

⁶ \$140.

The 1930 act also laid down that any condition in a policy or security providing an escape of liability in the event of some specified thing being done or omitted to be done *after* the happening of an event giving rise to a claim should be of no effect in respect of such claim. This does not, however, prevent the insurer or giver of the security from recovering from the insured or the person to whom the security is given.

The 1933 act provides for liability to pay hospital charges where a payment is made arising out of the death of or bodily injury to a third party as defined in the 1930 act even where the payment has been made without admission of liability, subject to limits of £50⁶ per person for in-patient treatment and £5⁷ per person for out-patient treatment.

The 1934 act was designed to close certain gaps in the legislation. Although compulsory insurance had operated reasonably smoothly, some cases had arisen where the object of the law, namely the proper compensation of persons entitled to damages through death or injury negligently caused by the drivers of automobiles, had not been fulfilled. Loopholes in the law were revealed in circumstances such as repudiation of policies on the grounds that they were obtained by fraud, misrepresentation of material facts or non-disclosure, or repudiation of claims on the grounds of infringement of policy conditions, as for example the automobile being mechanically imperfect at the time of the claim or carrying more than the permitted load of passengers or goods.

Whilst the provisions of the 1934 act should be noted as they amend the basic 1930 law and represent the present statutory position, they are of only academic interest whilst the Motor Insurers' Bureau arrangements, to which reference will be made later, continue to operate. The measures taken in 1934 were threefold:

(1) The insurer was required to satisfy a judgment in respect of an act liability unless it obtained a declaration from a court of law that it was entitled to avoid the policy on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular. "Material" was defined as "of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions." The insurance company's position was thus safeguarded in circumstances where owing to fraudulent misrepresentation the contract was void *ab initio* but on the other hand it was not now possible to repudiate on the grounds of some minor technicality.

(2) In the event of the bankruptcy of the insured or upon a composition or arrangement with creditors or a liquidation, the rights under the policy vested in the third party.

⁷ §14.

(3) Any clause in a policy designed to restrict the insurance by reference to any of the following matters was to be of no effect so far as act liability claims were concerned,

- (a) *the age or physical or mental condition of persons driving the vehicle; or*
- (b) *the condition of the vehicle; or*
- (c) *the number of persons that the vehicle carries; or*
- (d) *the weight or physical characteristics of the goods that the vehicle carries; or*
- (e) *the times at which or the areas within which the vehicle is used; or*
- (f) *the horse power or value of the vehicle; or*
- (g) *the carrying on the vehicle of any particular apparatus; or*
- (h) *the carrying on the vehicle of any particular means of identification other than any means of identification required to be carried by or under the Roads Act, 1920.*

Any sum paid by an insurer by virtue of this provision was recoverable from the insured.

The only other section of the 1934 act materially to alter the liability of insurance companies was the requirement of a payment (twelve shillings and sixpence⁸ plus a mileage allowance) by the user of a motor vehicle to medical practitioners who provide emergency treatment to persons sustaining injury arising out of the use of automobiles on the road. This payment is an absolute liability irrespective of negligence and cover in this respect is granted by the insurance policy.

The 1930 act had provided that an "authorised insurer" meant an insurance company who had complied with the Assurance Companies Act, 1909, as amended by the 1930 act with respect to deposits. The deposit for motor vehicle insurance business was fixed at £15,000,⁹ but this safeguard did not prevent some insurers (fortunately very few) going into liquidation in the early years. Such cases naturally caused dissatisfaction both from the motorists who found themselves personally liable and from the third parties who failed to secure their proper indemnities. Accordingly the Assurance Companies (Winding Up) Acts 1933 and 1935 were passed giving to the Board of Trade powers to investigate the affairs of companies whose financial stability they had reason to doubt, and to present a petition to the court, if necessary, for the winding up of a company.

Following a few years' experience of the legislation, the Board of Trade set up in 1936 a Departmental Committee on Compulsory Insurance (not confined to automobile insurance) under the chairmanship of Sir Felix Cassel and known as the Cassel committee.¹⁰

⁸ \$2.

⁹ \$42,000.

¹⁰ Report of Departmental Committee on Compulsory Insurance, 1937.

The committee recommended *inter alia* the establishment of a central fund financed by insurers to compensate persons unable to recover through gaps in the legislation, a tightening of the control of automobile insurance companies as regards licensing, deposits and returns and further limitations upon policy conditions and repudiation of liability by insurers.

The outbreak of war in 1939 prevented the implementation of the recommendations, but developments have since taken place making the report of little practical significance at the present time.

By the Assurance Companies Act, 1946, the control of insurance companies was materially tightened and, at the same time, the deposit procedure was superseded. Control is now exercised by setting a minimum standard for solvency. This prescribes a minimum paid up share capital of £50,000¹¹ and that the value of the assets must exceed the amount of the liabilities by whichever is the greater of £50,000¹¹ or one tenth of the general (i.e. non-life) premium income in the last preceding financial year. If an insurance company cannot meet this test, the Assurance Companies (Winding Up) Acts 1933 and 1935 apply and the Board of Trade can present a petition for its winding-up on the grounds of insolvency. These solvency requirements are much more flexible than a system of fixed deposits and are likely to be in the best interest of the maintenance of a sound market as a whole.

So far as concerns the establishment of a central fund, whilst the insurance market had agreed to accept this recommendation in principle at the time of the issue of the Cassel report, it was felt that it would be far better to set up a voluntary arrangement than to have one statutorily created. Following negotiation between the market and the government departments concerned, agreement was reached that if the market combined to create a voluntary instrument it would be accepted in substitution, provided it was effective. As a result in 1946 the Motor Insurers' Bureau was formed consisting of every authorised insurer in the country. The bureau entered into an agreement¹² with the Ministry of Transport which provided that if a third party sustained death or injury in circumstances which would form the basis for a compulsory insurance claim but no insurance policy was in force, it would satisfy the judgment. After so doing the bureau has the right of recovery against the motorist concerned, one of the conditions of satisfying a judgment being that the beneficiary would assign it to the bureau. Additionally, the members of the bureau entered into a domestic agreement¹² providing that where, at the time of an accident, a policy was in force, the member who issued the policy would handle the claim as the "insurer concerned" notwithstanding that by reason of a breach of the policy conditions liability under the policy could be denied. Here also the insurer has the right of recovery

¹¹ \$140,000.

¹² Motor Insurers' Bureau (Compensation of Victims of Uninsured Drivers) Agreement, 1946.

from its insured. The bureau operates from levies made on its members proportionate to their automobile premium income to cover the claims and expenses, but where the claim is handled by the insurer as the "insurer concerned," it has to be paid out of the insurer's own funds subject to the right of recovery as previously mentioned but such rights are in practice of little material value. It was felt that outgo under this heading would for all practical purposes average out over a period and thus no individual insurer would become seriously prejudiced by a pooling operation not being applied. The agreement also provided that if visitors to Great Britain are insured against third party injury risks by an overseas branch or subsidiary of an authorised insurer, that insurer must act as the "insurer concerned" in the event of the visitor becoming a judgment debtor. The government, for its part, agreed to act as the "insurer concerned" in respect of its own vehicles.

It will be observed that by virtue of these arrangements any person protected by the act who sustains injury on the roads of Great Britain as a result of the negligent operation of an automobile upon a road is guaranteed compensation, the only exception being where the motorist is not traced. The Cassel report had indicated that the grant of a right of indemnity in such cases against a central fund might lead to serious abuse. Motorists who had injured third parties might attribute the accident to emergency measures taken on account of the act of another vehicle which could not be traced. In practice the bureau has agreed to give sympathetic consideration to claims presented where the negligent party cannot be traced. Where there is little doubt that if the owner or driver were traced a claim would lie the making of an ex-gratia payment to the victim or his dependents normally follows.

It will be appreciated that in undertaking to meet their responsibilities under the bureau arrangements insurers have voluntarily incurred considerable liabilities. In addition to the cases where no insurance is in force they have foregone all their rights under their policies, subject to the right of recovery from the insured. Insurance may have been obtained by fraud, misrepresentation or non-disclosure or policy conditions or limitations may have been breached. Even if the automobile may have been driven by an unauthorised person or by a thief the insurer must still satisfy the judgment. The practical effect is that if there is a policy in force on an automobile which causes injury to a third party, its conditions are overridden, whilst if there is no policy the market as a whole meets the claim. This was an achievement of no mean significance. It is impossible to say what the full cost of the arrangements is as it is unknown what amounts are paid away by insurers as "insurers concerned", but it is undoubtedly quite considerable and naturally in the long run is reflected in the premiums paid by the motoring community. The fact that the arrangements have been arrived at by voluntary agreement within the whole market, are working very satisfactorily and have not induced

criticism either from government or public sources is cause for congratulation. The alternative of a central fund which would have involved legislation was, in the interests of the insurance market, to be avoided and the resultant solution is regarded as a particularly happy one.

There is no statutory control over the rating of automobile insurance in Great Britain. Insurers have complete freedom to charge what rates they please, but competitive influences are a guarantee that these rates are kept to a minimum. One section of the market, known as the tariff companies, belongs to the Accident Offices Association which prescribes minimum rating schedules based on collated experience on a wide basis and fixes premiums for fleet risks. The tariff companies, however, are quite free to charge higher premiums or impose excesses (deductibles) for cases where they consider that on account of claims experience or other factors the risk is subnormal. There is in addition a very large independent market, both companies and Lloyd's underwriters, who employ their own rating schedules, and the usual beneficial effects to the public of free competition apply. The responsible attitude of the market in the control of what is, in effect, a social service combined with the holding of costs and commission to a low level has kept criticism to a minimum.

In general, rates for liability insurance are based in the case of private type automobiles on the power of the engine, the purpose for which the vehicle is used and the location of the usual garage. In the case of goods vehicles, the rating factors are the carrying capacity, the purpose for which the vehicle is used and the garage address. These factors provide the basic rates at which the majority of business is written. Other factors, however, are taken into account in assessing the terms for the substandard risk. These would vary with the ideas of individual underwriters, but common causes of penalty terms in respect of regular drivers would include,

- (a) a bad claims record with particular emphasis on frequency,
or
- (b) a poor record of driving convictions, or
- (c) agedness or youth, or
- (d) lack of driving experience, or
- (e) physical disabilities which might affect the driving control,
or
- (f) an occupation in a class not generally favoured.

So far as the vehicle is concerned, these are not individually rated according to make, so penalties might be imposed on automobiles which have an exceptional performance in relation to their engine power or where they are very old. The treatment of these factors varies in the market and may involve compulsory excesses or increased premiums or both. In extreme cases cover may be restricted

to the minimum required by the Road Traffic Acts, that is third party injury only, excluding liability to guest passengers.

Most private automobile insurance in Britain is written under what is known as a comprehensive policy which is much wider than the American policy of that name as it gives in effect an all risks cover on the vehicle (subject to a few essential exceptions) and unlimited third party cover both for property damage and for injury including guest passengers. In the case of commercial vehicles the third party risk is limited in amount as regards property damage (basically £10,000)¹³ and passenger liability is not included without extra premium. A third party only policy is available and quite freely sold in respect of automobiles of low value excluding the physical damage element of the comprehensive policy and to this can be added fire, theft and other specific risks. The minimum and lowest rated cover is for Road Traffic Act liability only, but this is not advertised or sought and usually is only offered where the insurer wishes not to be responsible for keeping a motorist off the road by declining to offer insurance.

It is only in the rarest of cases that insurance is refused entirely. As there is a statutory liability to insure, insurers recognise that it is their duty to provide a market and that the responsibility for refusing driving facilities belongs properly to the licensing authorities and the courts. In practice, outright declinatures are rare indeed.

Thus far compulsory automobile insurance in Great Britain and its practical application in the insurance market has been surveyed briefly. When comparing this with other countries perhaps the most interesting features are that liability under the act is unlimited, there is no requirement to cover property damage (other than a special requirement in respect of London taxicabs)*, the freedom of underwriting and rating, the lightness but none the less effectiveness of the governmental control in obtaining the best out of a free and independent market, and the voluntary market agreement ensuring the success of the act in achieving its main purpose of adequately compensating the victims of negligent driving.

On the whole it can be said that the act has worked very well in that its objects have been achieved with a minimum of disturbance and interference in the private insurance market. To some extent the cost of claims has increased, as also has the frequency, and this tendency may have been accelerated by the knowledge that insurance cover is always behind the negligent motorist. Some claims may have been made, as for example between members of a family or friends, which might not otherwise have arisen, and whilst the courts may have in mind in assessing damages the certainty that they will be met, there is no reason to believe that the compensation awarded

¹³ \$28,000.

* London Cab Order, 1934 (S.R. & O. 1934 No. 1346) £10,000 (Horse Cab £1000) T.P.D.

is excessive. The fact that in twenty-eight years there has been only one recorded verdict in excess of £20,000¹⁴ for personal injury to an individual arising from a road accident is some indication that the situation has not got out of hand. The general effect of the legislation may have been to increase the claims consciousness of the public, but to what extent it contributed to a tendency which may have developed in any event it is difficult to say.

Some comment is appropriate on the unlimited liability feature of the British act. Even before the act the unlimited concept was generally accepted in the British market. The view is held in some other quarters that it is wrong to grant high third party cover to a person in the lower stratum of society, on the grounds that without the knowledge that such cover is there the courts would scale the damages down to suit his financial capability. The reverse view, of course, is that the victim of a motorist's negligence is entitled to just compensation for his loss and it should not be a matter of chance who hits him. It can be argued that the purpose of compulsory insurance legislation is achieved if it ensures that compensation up to a reasonable limit is assured, and that beyond that it goes beyond a matter for social legislation. There is something to be said for this point of view, and it is interesting to note that whilst "unlimited" legislation applies in most countries of the British Commonwealth, in most other countries there are limits of varying amounts.

It is not possible to give a firm indication of the results of compulsory insurance in Britain from the viewpoint of its profitability to the insurers. This is because the bulk of the business is written under comprehensive or third party only policies and the premium for the compulsory section of the cover is not separately allocated. The amount of business written for act liability only is insufficient to give a credible experience, and in any event such business would not represent a proper cross section as normally it is only taken up by persons unable to obtain wider cover. The premiums for third party insurance have not increased as much as those for comprehensive cover, and it may be assumed that the increased cost and frequency of physical damage claims are major factors in such unfavourable trends as there are in the combined automobile experience. Automobile insurance statistics are clouded by the effect of "Knock for Knock" agreements which are universal between insurers in Britain and operate to the benefit of the third party only experience, as the insurer of a vehicle on a third party basis does not pay for collisions with other vehicles if they are insured against damage. It is worthy of note that over the last twenty years the number of persons injured in road accidents compared with the number of vehicles in use has been reduced by one half, but, whilst no statistics are available for non-injury accidents, it is believed that these have not reduced at

¹⁴ \$56,000.

all. There is not much doubt that the damage risk is the greatest hazard to the British automobile insurer.

When the act was introduced there was an upward swing in injury claims, particularly in respect of trivial cases and there was a tendency for claims to be developed by some solicitors specialising in this type of work whenever road accidents occurred. These tendencies are now less noticeable and probably the changing attitude of mind between 1931 and today may be traced to the greater social security enjoyed by the population. The act was introduced during a period of severe depression and widespread unemployment but nowadays under conditions of prosperity and nearly full employment there is less incentive to make capital out of trivial injuries.

To summarise, the legislation is on an even keel, the purpose of the act is being fully achieved and control is sufficiently firm and flexible to ensure that in the long run losses do not unbalance the companies' overall prosperity.

REMAINDER OF THE UNITED KINGDOM

Before leaving Great Britain, mention should be made of the other parts of the United Kingdom which have their own compulsory insurance laws. These are Northern Ireland, the Isle of Man, and the Channel Islands of Jersey, Guernsey and Alderney. There are no vital differences between these laws and those operating on the mainland with the exception that the Northern Ireland Act does not provide for out-patient treatment and emergency treatment. The Motor Insurers' Bureau arrangements have been extended to the territories concerned.

OTHER EUROPEAN COUNTRIES WHERE FULL COMPULSORY INSURANCE APPLIES

Having now reviewed the British arrangements in fair detail, it remains to examine the situation in the remainder of Western Europe and in view of the number of countries involved and the diversity of the legislation, comment must of necessity be confined to a few salient points in each case. The countries where full compulsory insurance now applies are eleven in number:—Republic of Ireland, Denmark, Norway, Sweden, Finland, Belgium, Luxembourg, West Germany, Austria, Switzerland and Turkey.

REPUBLIC OF IRELAND

Compulsory insurance in the Republic of Ireland became effective on the 1st February, 1934, and the legislation is contained in the Road Traffic Act, 1933 (Eire). Whilst the law is in most aspects similar to the British and follows it in the principle of requiring unlimited indemnity for bodily injury, there is an additional requirement to insure against third party property damage, subject to a limit of

£1,000¹⁵ any one event, but excluding property conveyed in the vehicle or in the insured's custody, damage to weighbridges and roads or anything below the road's surface due to weight or vibration and boiler explosion damage. Hospital payments are limited to £35¹⁶ compared with the British £50¹⁷, but there is an additional £15¹⁸ for treatment whether or not in hospital by electrical or special apparatus or by massage. There are arrangements for the indemnification of the victims of uninsured motorists on similar lines to the British Motor Insurers' Bureau.

DENMARK

Turning now to Continental Europe, it seems appropriate to start with the Scandinavian countries which were first in the compulsory automobile insurance field. The law in Denmark is dated 20th March, 1918, and, as amended on the 25th May, 1950, it requires compulsory insurance for both injury and damage with an authorised insurer to the extent of Kr.60,000¹⁹ in respect of motor vehicles and motor cycles and Kr.10,000²⁰ for each passenger for public passenger vehicles over six seats. Companies may not decline proposals but in special circumstances may quote higher rates than usual. There is an association established by authorised insurers for settling third party claims caused by uninsured or unidentified vehicles, and whilst all claims are settled in respect of uninsured vehicles only injury claims are settled in respect of unidentified vehicles. The association is kept in funds by the members proportionately to their premium income.

NORWAY

The compulsory third party automobile insurance law in Norway is dated 20th February, 1926, and as amended on the 4th October, 1950, it provides for limits of Kr.20,000²¹ any one person, Kr.10,000²² for property damage and Kr.60,000²³ any one accident. Larger limits must be insured in the case of vehicles carrying more than eight passengers. The guarantee may be in the form of a deposit of cash or securities or by an insurance policy from an approved insurer. If the guarantee is insufficient to meet all the claims arising from one accident, it is shared amongst the various claimants. The law also provides for the sharing amongst all insurers in proportion to their previous year's income of the cost of personal injury claims where the motorist is uninsured or unidentified, and the insurers have set up a claims settlement bureau for this purpose. In Norway a driver can

¹⁵ \$2,800.

¹⁶ \$98.

¹⁷ \$140.

¹⁸ \$43.

¹⁹ \$8,700.

²⁰ \$1,500.

²¹ \$2,800.

²² \$1,400.

²³ \$8,400.

only escape full liability for injury or damage to third parties where the injured party has shown gross negligence or been guilty of a deliberate act, but an interesting sidelight is the provision that if injury is caused to a dog not on a lead, the driver is not liable for damages unless the injury was caused by his wilfulness or negligence. If two or more vehicles collide ordinary rules of negligence apply.

SWEDEN

Sweden was the next Scandinavian country to adopt the compulsory principle, the law being dated 10th June, 1929. The limits required under the law as amended are much higher than in Norway, being Kr.200,000²⁴ any one person, Kr.600,000²⁵ any one accident and Kr.50,000²⁶ for property damage. There is a government controlled organisation for the supervision of rates. A particular point of interest is that an insurer's profits from compulsory insurance may not exceed 3%. If this percentage is exceeded the surplus must be deposited with the government but any deficiency in succeeding years may be made good by withdrawals from such deposit but not more than to make the profit up to 3%. Here also the law requires injury claims caused by uninsured or unidentified motorists to be settled by the insurance market and the injured party may apply to any authorised insurer he likes. In practice an association of authorised insurers has been formed to handle such claims which are paid proportionately to the previous year's income.

It is interesting to note that liability to pay damage in respect of motoring accidents in Sweden is based upon the reverse rule of proof, the motorist having to prove that he was in no degree at fault. This naturally makes the position of the insurer more difficult, and bearing in mind controlled rates and limited profits, the business is not very attractive from the insurers' viewpoint.

FINLAND

The last Scandinavian country to be considered is Finland, where compulsory automobile insurance has been effective since 1937. The laws here bear marked differences from the other countries and it is to be noted particularly that there are stringent regulations providing for financial stability of insurers, whilst it is not permissible for foreign insurers to write third party automobile risks.

The traffic insurance law in Finland has the rare requirement in continental European countries that unlimited insurance must be carried, but it also provides that the amount payable for property damage shall not exceed M.1,000,000²⁷ and for death or personal injury an annuity of M.480,000²⁸, which may be divided between de-

²⁴ \$38,600.

²⁵ \$115,800.

²⁶ \$9,700.

²⁷ \$3,000.

²⁸ \$1,500.

pendents in the event of death. Funeral expenses are payable in addition. In the case of injury medical expenses up to a maximum of M.200,000²⁹ are provided for.

As with the other Scandinavian countries, there is an association to handle claims in respect of unknown or uninsured vehicles for which the market is jointly liable. Premiums are fixed by the government and as the Act provides that these should be sufficient to pay for claims and costs there is no margin for profit other than by way of interest on reserves. In view of the unlimited insurance provisions of the law, it is of interest to note that there is a pool to cover catastrophes and membership of this is compulsory.

A plan was drawn up by a Government committee for the nationalisation of the business, but this was withdrawn owing to the opposition of the policyholders. From this one can infer that the operation of compulsory automobile business has been a success so far as the general public is concerned. The same probably cannot be said for the insurers who may regard it as a lesser evil than nationalisation, but it is understood that the class has continuously produced an underwriting loss.

Before leaving Scandinavia it should be noted that a committee has been sitting in Denmark with the object of making proposals for the uniformity of legislation in the four Nordic countries particularly with regard to limits and liabilities. It is possible that material changes in the laws in these four countries may be adopted at some future date.

BELGIUM

Two of the three Benelux countries now have full compulsory third party insurance, but Holland has not as yet adopted a full scale law. Before 1957, compulsory insurance in Belgium was confined to omnibuses, motor coaches, taxis, hire cars and goods carrying vehicles. By virtue of the law dated 1st July, 1956, the third party insurance of all mechanically propelled vehicles became compulsory from the 1st January, 1957. Notable features of the law are that the indemnity is required to be unlimited both for bodily injury and property damage, although it may be restricted to Frs.5,000,000³⁰ for third party fire and explosion damage, and that all passengers are required to be covered, other than the driver or person effecting the insurance, the spouse or close relatives of the insured living with him and employees of the insured covered by the workmen's compensation law. Goods carried in the vehicle need not be insured. It will be observed that the law is very wide in scope and it may also be noted that the injured third party has a direct right of action against the insurer and any restrictions avoiding liability are of no effect so far as third party

²⁹ \$600.

³⁰ \$100,000.

claims are concerned. The insurance has to be written on a standard form.

Insurers are required to maintain reserves consisting of cash, specified Belgian securities or real estate to cover the reserve for unexpired risks and outstanding claims, and these reserves must be not less than 60% of the previous year's income. The reserves are primarily for the benefit of persons injured in terms of the law. All approved insurers must subscribe to a central fund to compensate victims not protected by insurance. In view of the wide scope of the law this only arises in respect of motorists who are uninsured or who cannot be traced or where the car is driven by a thief. Such a fund had already been voluntarily created by insurers before the law came into force and the legislation permitted this voluntary fund to provide the machinery for the compulsory fund. The fund only applies to injury claims.

It is early yet to say how this stringent law has affected the loss experience, but it is comforting to know that, despite fears to the contrary, there has not as yet been an appreciable increase in the number of road accidents or in loss ratios.

LUXEMBOURG

Insurance has been compulsory in Luxembourg since 1932, but various modifications have been introduced and the present law is contained in the "Code de la Route, 1956". The policy is required to cover both injury and damage, and the combined limits must be at least Frs.4,000,000³¹ for motorcycles and similar vehicles, Frs.6,000,000³² for motor vehicles seating up to six and goods vehicles with a maximum weight of 3.500 Kg., Frs.15,000,000³³ for motor vehicles seating up to twenty and goods vehicles weighing over 3.500 Kg., and Frs.30,000,000³⁴ for motor vehicles seating more than twenty. If the claims exceed the policy limits, injury claims must be satisfied first. Fire and explosion property damage may be limited to Frs.4,000,000³⁵. Children under 14 years of age count as half in the calculation of the number of people transported.

The law lays down a number of circumstances in which claims may not be repudiated (e.g. drunkenness, driver unlicensed, passenger vehicle overloaded so far as third parties other than passengers are concerned) and a particularly interesting feature is that the insured is required himself to pay all claims up to Frs.2,500³⁶ and the first Frs.2,500 of claims in excess of that amount. Despite this provision third party claims have to be paid in full and the insurer is required

³¹ \$80,000.

³² \$120,000.

³³ \$300,000.

³⁴ \$600,000.

³⁵ \$80,000.

³⁶ \$50.

to recover the insured's share, which right may not be renounced except in the case of insolvency. Insurance cover may be separately obtained in this respect.

The classes of persons required to be indemnified follow the Belgian law and here also there is a direct right of action by third parties against insurers. There is, however, no redress for the victim of the uninsured or unidentified motorist, as there is no central fund, although it is possible one may be formed to remedy this unusual omission from European practice.

GERMANY

Automobile insurance in Germany was compulsory before the war, and as from 1940 new conditions were laid down which are still operative so far as the German Federal Republic formed in 1949 from the union of the three Western Zones is concerned. These provide for minimum insurance in respect of private cars of DM.100,000³⁷ for personal injuries and DM.10,000³⁸ for property damage, and for commercial vehicles DM.150,000³⁹ for personal injuries and DM.15,000⁴⁰ for property damage, with special limits for other types of vehicles, such as motor omnibuses, varying according to carrying capacity. The limit for private cars has recently been increased to DM.150,000⁴¹. Rates are subject to strict state supervision and risks cannot be declined.* Foreign visitors are required to comply with the law as from January 1957.

It should be noted also that there is compulsory insurance legislation in the Saar, requiring bodily injury cover for varying amounts between Frs.25,000,000⁴² and Frs.100,000,000⁴³ according to seating capacity, with a limit as regards any one person of Frs.12,500,000⁴⁴. The limit for commercial vehicles is Frs.62,500,000⁴⁵. Material damage must be covered up to 10% of the minimum sum insured for personal injury.

AUSTRIA

In Austria also of the Germanic countries, third party insurance of automobiles is compulsory under the federal law of 6th July, 1955. The limits required for all vehicles other than omnibuses and lorries carrying more than nine persons are S.200,000⁴⁶ for personal injuries

³⁷ \$24,000.

³⁸ \$2,400.

³⁹ \$36,000.

⁴⁰ \$3,600.

⁴¹ \$36,000.

⁴² \$50,000.

⁴³ \$200,000.

⁴⁴ \$25,000.

⁴⁵ \$125,000.

⁴⁶ \$7,800.

* Recent results have been generally very unfavourable.

to any one person and S.600,000⁴⁷ for each accident, with S.60,000⁴⁸ for property damage claims. In Austria the possessor of a vehicle is entirely responsible for injury or damage caused unless he can prove circumstances beyond his control. Where the driver is to blame, the Civil Code requires unlimited liability, but if he is not to blame his responsibility is limited in amount by statute.

SWITZERLAND

Switzerland has experienced compulsory insurance since 1932. The federal law of that year required owners of automobiles and motorcycles to insure with an approved insurer for various limits. The personal injury limits are for motorcycles Frs.30,000⁴⁹ per person and Frs.60,000⁵⁰ per accident, for vehicles Frs.50,000⁵¹ per person and Frs.100,000⁵² per accident, and for heavy passenger vehicles higher amounts up to a maximum of Frs.500,000⁵³ where there are more than twenty seats. In the event of claims arising from one accident exceeding the limit, the compensation due to each victim is reduced proportionately.

For property damage the limits are very modest being Frs.3,000⁵⁴ for motorcycles and Frs.5,000⁵⁵ for all other vehicles.

The Swiss Civil Code is Germanic in origin and here also there is almost an absolute liability upon the motorist, and anyone in charge of a motor vehicle is held liable in respect of damage caused by its use irrespective of fault. There are exceptions, however. If the accident is caused by *force majeure* (Act of God) or through the serious and exclusive fault of the third party no liability is incurred, whilst some reduction in the indemnity may be allowed according to the discretion of the court if the victim is partially at fault. In the case of non-fare paying passengers no indemnity is payable unless there is negligence on the part of the driver. The victim of a road accident may proceed direct against the insurer, but in view of this statutory subrogation the claim can only be up to the limits provided by the law. Where the claim exceeds the statutory limit he may also sue the wrong-doer.

The Swiss arrangements do not make any provision for idemnification of the victims of untraced motorists, but where the driver is uninsured the victim obtains compensation under a special cover for uninsured drivers arranged by the Government and financed out of

⁴⁷ \$23,400.

⁴⁸ \$2,300.

⁴⁹ \$7,000.

⁵⁰ \$14,000.

⁵¹ \$11,600.

⁵² \$23,200.

⁵³ \$116,000.

⁵⁴ \$700.

⁵⁵ \$1,160.

the gasoline duty. This cover is restricted to death and personal injury.

TURKEY

As a final note on countries in the mainland of Europe outside the sphere of communist influence, where full compulsory automobile insurance prevails, it may be noted that in Turkey there is a law dated 27th September, 1954, which requires cover for personal injury for motorcycles up to £T.2,000⁵⁶ for private automobiles up to £T.5,000⁵⁷ and commercial vehicles up to £T.10,000⁵⁸. For property damage the limits are for motorcycles £T.1,000⁵⁹ and for all other vehicles £T.2,000⁶⁰.

COUNTRIES WITHOUT FULL COMPULSORY AUTOMOBILE INSURANCE

FRANCE

At the date of this paper, insurance is compulsory in France only for the public transport of goods and passengers, but the public is also protected by a guarantee fund set up by law to provide compensation for bodily injuries received in road accidents where the motorist is unknown or he or his insurer is insolvent. This fund is financed by contribution on a prescribed scale from all insurers, all insured motorists and all uninsured motorists responsible for the accidents. To date the fund has been running at a considerable deficit.

A new law dated 27th February, 1958, has instituted compulsory third party automobile insurance for all vehicles and, by virtue of recently issued regulations, takes effect from the 1st April, 1959. The obligation is to insure against third party risks arising from death, bodily injury or material damage caused by a vehicle up to a minimum of Frs.50,000,000⁶¹, except that in the case of the public transport of goods and passengers the indemnity must be unlimited.

Whilst the act permits the insurer to limit his cover in certain directions, the third party claimant must always be paid in full with a right of recovery against the insured. Non-residents in France must also produce an insurance certificate, for which the international green card serves. Failing this, insurance cover has to be obtained from the customs authorities.

There is provision for the setting up of a central rating bureau with the exclusive power of rating cases where insurers have declined or required higher rates. The bureau is to study the history of each case and then fix the premium which may be either at tariff or higher

⁵⁶ \$230.

⁵⁷ \$580.

⁵⁸ \$1,160.

⁵⁹ \$110.

⁶⁰ \$230.

⁶¹ \$100,000.

than tariff coupled with an excess. The decision is notified to the proposer and to the insurer who has to cover the risk on the terms indicated. If he fails to do so, his licence to write automobile business is likely to be withdrawn. The bureau is composed of equal membership of the insurers and of bodies representing the motorists, and at each meeting a government officer will be present as observer with power to request a re-study in the event of his not agreeing with any decision.

Whilst it is believed that only 5% of motorists are at present uninsured, the majority of "scooterists" (largely youngsters) and motorcyclists have not previously bothered with insurance and these will now be forced to pay their proper contribution towards the indemnification of injured persons, thus relieving the drain on the guarantee fund. Fines for failure to insure are to be increased by 50% in favour of the fund, which will continue to operate for bodily injury claims and will also handle cases where the insurer claims non-insurance on account of non-payment of the premium.

Automobile insurance in France has been notorious in its difficulties for insurers and the new law may make prospects in this field even bleaker. Throughout the last few years, because of the preoccupation of the government in trying to check the cost of living, it has in practice become extremely difficult for insurers to obtain approval for increased rates, despite ever worsening experience. Fairly substantial increases were authorised in 1958, but since then prices have again risen and this, together with the impact of compulsory insurance, may again eliminate the possibility of profitable underwriting. The new measure is understandably unpalatable to the French insurance industry and appears not only as a danger to financial stability in view of the introduction of the compulsory element with rating control, but also as another step in governmental interference in the affairs of the companies not yet nationalised, bringing them nearer to complete integration.

ITALY

In Italy there is still no law requiring compulsory automobile insurance; yet the results from operating automobile insurance in this country are more deplorable than in most, and the relation of claims to premiums has for some years usually been in the region of 90%. Not all the ills of operating an automobile account are necessarily linked with the compulsory aspect. A draft law for compulsory insurance has now been introduced, but it appears likely it will be some time before legislation takes effect. It has already been under consideration for some years. So bad have been the results without legislation, however, that it is difficult to believe they can become worse, but there are many uninsured motorists, and the increased volume in what is already the predominant account bodes ill for private insurance.

HOLLAND

As previously mentioned, Holland alone of the Benelux countries has not yet adopted full scale compulsory insurance. The law compels the insurance of liability to fare paying passengers up to Fls. 20,000⁶² per passenger (maximum Fls. 400,000⁶³) for personal injury and up to Fls. 5,000⁶⁴ for damage to passengers' property. At present negotiations are proceeding between Holland and Belgium with the intention of introducing a new law, and dependent upon the outcome a bill may be introduced shortly, although it is not possible to say when the law would become effective. It seems insurers will be at liberty to fix rates and that they will form a bureau for the indemnification of the victims of uninsured motorists.

SPAIN

There is no compulsory insurance in Spain, but there is one feature which merits mention. If a motorist is involved in an accident involving death of or serious injury to a third party, the judicial authorities may detain the driver until such time as he produces a financial guarantee for an amount determined by the court to take care of any claim which may be awarded against him or the automobile owner. It is possible to secure cover for this guarantee under the automobile policy on payment of an additional premium for what is known as the "Fianza clause." The insurer's lawyer acts in the legal proceedings and, if the motorist has been detained, secures his release. This cannot be termed compulsory insurance, but it certainly creates inducement to insure.

PORTUGAL

There is only limited legislation in Portugal. Insurance is compulsory for public passenger vehicles for passenger liability up to Esc. 10,000⁶⁵ per seat including driver and conductor and for goods vehicles up to Esc.25⁶⁶ per kilogram of the carrying capacity. Minors can only obtain driving licenses provided they are covered for third party risks up to Esc. 100,000.⁶⁷ In the event of an accident, if proof of third party insurance is not produced, a cash guarantee may be demanded or the vehicle detained. If the accident is serious the vehicle may be seized and the driver arrested whether there is insurance cover or not. It is also of interest to note that the Highway Code provides that persons injured by vehicles or animals on the road have a right to indemnity unless the injury or damage is due to *force majeure*,

⁶² \$5,300.

⁶³ \$106,000.

⁶⁴ \$1,300.

⁶⁵ \$350.

⁶⁶ \$0.90.

⁶⁷ \$3,500.

but if the accident is due to the fault of both parties the damages are proportionately reduced. Here also there is an inducement to carry insurance.

GREECE

Insurance is not compulsory in Greece, but in the event of an accident the police may impound the vehicle which will not be released until a letter of guarantee issued by an insurance company legally established in Greece is produced.

EASTERN EUROPE

The position regarding compulsory insurance in countries under communist control is perhaps only of passing interest to anyone engaged in private insurance, as in most if not all insurance is conducted by a state institution with no scope for commercial risk bearing. In view of their participation in the "Green Card" scheme referred to later, it may be noted that in Czechoslovakia the law compels third party bodily injury cover without limit and property damage cover limited to Kcs.50,000⁶⁸ for general property and Kcs.4,000⁶⁹ for moneys and/or valuables involved in one accident.

FOREIGN TRAVEL

To complete the European picture some reference must be made to the facilities which have been provided by international co-operation to ease the way for the motorist travelling from one country to another and requiring to conform to differing compulsory insurance laws as he goes on his way. Prior to 1953 when a journey across frontiers was contemplated the arrangements were somewhat piecemeal and cumbersome, often involving arrangements between individual insurers in different countries or negotiations conducted on the frontier to purchase short term insurance. A British suggestion for an international insurance agreement was accepted in 1948 by the road transport committee of the Economic Commission for Europe set up by the United Nations Organization and following negotiation it became effective on the 1st January, 1953. Under it insurers in the countries concerned formed national bureaux (in Britain there was already the Motor Insurers' Bureau in existence) to issue on behalf of insurers International Insurance Cards, colloquially known as "Green Cards," which are signed and carried by the driver as evidence of insurance in all the participating countries. In the event of an accident involving a claim for damages the bureau in the country where the claim arises handles it as though the insurance complied with the local compulsory legislation and their expenditure is recovered from the bureau issuing the Green Card, who in turn recover

⁶⁸ \$7,000.

⁶⁹ \$560.

from their member company. The issue of a Green Card is obligatory for visitors to countries where compulsory insurance is operative and facilitates travel in that it ensures compliance with the law, takes care of questions of jurisdiction and service of process and avoids the necessity for purchasing insurance locally. In certain countries (Great Britain and Switzerland) a signed duplicate must be deposited with the authorities on entry. Green Cards are also issued for visits to countries where compulsory insurance is not effective as this simplifies procedure and may avoid official enquiries and in Greece or Spain may avoid the impounding of the car or detention of the driver. When an accident occurs the injured party normally lodges the claim with the bureau in his own country, who are authorised to accept service and pass the claim to a "handling member" for settlement. The cost of the claim is eventually recovered from the visitor's own insurers in his country of origin. If an insurer has an organisation for transacting automobile insurance in the country of the accident it can be arranged for this organisation to handle. It may be also noted that insurers who have no facilities for handling automobile insurance in Europe may make an agreement with any member of any bureau to obtain Green Cards from that member, subject to the consent of the bureau being first obtained and the member being responsible for the fulfilment of the financial obligations of the non-member insurer. The agreement has been subscribed by eighteen countries (Austria, Belgium, Czechoslovakia, Denmark, Finland, France, Germany, Great Britain and Northern Ireland, Greece, Republic of Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden and Switzerland) and has proved a remarkable achievement in the sphere of international cooperation. With the wide divergencies in the legal codes it is perhaps too much to expect that uniformity of legislation will follow.

From this review of the present or prospective legislation in Great Britain and the countries of Europe, it will be apparent that no clear pattern emerges. Some countries prescribe unlimited personal injury cover whilst others fix limits of widely diverging amounts. Some legislate for property damage and others do not. There are variations in the extent to which passengers are required to be covered. Some countries legislate for the indemnification of uninsured or untraced motorists. Others either achieve this by voluntary action of insurers or make no provision at all. There are variations in the degree of freedom of insurers to decline or to charge rates of their own choice. Methods of governmental control to ensure the stability of the insurance market are diverse. Most countries have legislative features unique to themselves, often influenced by the nature of the common law or civil code into which the statutory law must fit. There is only one completely common feature. In every country the legislation has been implemented with the cooperation of the private insurance market and none has seen fit to nationalise the business or to compete

with the private market through a state insurance office. It seems the private insurance industry is performing its part in implementing the law to the general satisfaction.

In the few countries where compulsory insurance is either non-existent or not complete, either legislation is pending or there are regulations designed to protect the public and encourage insurance. The principle is thus becoming generally accepted in Europe as being in the public interest and the fact that in over forty years no country has seen fit to loosen the compulsory features or to introduce government monopoly or competition, indicates that on the whole the laws have been satisfactorily implemented. Whilst the spread of compulsory insurance may be a matter for some concern to insurers as legislation tends to bring in its train more difficult conditions in which to trade, the market is conscious of its duty to make the laws work and to keep the public cost of what is in effect a social service to the minimum and has generally cooperated well with the legislature in producing the desired result. With the ever increasing number of automobiles on the roads, the automobile section of the average insurer's accounts becomes increasingly important, and if it goes seriously into deficit over a long term, the insurer cannot prosper. The experience of compulsory insurance varies widely between different countries, and it is not wise to generalise on the results. It seems from such statistics as are available that automobile business is one of the least profitable classes, but to what extent this is contributed to by the compulsory element it is impossible to say.

Objections to compulsory insurance usually arise under two heads; first that it is wrong for government to force people to do what the prudent do voluntarily and second that the government should not provide both the compulsion and the market to satisfy it through state insurance offices. The second is the more distasteful to the insurance market and by swallowing the former and in general making the laws work well insurers in Western Europe have kept their independence and a worth while measure of freedom, although state intervention in rating is apparent in a few places. As long as government control is confined to ensuring that the legislation works by providing an indemnity to the innocent victims of road accidents, insurers have little to fear from it; it is when government also controls the premiums that trouble develops for the insurance industry. Political pressures often prevent the authorisation of basic rate increases shown by claims experience to be essential to preserve a sound market, whilst the prohibition of adequate premium penalties on those who cause the accidents mean that they are being subsidised by those who drive with care and also by the insurance market as a whole. When this situation develops the stability of the business becomes seriously threatened.

January, 1959.

NOTE: Dollar equivalents of European currencies quoted in footnotes are approximate at exchange rates ruling on 31st December, 1958.