

Nomination of correspondents by insurers operating under Freedom to provide Services or Freedom of Establishment

Guidelines

1. Executive summary

According to European legislation, insurance undertakings can perform insurance activities in their own Member State where they have their head office as well as in other Member States. In other Member States than the one where they have their head office, they can operate under Freedom to provide Services (FOS) or under Freedom of Establishment (through a branch office; FOE).

Under the Green Card System, Motor Third Party Liability (MTPL) insurers can nominate correspondents in other countries participating in the Green Card System.

Having regard to the FOS and FOE system, MTPL insurers can thus nominate correspondents in other countries, both for the own activities, performed in the own Member State and for their operations in other Member States under FOS or FOE.

In order to avoid confusion, the Council of Bureaux instructs MTPL insurers only to nominate one and the same correspondent in a specific country, be it for the insurer's activities performed in the own Member State where they have their head office ("the home Member State") or for the activities performed under FOS or FOE in another Member State ("the host Member State").

This paper explains the practical consequences of this principle for insurers, wishing to nominate correspondents in other countries participating in the Green Card System.

2. Freedom to provide Services and Freedom of Establishment

In accordance with European law, the taking-up of the business of insurance is subject to prior authorisation, which is to be given by a Member State's supervisory authority. Such authorisation for a specific class of insurance activities is to be valid for the entire Community (all Member States).

In that way, an insurer having received authorisation in its own Member State (the home Member State) for MTPL insurance (class 10) can offer MTPL insurance in another Member State (the host Member State) or other Member States by way of:

- the right of establishment or Freedom of Establishment (FOE), which means that the insurance activities are performed via a branch, located in the host Member State. The branch does not have a separate legal personality distinct from the insurance undertaking;
- the freedom to provide services or Freedom of Services (FOS), which means that activities are performed in the host Member State directly from the insurance undertaking's head office.

In that way, it is even possible that an insurance undertaking does not perform any insurance activities in the home Member State but is merely active under FOS or FOE in other (host) Member States.

3. Consequences for the Green Card System

The same European legislation requires insurance undertakings operating by way of FOS or FOE to be a member of and participate in the financing of the host Member State's national Bureau and national Guarantee Fund.

In order to protect victims of accidents, insurance undertakings operating by way of FOS or FOE are required to appoint a representative, resident or established in the host Member State's territory and who shall have sufficient powers to represent the insurance undertaking in relation to victims of road traffic accidents. For the sake of clarity, the function of *representative* in this context is to be distinguished from the function of a *claims representative* in the sense of Article 21 of the Codified Motor Insurance Directive (Directive 2009/103/EC of 16 September 2009).

Certain Member States only require insurance undertakings to be a member of that Member State's national Bureau if MTPL insurance is offered in that Member State. In that way it is possible that an insurance undertaking, having received its authorisation in the home Member State, does not offer any MTPL insurance in that home Member State but merely operates under FOS or FOE in other Member States. It will then not be required to be a member of the home Member State's national Bureau. On the other hand, it will necessarily have to be a member of the host member State's national Bureau.

Under the Green Card System, MTPL insurers can nominate correspondents in other countries also participating in the Green Card System. Such nomination is possible not only for the activities performed in the home Member State, but the insurance undertaking can also nominate correspondents for the activities performed in host Member States under FOS or FOE.

4. Need for clarity / avoiding confusion

The Council of Bureaux wishes to increase transparency in the nominations of correspondents and is willing to avoid confusion for victims of road traffic accidents who want to find the competent correspondent of an insurer in the country where the accident occurred. In order to obtain that goal, the Council of Bureaux instructs insurance undertakings only to appoint one and the same correspondent in a given country, being it for the insurer's MTPL activities performed in the home Member State or for the insurer's activities performed in a host Member State under FOS or FOE.

In that way, situations are avoided in which one and the same insurance undertaking would be represented in the same country by two different correspondents, depending on whether the vehicle causing the accident is insured by the insurance undertaking active in its home Member State or in another Member State under FOS or FOE.

For these reasons, insurance undertakings are requested to make sure that they only nominate one and the same correspondent in a specific country, be it for the insurer's activities performed in the own Member State where they have their head office (the home Member State) or for the activities performed under Freedom to provide Services (FOS) or Freedom of Establishment (FOE) in another Member State (the host Member State).

5. Consequences for the practicalities to nominate correspondents

According to Article 4.3 Internal Regulations (IR), "*only a bureau shall have the authority, on the request of one of its members, to send to another bureau a request for approval of a correspondent established in the country of that bureau*".

The national Bureau of the country where the correspondent is to be approved is the best in place to watch over the rule that only one correspondent can be nominated in its country for one and the same insurer (either acting in its home Member State or in other Member State, under FOS or FOE). The Council of Bureaux considers that this national Bureau can better control this principle than the national Bureau of the home Member State or of the host Member State.

The national Bureau of the home Member State is less appropriate to watch over this uniformity because:

- in the spirit of Article 4.3 IR, the request for approval of a correspondent is to come from the Bureau where the "insurance activities originate from". In case of insurance activities performed under FOS or FOE, this is the Bureau of the host Member State. In case of necessity, it is this Bureau who will be the guaranteeing Bureau under the rules of the Green Card System;
- in some cases, the insurance undertaking is merely operating in other Member States by way of FOS or FOE and does not perform any MTPL insurance activities in the home Member State itself. Since there are Member States that only require insurers to be a member of the Bureau in case MTPL insurance activities are performed in that Member State, it is possible that the Bureau of the home Member State does not even have any legal relationship with the insurance undertaking, because the insurer is not one of the Bureau's members. In that case, the Bureau can't send any request for approval of a correspondent, because that would be in violation of Article 4.3 IR, which sets out that a Bureau can only send such a request for its members.

The national Bureau of the host Member State is also less appropriate to watch over the uniformity because it does not know in what other Member States the insurance undertaking may still be active.

As the national Bureau of the country where the correspondent is to be approved is the best in place to watch over the uniformity rule, the Council of Bureaux has taken the following decision in 2012:

The following procedure shall apply if the nomination of a correspondent is requested:

If it comes to the knowledge of the Bureau which has to approve the nomination of a correspondent that the insurance undertaking, either for its activities in the Home Member State or for its branch office or under freedom of service, has already nominated another correspondent in the same country, it shall refuse the later nomination and it shall inform the Bureau which requested this nomination accordingly.

The Bureau thus informed shall then invite its member to decide on the nomination of a single correspondent for all its activities in the said country.

Explanation:

Insurance undertakings can operate in other countries than their Home Member State under freedom of establishment (through a branch office) or freedom to provide services (FOS). In both options the insurance undertaking is required to join the Bureau of the Member State where insurance activities are performed. Neither the branch office, nor the activity under FOS constitutes a legal entity in that country. The only legal entity is the insurance undertaking. It follows that only the insurance undertaking can require the nomination of a correspondent. In the interest of transparency for victims, any one insurer should only be able to nominate one correspondent in another country.

The Bureau of the country of the nominated correspondent is in the best position to identify that an insurance undertaking proposes to nominate more than one correspondent and to take action. It is also in its interest to take action in view of the position of victims of accidents in its territory.

It will in such a situation refuse the nomination of the second correspondent and inform the Bureau which requested this nomination. That Bureau will then contact its member and invite it to harmonise the nomination of its correspondents in its own organisation.

The text of this decision has been inserted in the Explanatory Memorandum to the Internal Regulations, under Article 4.1.

6. Instructions for insurers

In order to ensure the smooth functioning of the rules set out above, insurers are required to observe the following instructions when requesting the approval of a correspondent:

- It is in the first place the insurance undertaking's head office that should watch over the uniformity in the nomination of correspondents. The insurer is the best in place to coordinate this nomination process and to ensure that the approval of only one correspondent per country is requested for;
- The request for approval of a correspondent is to be made by the Bureau where the activities are performed for which the insurer wishes to nominate a correspondent, which operates as guaranteeing Bureau. This means:
 - ☞ The Bureau of the home Member State for the insurer's activities performed in the home Member State;
 - ☞ The Bureau of the host Member State for the insurer's activities performed under FOS or FOE in the host Member State.
- In case the request for approval of a correspondent relates to the activities of an insurer acting in a host Member State under FOS or FOE, the request should be accompanied by a letter of the insurer's head office in the home Member State, approving the requested nomination. In that way, the approving Bureau has certainty that the head office is aware of the nomination and that the nominations should be coordinated.
- In case of non-compliance with the rule of uniform nomination of a correspondent, the Bureau of the country of accident (the handling Bureau) can decide to take over the handling and settlement of a claim from a correspondent in accordance with Article 4.5 IR.