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GE zur Umsetzung der RL (EU) 2021/2118 und FH zur Benennung des Verkehrsofferhilfe e.V. als Verhandlungsstelle

Sehr geehrte Frau Dr. Mentgen,

herzlichen Dank für die Möglichkeit, als Verkehrsunfall-Opferhilfe Deutschland e.V. (VOD) zu den Gesetzesvorhaben Stellung beziehen zu dürfen.

Der Formulierungshilfe stimmen wir vollumfänglich zu.

Wir finden es richtig, dass die Verkehrsofferhilfe e.V. als Verhandlungsstelle eingesetzt wird. Durch ihre Arbeit auch zum Entschädigungsfond für Schäden aus Kraftfahrzeugunfällen im Bereich Beratung und Abwicklung hat sich der Verein auch für die Zuständigkeit für den Insolvenzfonds für Kraftfahrzeugunfälle qualifiziert.

Zu dem Referentenentwurf zur Umsetzung der EU Richtlinie 2021/2118 werden wir Ihnen zeitgerecht eine Stellungnahme zusenden.

Mit den besten Grüßen


Silke von Beesten, M.Sc.
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**GE zur Umsetzung der RL (EU) 2021/2118 und FH zur Benennung des
Verkehrsoferhilfe e.V. als Verhandlungsstelle**

Sehr geehrte Frau Dr. Mentgen,

herzlichen Dank für die Möglichkeit, als Verkehrsunfall-Opferhilfe Deutschland zu der Formulierungshilfe und dem Referentenentwurf Stellung beziehen zu dürfen.

Bei dem Referentenentwurf zur Umsetzung der Richtlinie (EU)2021/2188 finden wir die 1:1 Umsetzung sachgerecht.

Insbesondere die Möglichkeit, eine Schlichtungsstelle auch für Fälle den Insolvenzfonds betreffend einzurichten, sehen wir positiv.

In diesem Zusammenhang sollte in Zukunft die Einrichtung einer Schlichtungsstelle auch für Fälle geprüft werden, in denen das Verfahren zur Schadensregulierung sehr lange Zeit dauert. Denn eine schnelle Schadensabwicklung ist nicht nur für die Versicherer, sondern insbesondere

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für die Geschädigten von enormer Bedeutung ist. In unserer Beratungspraxis erleben wir immer wieder, dass die langen Verfahren zu Retraumatisierung und Schwierigkeiten, in den (Arbeits-)Alltag zurückzufinden, führen.

Die Ursachen dafür sind vielfältig (unerfahrene Anwälte, Gutachter, die aufgrund ihrer Nähe zum Versicherer nicht akzeptiert werden, lange Verfahrenszeiten bei Gerichten). Wir betreuen aktuell einen Fall eines Unfallopfers, das nachweislich keine Schuld an dem Unfall hat und zu 100 % erwerbsunfähig ist, im 8. Jahr des Verfahrens zur Schadensregulierung!

Zwar sind diese Fälle nicht allzu häufig, aber für die Betroffenen extrem belastend. Sie können neben dem persönlichen Leid auch zu erhöhten Kosten der Krankenkassen und anderer Sozialleistungsträger führen.

Die bisherigen außergerichtlichen Einigungsverfahren sind davon gekennzeichnet, dass lediglich die Verfahrensbeteiligten am Tisch sitzen und naturgemäß jeweils ihre eigenen Interessen möglichst unnachgiebig vertreten. Die Vermittlung durch einen unbeteiligten Dritten könnte schnellere und konstruktivere Beratungen im Interesse aller Beteiligten bewirken. Über Lösungen zur zügigen Streitschlichtung in diesem Sinn ist die VOD im Gespräch mit dem GDV. Die VOD hat, basierend auf der UN-Charta der Rechte von Straßenverkehrsoptionern (<https://unece.org/sites/default/files/2021-01/ECE-TRANS-WP1-2021-1e.pdf>), einen entsprechenden Vorschlag für einen Arbeitskreis auf dem nächsten Deutschen Verkehrsgerichtstag eingereicht.

Mit den besten Grüßen


Silke von Beesten, M.Sc.
Vorstandsvorsitzende



Economic Commission for Europe**Inland Transport Committee****Global Forum for Road Traffic Safety****Eighty-second session**

Geneva, 8-12 March 2021

Item 2 of the provisional agenda

Activities of interest to the Working Party**Charter of Road Traffic Victims' Rights****Note by the secretariat***Summary*

1. At the last session, the secretariat tabled Informal document No. 5 containing a draft Charter of Road Traffic Victims' Rights (Charter) which is the outcome of a joint collaboration between the secretariat, the Institute for European Traffic Law and the Council of Bureaux. The aim is to improve the situation of road traffic victims by alleviating the damage and pain suffered through the proposed application of ten principles concerning road traffic victims' rights. WP.1 was invited to provide feedback to the secretariat. WP.1 invited the secretariat to present the finalized Charter at this session.
2. The Chair of WP.1 asked if the Charter was envisaged to cover damage or injury arising from accidents resulting from the use of personal mobility devices (PMDs). It might be covered depending on the definition of "motor vehicles" in domestic legislation, and whether they cover PMDs. In addition, given that policy and legislative regimes in relation to PMDs are still evolving, the secretariat and its partners have not made any changes to the Charter on this issue, and recommend that if needed in the future, the Charter could be reviewed to include PMDs if the definition of "motor vehicles" under domestic legislation proves to be insufficient or unclear.
3. In any event, the principles of the Charter are neither envisaged to be exhaustive nor binding as a code of conduct. Rather, it is an appeal to provide the best possible assistance to road accident victims in their post-accident situation and to give them - or in the event of death, their surviving dependants - quickly and fairly what they deserve: a decent and respectful way of dealing with each other in meetings and a common path of compensation negotiations.
4. This document contains the finalized Charter for WP.1's consideration and support

Charter of Road Traffic Victims' Rights

UNECE secretariat– IETL – CoB

I. Preamble

1. This Charter is a joint initiative of the secretariat of the United Nations Economic Commission for Europe (UNECE Secretariat), the Institute for European Traffic Law (IETL) and the Council of Bureaux (CoB).
2. Defining the victim's rights presupposes a good level of cooperation between the victim and the entity which is responsible for compensating the victim. Such cooperation depends on good faith and cooperation by all parties. Any fraudulent intention and/or behaviour by any party will jeopardise the good relationship between the parties.
3. It is hoped that the principles recommended in this Charter will be applied to domestic (intra-national) and cross-border (international) road traffic accidents. This Charter – believed to be the first of its kind - is intended to raise awareness of the rights of road traffic victims, and to provide a general framework for a timely and transparent claims handling process.
4. The Charter does not intend to legislate in whole or in part. It does not affect national or international sources of law in any way. The Charter is intended to be a code of conduct for all those involved in the compensation of road traffic victims. Often a claim is handled correctly from a legal point of view, but the way in which the compensation is settled can still be questionable. This should be avoided by a correct and respectful behaviour of all involved parties.

II. Principles

5. **Principle 1:** A victim of a road traffic accident is any person, natural or legal, suffering material or non-material damage and/or personal injury, resulting from the use of a motor vehicle in road traffic.
6. The victim should be entitled to receive compensation in the event that damage or injury has been caused by a person or persons contravening traffic rules in operation at the time of the accident. Ideally, the right to be compensated should also include damage which is not the result of negligence or fault on the part of the driver and which has been caused solely as a result of the operation of the vehicle in traffic.
7. The victim may lose the right to receive compensation, whether fully or partially, through his or her own fault or negligence.
8. **Principle 2:** The victim should not only be able to address a claim to the person violating the traffic rules or – if based on the operational risk of the use of a motor vehicle – to its keeper. If an entity ("the compensator") was established by law to offer full or partial compensation for damage resulting from the use of a motor vehicle in road traffic, the victim should also be able to address the claim to such entity under the conditions of the applicable law.
9. **Principle 3:** The victim should be given the statutory maximum period to present the claim and the evidence related to the claim.
10. **Principle 4:** The victim's claim should be handled pro-actively, diligently and respectfully. Within an appropriate time period the victim should receive information about the process by which the claim will be handled and by whom.
11. **Principle 5:** The victim and/or their duly appointed representative(s) should be treated with fairness, dignity, respect and empathy, with due care for the situation in which the victim may be in after the road traffic accident, whilst respecting the rights of the compensator or tortfeasor.

12. The victim should receive a reasoned response regarding the acceptance or the partial or total rejection of the claim.

13. **Principle 6:** The victim should have the opportunity to be heard in the claims handling process. The compensator should provide a reasoned reply to the victim's claim within a reasonable timescale, explaining in particular the reasons for any partial or total rejection of the claim.

14. **Principle 7:** The victim should receive advance payments and/or interim payments on account of damages from the compensator if liability is determined but the compensation is not yet fully quantified. The advance payments should ideally cover the damage or injury that has already been suffered and that is not compensated by any other entity.

15. **Principle 8:** The victim should be offered reasonable time for reflection before accepting or refusing a proposal for settlement of the claim, during which the victim may seek independent professional advice prior to making a decision.

16. The victim's rights should not be compromised by any obvious incorrect or insufficient compensation. If compensation is due to the victim, the compensation should be paid on time and in full accordance with the applicable law.

17. **Principle 9:** The victim's right to compensation should not be affected by contractual clauses between the driver, keeper of the vehicle or any other tortfeasor on the one hand and their insurer on the other that may reduce the latter's obligations vis-à-vis the insured.

18. **Principle 10:** The victim should have due access to a court or any other neutral entity, in order to receive an independent assessment of his/her rights according to applicable legislation.

The rights of the victims described in the above-mentioned principles presuppose an honest and non-fraudulent intention and behaviour of the victim. They will not apply in a case where it can be determined that the victim has not acted in good faith. To the extent of what is possible (and taking into consideration the victim's injuries), the victim should show a cooperative and reasonable attitude during the claims handling process.

III. Epilogue

19. For decades, the United Nations has been striving to reduce the number of road accidents worldwide. However, preventive road safety measures alone have not been able to prevent over a million traffic accidents each year around the world.

20. The UNECE Secretariat, the IETL and the CoB wish to improve the post-accident situation of the affected victims or, in the event of death of the victims, their families, by alleviating the damage and pain suffered through the proposed application of ten principles concerning road traffic victims' rights as contained in this Charter.

21. The principles are not an exhaustive code of conduct, but rather an appeal to provide the best possible assistance to road accident victims in their post-accident situation and to give them - or in the event of death, their surviving dependants - quickly and fairly what they deserve: a decent and respectful way of dealing with each other in meetings and a common path of compensation negotiations. A fair and, in all respects, appropriate compensation should be the goal of this approach, in order to provide solace for the injustice suffered by the victim or his or her survivors.