

Cross-border motor third-party liability claims in Europe: Functional harmonization through soft law?

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1. A cross-border motor traffic accident



2. The legal framework

A. Green Card system (GC system)

► Protection for injured parties of a road traffic accident with a foreign liable vehicle involved

- Introduced in 1949, under the auspices of the UN
- Scope: 47 states in Europe, Middle East and Asia
- Functions on the basis of private law agreements between national green card bureaux
- Overarching body: Council of Bureaux

B. Protection of Visitors system (PoV system)

► Protection for visiting victims in EU

- Introduced by the European Motor Insurance Directives (MIDs), more specifically the 4th MID in 2000
- Scope: European Union

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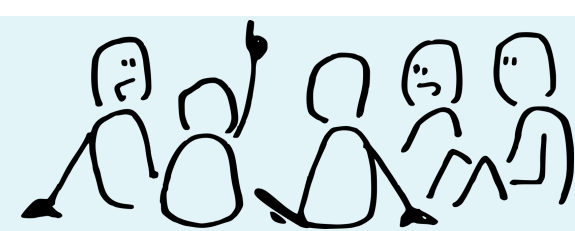
Private international law & national tort law

No harmonization of national tort law

3. Two systems, one legal framework

The GC system and the PoV system, in combination with private international law, have developed a coordinated framework for the handling of cross-border MTPL claims. The two systems demonstrate how private and semi-public coordination mechanisms (for example through private law agreements between insurers) can accommodate legal diversity and provide an operational system for cooperation without formal harmonization.

4. Notably,

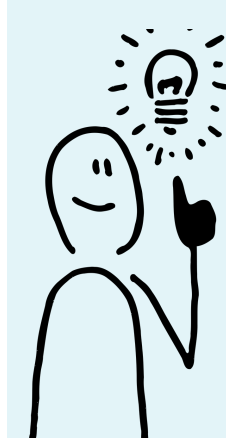


- The private law agreement on which the GC system is based (*Internal Regulations*) has been published as an annex to European Com. Decision 2003/564;
- The MIDs have modified the functioning of the GC system for EU member states;
- National Green Card Bureaux may also function as institutions under the MIDs;
- The MIDs impose specific obligations on the National Green Card Bureaux;
- Council of Bureaux now acts not only as the overarching institute for the GC system but also for the PoV system;
- Both systems are established to enhance the free movement of persons;
- Yet, the CJEU has no jurisdiction to interpret the acts underpinning the Green Card system (see *Dockevičius* 2017).

5. A hybrid legal framework in which questions arise, for example:

- Does this legal framework result in an **accountability gap**?
 - Advocate General Bobek (*Dockevičius*) states that EU institutions rely on private instruments to achieve EU objectives, yet no EU body accepts responsibility for their interpretation or effects. He argues that this results in a **'black hole of review'**.
- How is the **supervision** of this legal framework structured? What is and what should be the role of EIOPA?
- Does this accommodate a form of **functional harmonization through soft law**?

► How does this impact victim protection?



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