



---

*Plenary sitting*

---

**A8-0206/2017**

1.6.2017

# REPORT

with recommendations to the Commission on limitation periods for traffic accidents  
(2015/2087(INL))

Committee on Legal Affairs

Rapporteur: Pavel Svoboda

(Initiative – Rule 46 of the Rules of Procedure)

## CONTENTS

	<b>Page</b>
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION .....	3
ANNEX TO THE MOTION FOR A RESOLUTION: RECOMMENDATIONS FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON COMMON LIMITATION PERIODS FOR CROSS-BORDER ROAD TRAFFIC ACCIDENTS .....	7
EXPLANATORY STATEMENT.....	15
INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE .....	18
FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE.....	19

## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### with recommendations to the Commission on limitation periods for traffic accidents (2015/2087(INL))

*The European Parliament,*

- having regard to Article 225 of the Treaty on the Functioning of the European Union,
- having regard to Articles 67(4) and 81(2) of the Treaty on the Functioning of the European Union,
- having regard to Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'),
- having regard to Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the case-law thereof,
- having regard to the case-law of the Court of Justice of the European Union on the principles of national procedural autonomy and effective judicial protection<sup>1</sup>,
- having regard to the Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)<sup>2</sup> ('the Rome II Regulation'),
- having regard to the Hague Convention of 4 May 1971 on the Law Applicable to Traffic Accidents ('the 1971 Hague Traffic Accident Convention'),
- having regard to Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability<sup>3</sup> ('the Motor Insurance Directive'),
- having regard to the European Convention on the Calculation of Time-Limits<sup>4</sup>,
- having regard to the European Added Value Assessment study from the European Added Value Unit of the European Parliament Research Service (EPRS) entitled 'Limitation periods for road traffic accidents' accompanying the European Parliament's legislative own initiative report<sup>5</sup>,
- having regard to the study from the Directorate General for internal policies entitled

---

<sup>1</sup> See *inter alia*: judgment of 18 September 2003, *Peter Pflücke v Bundesanstalt für Arbeit*, C-125/01, ECLI:EU:C:2003:477, judgment of 25 July 1991, *Theresa Emmott v Minister for Social Welfare and Attorney General*, C-208/90, ECLI:EU:C:1991:333 and judgment of 13 July 2006, *Vincenzo Manfredi and Others v Lloyd Adriatico Assicurazioni SpA and Others*, joined cases C-295/04 to C-298/04, ECLI:EU:C:2006:461.

<sup>2</sup> OJ L 199, 31.7.2007, p. 40.

<sup>3</sup> OJ L 263, 7.10.2009, p. 11.

<sup>4</sup> CETS 076.

<sup>5</sup> PE 581.386, July 2016.

‘Cross-border traffic accidents in the EU-the potential impact of driverless cars’<sup>1</sup>,

- having regard to the study from the Commission entitled ‘Compensation of victims of cross-border road traffic accidents in the EU: Comparison of national practices, analysis of problems and evaluation of options for improving the position of cross-border victims’<sup>2</sup>,
  - having regard to the 2010 Commission report on an Action plan implementing the Stockholm programme<sup>3</sup>,
  - having regard to its resolution of 1 February 2007 with recommendations to the Commission on limitation periods in cross-border disputes involving personal injuries and fatal accidents<sup>4</sup>,
  - having regard to its resolution of 22 October 2003 on the proposal for a directive of the European Parliament and of the Council amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC, 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council on insurance against civil liability in respect of the use of motor vehicles<sup>5</sup>,
  - having regard to Rules 46 and 52 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs (A8-0206/2017),
- A. whereas in the Union, limitation rules on claims for damages vary widely between the Member States, so that no two Member States operate exactly the same basic rules of limitation; whereas also the relevant limitation is determined on the basis of various factors, including whether there are related criminal proceedings and whether the claim is considered tortious or contractual;
- B. whereas national limitation systems are thus highly complex and it can often be challenging to understand which is the applicable overall limitation, when and how limitations begin to run and how these are suspended, interrupted or extended;
- C. whereas unfamiliarity with foreign rules of limitation can lead to the loss of the right to make an otherwise valid claim, or to obstacles for the victims with regard to accessing justice, in the form of additional costs and delays;
- D. whereas there are only limited statistics currently available on the rejection of claims for damages in cross-border traffic accidents on the ground that a limitation period has expired;
- E. whereas in the area of cross-border traffic accidents, the only cause of action already harmonised at Union level is the one established in Article 18 of the Motor Insurance

---

<sup>1</sup> PE 571.362, June 2016.

<sup>2</sup> Available online here: [http://ec.europa.eu/civiljustice/news/docs/study\\_compensation\\_road\\_victims\\_en.pdf](http://ec.europa.eu/civiljustice/news/docs/study_compensation_road_victims_en.pdf) (30 November 2008).

<sup>3</sup> COM(2010)171.

<sup>4</sup> OJ C 250 E, 25.10.2007, p. 99.

<sup>5</sup> Texts adopted, P5\_TA(2003)0446.

Directive, enabling victims to seek compensation in their own country of residence by way of a claim for compensation brought directly against a relevant insurance undertaking or against a relevant compensation body against civil liability in respect of the use of motor vehicles<sup>1</sup>;

- F. whereas limitation periods constitute an important and integral part of Member States' civil liability regimes which operate in traffic accident cases in that a short limitation period may balance a strict liability rule or generous damages awards;
- G. whereas limitation periods for claims are essential to ensuring legal certainty and the finality of disputes; whereas, however, the defendant's rights to legal certainty and finality of disputes should be balanced with the claimant's fundamental rights to access to justice and to an effective remedy, and unnecessarily short limitation periods could obstruct effective access to justice across the Union;
- H. whereas, given the current divergences in relation to limitation rules and the types of problems that are directly related to the disparate national provisions governing trans-national personal injury and damage to property cases, a certain level of harmonisation is the only way to ensure an adequate degree of certainty, predictability and simplicity in the application of Member States' rules of limitation in cases of cross-border traffic accidents;
- I. whereas such a legislative initiative should strike a balance of fairness between litigants in respect of issues concerning limitation rules and facilitate the calculation and suspension of the running of time; whereas therefore a targeted approach that takes into account the increasing amount of cross-border traffic within the Union, without overhauling the entire legal framework of Member States is hereby envisaged;

\* \* \*

- 1. Recognises that the situation of traffic accident victims has been considerably improved over the last few decades including at the level of jurisdiction in private international law, whereby visiting victims can benefit from proceedings in the Member State in which they are domiciled for any direct claim made against the liability insurer of the car or compensation bodies;
- 2. Notes however, that the continued existence in the Union of two parallel regimes governing the law applicable in traffic accident cases depending on the country where the claim is brought, namely either the 1971 Hague Traffic Accident Convention or the Rome II Regulation, which combined with the choice of forum possibilities under Regulation (EU) No 1215/2012 of the European Parliament and of the Council<sup>2</sup>, creates legal uncertainty and complexity as well as potential opportunities for forum shopping;
- 3. Reiterates that in cross-border litigation, the length of time for investigations and

---

<sup>1</sup> See also: judgment of 13 December 2007, FBTO Schadeverzekeringen NV v Jack Odenbreit, C-463/06, ECLI:EU:C:2007:792.

<sup>2</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

negotiations is often much longer than in domestic claims; underscores in this context that these complexities could be exacerbated when new technologies play a role, such as in the case of driverless cars;

4. Recalls in this context that the subject of limitation rules should be understood as forming part of the measures in the field of judicial co-operation in civil matters within the meaning of Article 67(4) and Article 81 of the Treaty on the Functioning of the European Union (TFEU);
5. Notes that the existence of common minimum rules in respect of limitation periods in cross-border disputes is essential to ensuring that effective legal means are available for the protection of victims of cross-border road traffic accidents and to guaranteeing legal certainty;
6. Stresses that disproportionately short limitation periods in national legal systems constitute an obstacle to accessing justice in the Member States which may contravene the right to a fair trial enshrined in Article 47 of the Charter and in Article 6 of the ECHR;
7. Highlights that the significant difference between Member States' rules in respect of limitation periods for cross-border road traffic accidents creates further obstacles for victims when filing claims for compensation for personal injury and damage to property suffered in Member States other than their own;
8. Calls on the Commission to ensure that general information on Member States' rules of limitation for claims of compensation for damages in cross-border traffic accidents become available and are constantly updated on the e-Justice Portal;
9. Also calls on the Commission to undertake a study on the protection afforded in the Member States to minors and persons with a disability in respect of the running of time for limitation purposes, and on the necessity to set minimum rules at Union level to ensure that such persons do not lose their rights to claim compensation when involved in a cross-border road traffic accident and that they are guaranteed effective access to justice in the Union;
10. Requests the Commission to submit on the basis of Article 81(2) TFEU, a proposal for an act on limitation periods in respect of personal injury and damage to property in cross-border road traffic accidents, following the recommendations set out in the Annex hereto;
11. Considers that the requested proposal does not have financial implications;
12. Instructs its President to forward this resolution and the accompanying recommendations to the Commission and the Council and to the Parliaments and Governments of the Member States.

**ANNEX TO THE MOTION FOR A RESOLUTION:  
RECOMMENDATIONS FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT  
AND OF THE COUNCIL ON COMMON LIMITATION PERIODS FOR CROSS-  
BORDER ROAD TRAFFIC ACCIDENTS**

**A. PRINCIPLES AND AIMS OF THE PROPOSAL REQUESTED**

1. In the European Union, enforcement of law before the courts remains largely a matter of national procedural rules and practice. National courts are also Union courts. It is therefore for those Courts in the course of the proceedings before them to ensure fairness, justice and efficiency as well as effective application of Union law, guaranteeing that European citizens' rights are protected throughout the European Union.
2. The Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the Presidency conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point 38 thereof, new procedural legislation in cross-border cases should be prepared, in particular on those elements which are instrumental to smooth judicial co-operation and to enhanced access to law, e.g. provisional measures, taking of evidence, orders for money payment and time limits.
3. Common minimum limitation period rules applicable in trans-national personal injury and property damage litigation arising out of road traffic accidents are deemed necessary to reduce the obstacles for claimants when enforcing their rights in Member States other than their own.
4. Common minimum limitation period rules would lead to increased certainty and predictability, limiting risks of under-compensation of cross-border road traffic accidents' victims.
5. As such, the proposed Directive is aimed at establishing a special limitation regime for cross-border cases that would safeguard effective access to justice and facilitate the proper functioning of the internal market, eliminating obstacles to the free movement of citizens throughout the territory of the Member States.
6. The proposed Directive is not aimed at substituting national civil liability regimes in their entirety, but, while respecting national specificities, it is aimed at establishing common minimum rules regarding limitation periods for claims falling within the scope of application of Directive 2009/103/EC relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability having a cross-border nature.
7. The present proposal complies with the principles of subsidiarity and proportionality, as the Member States cannot act alone to set up a set of minimum limitation period rules, and the proposal goes no further than absolutely necessary to ensure effective access to justice and legal certainty in the Union.

**B. TEXT OF THE PROPOSAL REQUESTED**

## **Directive of the European Parliament and of the Council on common limitation periods for cross-border road traffic accidents**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 67(4) and 81(2) thereof,

Having regard to the European Parliament's request to the European Commission,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. For the gradual establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.
- (2) Pursuant to Article 81(2) of the Treaty on the Functioning of the European Union, those measures are to include measures aimed at ensuring, inter alia, effective access to justice and the elimination of obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.
- (3) According to the 2010 Commission report on an Action plan implementing the Stockholm programme, when citizens drive to another Member State and are unfortunate enough to have an accident, they need legal certainty on the limitation periods of insurance claims. To this end, a new Regulation on limitation periods on cross border road traffic accidents to be adopted in 2011 was announced.<sup>1</sup>
- (4) Limitation rules have a considerable impact not only on the injured parties' right to access justice, but also on their substantive rights, since there cannot be an effective right without proper and adequate protection of it. This Directive seeks to promote the application of common limitation periods for cross-border road traffic accidents to secure effective access to justice in the Union. The generally recognised right of access to justice is also reaffirmed by Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

---

<sup>1</sup> COM(2010)171.



- (5) The requirement of legal certainty and the need to do justice in individual cases are essential elements of an area of justice. Common limitation periods increasing legal certainty, ensuring that disputes are ended and contributing to an effective enforcement regime are therefore necessary to guarantee the application of that principle.
- (6) The provisions of this Directive should apply to claims falling within the scope of application of Directive 2009/103/EC of the European Parliament and of the Council<sup>1</sup> which are of a cross-border nature.
- (7) Nothing should prevent Member States from applying any of the provisions of this Directive also to purely internal road traffic accident cases, where appropriate.
- (8) All Member States are contracting parties to the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 ('ECHR'). The matters referred to in this Directive should be dealt with in compliance with that Convention and in particular the rights of fair trial and effective remedy.
- (9) The principle of the *lex loci damni* constitutes the general rule established in Regulation (EC) No 864/2007 of the European Parliament and of the Council<sup>2</sup> with regard to the applicable law to cases of personal injury or damage to property, which should thus be determined on the basis of where the damage occurs, regardless of the country or countries in which the indirect consequences could occur. According to point (h) of Article 15 of that Regulation, the law applicable to non-contractual obligations is to govern in particular the manner in which an obligation can be extinguished and rules of prescription and limitation, including rules relating to the commencement, interruption and suspension of a period of prescription or limitation.
- (10) In the field of road traffic accidents, it can be very difficult for a visiting victim to get basic information about the accident from the foreign jurisdiction within a relatively short time, such as the identity of the defendant and liabilities potentially involved. It may also take considerable time to identify which claims representative or insurer should deal with the case, to collect evidence about the accident and to have any necessary documents translated.
- (11) It is not uncommon in cross-border road traffic cases for the claimant to be very close to the expiration of a time limit before negotiations can be started with the defendant. This happens most often when the overall time limit is particularly short or when there is ambiguity about the way in which the limitation period can be suspended or interrupted. The gathering of information about an accident, which occurred in a country foreign to the claimant can take considerable time. Therefore, the running of the general time limit established in the Directive should be suspended as soon as a claim is made to the insurer or the compensation body, to allow the claimant an

---

<sup>1</sup> Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ L 263, 7.10.2009, p. 11).

<sup>2</sup> Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ L 199, 31.7.2007, p. 40).

opportunity to negotiate the settlement of the claim.

- (12) This Directive should set minimum rules. Member states may provide a higher level of protection. Such higher level of protection should not constitute an obstacle to effective access to justice that these minimum rules are designed to facilitate. The level of protection provided for by the Charter, as interpreted by the Court, and the primacy, unity and effectiveness of EU law should thereby not be compromised.
- (13) This Directive should be without prejudice to Regulation (EC) No 864/2007 and Regulation (EU) No 1215/2012 of the European Parliament and of the Council<sup>1</sup>.
- (14) This Directive seeks to promote the fundamental rights, and takes into account the principles and values recognised in particular by the Charter, and at the same time seeks to achieve the Union objective of maintaining and developing an area of freedom, security and justice.
- (15) Since the objectives of this Directive, namely setting common minimum standards for limitation periods in cross-border road traffic accidents, cannot be sufficiently achieved by the Member States, but can rather, by reason of scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (16) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, [the United Kingdom and Ireland have given notice of their wish to take part in the adoption and application of this Directive]/[without prejudice to Article 4 of the Protocol, the United Kingdom and Ireland will not participate in the adoption of this Directive and will not be bound by it or be subject to its application].
- (17) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark will not participate in the adoption of this Directive and is not therefore bound by it or required to apply it,

HAVE ADOPTED THIS DIRECTIVE:

## **CHAPTER I:**

### **SUBJECT MATTER, SCOPE AND DEFINITIONS**

---

<sup>1</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

## *Article 1*

### **Subject matter**

The objective of this Directive is to lay down minimum standards concerning the overall length, commencement, suspension, and computation of limitation periods for compensation claims for personal injury and damage to property and recoverable under Directive 2009/103/EC, in case of cross-border road traffic accidents.

## *Article 2*

### **Scope**

This Directive shall apply to compensation claims in respect of any loss or injury as a result of an accident caused by a vehicle covered by insurance against:

- a. the insurance undertaking covering the person responsible against civil liability under Article 18 of Directive 2009/103/EC; or
- b. the compensation body provided by Articles 24 and 25 of Directive 2009/103/EC.

## *Article 3*

### **Cross-border road traffic accident**

1. For the purposes of this Directive, a cross-border road traffic accident means any road accident caused by the use of vehicles insured and normally based in a Member State and which takes place in a Member State other than that of the habitual residence of the victim or in third countries whose national insurers' bureaux, as defined in Article 6 of Directive 2009/103/EC, have joined the green card system.
2. In this Directive, the term 'Member State' means Member States with the exception of [the UK, Ireland and] Denmark.

## **CHAPTER II:**

### **MINIMUM STANDARDS FOR LIMITATION PERIODS**

## *Article 4*

### **Period of limitation**

1. Member States shall ensure that a limitation period of at least four years shall apply to actions relating to compensation for personal injury and damage to property resulting from a cross-border road traffic accident, falling within Article 2. The limitation period shall begin to run from the day on which the claimant became aware, or had reasonable grounds to become aware, of the extent of the injury, loss or damage, its cause and the identity of the person liable and the insurance undertaking covering this person against civil liability or the claim representative or compensation body responsible for providing compensation

against whom the claim is to be brought.

2. Member States shall ensure that where the proper law of the claim provides for a limitation period which is longer than four years, such longer limitation period shall apply.
3. Member States shall ensure that they provide the Commission with up-to-date information on national rules of limitation for damages caused by traffic accidents.

#### *Article 5*

#### **Suspension of limits**

1. Member States shall ensure that the limitation provided for in Article 4 of this Directive shall be suspended during the period between the claimant's submission of his claim to:
  - a) the insurance undertaking of the person who caused the accident, or its claims representative provided by Article 21 and 22 of Directive 2009/103/EC, or
  - b) the compensation body provided for in Articles 24 and 25 Directive 2009/103/EC,and the defendant's rejection of the claim.
2. Where the remaining part of the limitation period once the period of suspension ends is less than six months, Member States shall ensure that the claimant is granted with a minimum period of six additional months to initiate court proceedings.

#### *Article 6*

#### **Automatic extension of periods**

Member States shall ensure that if a period expires on a Saturday, Sunday or on one of their official holidays, it shall be extended until the end of the first following working day.

#### *Article 7*

#### **Calculation of periods**

Member States shall ensure that any period of time prescribed by this Directive, shall be reckoned as follows:

- a) computation shall start on the day following the day on which the relevant event occurred;
- b) when a period is expressed as one year or a certain number of years, it shall expire in the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on which the said event occurred. If the relevant subsequent month has no day with the same number, the period shall expire on the last day of that month;
- c) periods shall not be suspended during Court holidays.

#### *Article 8*

## **Settlement of claims**

Member States shall ensure that where victims have recourse to the procedure referred to in Article 22 of Directive 2009/103/EC for the settlement of claims arising from an accident caused by a vehicle covered by insurance, this shall not have the effect of preventing victims from initiating judicial proceedings or arbitration in relation to these claims by the expiry of any limitation period under this Directive during the procedure for the settlement of their claim.

## **CHAPTER III:**

### **OTHER PROVISIONS**

#### *Article 9*

#### **General information on rules of limitation**

The Commission shall make publicly available and easily accessible, by any appropriate means and in all Union languages, general information on the national rules of limitation for compensation claims on damages caused by traffic accidents communicated by the Member States pursuant to Article 4(3) of this Directive.

#### *Article 10*

#### **Relationship with national law**

This Directive shall not prevent Member States from extending the rights set out in this Directive to provide a higher level of protection.

#### *Article 11*

#### **Relationship with other provisions of Union law**

This Directive shall not prejudice the application of Regulation (EC) No 864/2007 and Regulation (EU) No 1215/2012.

## **CHAPTER IV:**

### **FINAL PROVISIONS**

#### *Article 12*

#### **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [one year after the date of entry into

force of this Directive]. They shall immediately inform the Commission thereof.

2. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

3. Member States shall communicate to the Commission the text of the measures of national law which they adopt in the field covered by this Directive.

#### *Article 13*

#### **Review**

The Commission shall, not later than 31 December 2025, and every five years thereafter, submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive on the basis of both qualitative and quantitative information. In this context, the Commission should in particular evaluate its impact on access to justice, on legal certainty and on the free movement of persons. If necessary, the report shall be accompanied by legislative proposals to adapt and strengthen this Directive.

#### *Article 14*

#### **Entry into force**

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

#### *Article 15*

#### **Addresses**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels, [date]

For the European Parliament

The President

For the Council

The President

## EXPLANATORY STATEMENT

Almost ten years have passed since Parliament adopted a resolution on ‘Limitation periods in cross-border disputes involving personal injuries and fatal accidents’ (2006/2014 (INL)), and despite relevant public consultations and studies, the Commission has not yet prepared a specific legislative proposal.

Rules of limitation determine the time available for the bringing of a claim for compensation before a court or other competent body. If these rules are not complied with, they can determine the failure of a claim even before substantive legal issues arise.

Rules of limitation for tort claims vary widely between the Member States. Specifically, while legal systems in continental Europe refer to ‘prescription periods’, namely periods of time after the expiry of which a claim is deemed extinguished; in common law countries there are only ‘limitation periods’, which indicate the time after which the right to lodge a claim is barred, albeit the claim itself is not extinguished. What is more, discrepancies in national limitation laws exist with regard to the commencement of the running of time as well as with regard to the capacity to stop or interrupt the running of limitation.

Rules of limitation for claims are essential to ensure legal certainty and the finality of disputes. These interests should be balanced with the fundamental right to obtain an effective remedy, since unnecessarily short rules of limitation could obstruct effective access to justice across the EU. EU legislation has not harmonised the rules of limitation, neither in general nor concerning traffic accidents in particular.

In the EU, protection for victims of road accidents, which occur in a Member State (MS) other than that where the victim is resident, has been in place for over 10 years. The Motor Insurance Directive (MID) ensures that visiting victims can bring a claim directly against an insurer or a compensation body in the court of their MS of residence. The underlying objective of the Motor Insurance Directive is therefore to ensure comparable treatment of victims regardless of where in the Union an accident occurred, thereby supporting free movement of persons and vehicles, in furtherance of the internal market.

In cross-border accidents, the time limits applicable for instituting a claim are determined based on the law of the Member State where the accident occurred, in accordance with the Rome II Regulation (Articles 4(1) and 15(h)). What is more, Article 28 of Rome II ensures that the Hague Convention on the law applicable to traffic accidents will continue to apply to those Member States which are signatories to it, precluding the application of any measure of Rome II dealing with the same issue. Rome II and the Hague Convention take different approaches to the questions of applicable law.

National rules of limitation can be very complex, and victims and their legal advisors will often not be familiar with the rules of the Member States they are travelling in. Also, most cross border accident victims will take advantage of the ability to bring an action at home, meaning that the court hearing the case will have to apply a law which is foreign to it. This includes the unfamiliar rules of limitation. This, combined with the discrepancies between different limitation laws, can lead to undesirable consequences for the victims, creating

unnecessary obstacles to securing their right to reparation and to timely litigation at reasonable cost.

Additionally, following the Court of Justice's decision in case C-463/06, *FBTO v Odenbreit* and case C-133/11, *Folien Fischer*, both injured parties and the person claimed to be liable and his insurers have under the Brussels I regime a number of options open to them for bringing proceedings with respect to liability, or non-liability, for injury suffered in a traffic accident. This, coupled with the preclusive effect of the *lis pendens* rules in Brussels I, create opportunities for "applicable law arbitrage" in which the party first to court is, by his selection of forum, able to choose between Rome II Regulation and the Hague Traffic Accidents Convention and, in cases where the two regimes point to different laws, to secure more favourable outcome on limitation issues.

Generally speaking it is more difficult to organise a claim from abroad. It can take time to discover which claims representative or insurer a claim should be made against; to collect evidence about the accident; and to get any necessary documents translated. As a result, the lack of familiarity with the way in which the rules of limitation operate may cause the claimant to lose the right to claim altogether. This is especially so where the overall time limit is particularly short or where there is ambiguity about the way in which time can be suspended or interrupted.

More often however, the application of foreign rules of limitation creates additional hurdles for the claimant in trying to access justice. The situation often requires additional hours to be spent by the legal advisor dealing with the issue of limitation, which they would not have had to do for purely domestic cases. There may be additional costs if an expert in the country of the accident is called upon to provide advice about the limitation issue.

Your rapporteur is therefore convinced that the complexity of the situation and the difficulties faced by claimants, justify the harmonisation of limitation rules. Protecting access to justice and thereby supporting free movement of people within the Union constitutes a sufficient reason to harmonise rules in relation to cross border road traffic accidents. Minimum standards in relation to the main aspects of limitation law should therefore be effected in conformity with the principles of subsidiarity and proportionality.

Your rapporteur contends therefore that minimum standards regarding the overall time limit to bring a claim, the beginning of the time period and the suspension of the period, and on information obligations would resolve most of the problems currently encountered by visiting victims and could lead to savings in terms of legal costs and delays. Such harmonised rules should apply to actions falling within the scope of application of the Motor Insurance Directive, namely to actions against insurers and compensation bodies, and to the extent that they have a cross border nature. A legislative measure in these terms could be correctly based on Art 81(2) of the Treaty on the Functioning of the European Union (TFEU).

This report contains a proposal for a directive which is to be considered as a first step in facilitating a more natural and spontaneous convergence of Member States' rules in time, as part of a continuing and gradual process whilst supporting the effective realisation of the rights granted by Union law, particularly as regards access to justice.

For the detailed background to the legislative proposal, the reader is referred to the annex to



the resolution above.

## INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

<b>Date adopted</b>	30.5.2017
<b>Result of final vote</b>	+ : 18 - : 0 0 : 4
<b>Members present for the final vote</b>	Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Kostas Chrysogonos, Mady Delvaux, Rosa Estaràs Ferragut, Lidia Joanna Geringer de Oedenberg, Sylvia-Yvonne Kaufmann, Gilles Lebreton, António Marinho e Pinto, Pavel Svoboda, József Szájer, Axel Voss, Tadeusz Zwiefka
<b>Substitutes present for the final vote</b>	Pascal Durand, Angel Dzhambazki, Evelyne Gebhardt, Virginie Rozière, Kosma Złotowski
<b>Substitutes under Rule 200(2) present for the final vote</b>	Jarosław Wałęsa, Josef Weidenholzer

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

18	+
EPP	Rosa Estaràs Ferragut, Pavel Svoboda, József Szájer, Axel Voss, Jarosław Wałęsa, Tadeusz Zwiefka
S&D	Mady Delvaux, Evelyne Gebhardt, Lidia Joanna Geringer de Oedenberg, Sylvia-Yvonne Kaufmann, Virginie Rozière, Josef Weidenholzer
ALDE	Jean-Marie Cavada, António Marinho e Pinto
GUE/NGL	Kostas Chrysogonos
Verts/ALE	Max Andersson, Pascal Durand
EFDD	Joëlle Bergeron

0	-

4	0
ECR	Angel Dzhambazki, Kosma Złotowski
ENF	Marie-Christine Boutonnet, Gilles Lebreton

Key to symbols:

+ : in favour

- : against

0 : abstention