



N/REF : **CIRCULAIRE N°3/2013**

Objet : Penalty for lack of information of the social security having recourse against the author of a traffic accident

Paris, le 19 mars 2013

All bureaux

This circular aims to draw your attention on new financial penalties which can be imposed to insurers due to a breach of their obligation of information of the French social organisms.

A law of 21st December 2011 introduced a new obligation and increased the penalties imposed to the insurance companies which failed to inform the social security of a traffic accident or of a transaction.

1) Information to be given to the social organisms :

Before the law of 2011, some obligations were already existing :

- Obligation to inform the social organisms of the occurrence of a traffic accident within 3 months following this occurrence.

In case of failure, the penalty was not too much deterrent.

- Obligation to inform the social organisms, 15 days before an agreement between the author of an accident and the third party (affiliated to the social organism), if not the agreement was not opposable to the social organisms.

After the law of 2011, the existing obligations remain, but :

- A new obligation is added : the insurer is obliged to inform the social organism of any agreement concluded between the author, his insurer and the third party affiliated to these organisms.
- The financial sanctions if the insurer fails to inform the social organisms of an accident or of a transaction, can, now, be very important.

2) Sanction in case of failure

A decree n° 2012-1160 of 17th October 2012 (come into force on 20th October 2012) lays down the new penalties, which depends on the sums obtained after the recourse and on the gravity of the breach, within a limit of 50% of the sums obtained (see attached).

- If the sums due to the social security are lower than 10 000€, the penalty is equal to 50% of these sums, with a maximum of 4000 €
- If the sums due to the social security are higher than 10 000€ and lower than 50 000€ the penalty is equal to 40% if these sums, with a maximum of 15 000 €
- If the sums due to the social security are higher than 50 000€ and lower than 100 000€, the penalty is equal to 30% if these sums, with a maximum of 20 000 €
- If the sums due to the social security are higher than 100 000€, the penalty is equal to 20%



These penalties can be increased of 50 % (without maximum) in case of repetition of the failure. If an injured person, affiliated to a social organism, suffers personal damages due to an accident of which a foreign vehicle is liable in France, the obligation of information will rest, legally, on the foreign insurer of the author, or on the foreign Bureau, but the BCF agents and your members 'correspondents, will be on the front line to give this information.

3) It is the reason why the Bureau central français drew the attention of its agents and of your members' correspondents on these penalties.

In particular, we recommended them to inform the social organisms of the occurrence of an accident as soon as possible, «subject of the confirmation of the guarantee and of liability”.

We want also to stress that in case of repetition of the failure, the financial risk can be very high.

At this stage we cannot foresee which application will be made of this law by the social organisms. In this context we recommend to facilitate the task of the correspondents and of our agents in this respect, especially in giving as soon as possible the confirmation of the guarantee.

We ask you to inform your members of these financial risks.

Sincerely yours

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Manager

Attached document : 1