

## **Emergency Ordinance no. 54/2016**

**on compulsory motor liability insurance for damages caused to third parties**

**by motor vehicle accidents and trams**

in force since September 19<sup>th</sup>, 2016

Consolidation of October 18<sup>th</sup>, 2016 is based on the publication in the Official Journal, Part I, no. 723 of September 19<sup>th</sup>, 2016 and includes the amendments made through the following documents:

Rectification 2016;

Latest amendment of September 26<sup>th</sup>, 2016.

Considering the well-defined role, the civil liability insurances for car owners covering the prejudices produced to third persons (RCA) have in the society and in economy from the perspective of covering the risk to the other participants in the traffic,

as a result of RCA mandatory character which makes that RCA insurance products providing is one of the critical functions the insurances market as a whole is meeting the relation to the Romanian economy and society,

because the evolutions on this market have a fast and significant impact on some wide categories of consumers and economic operators,

considering that the measures to amend the legislation regarding the civil liability insurances for car owners covering prejudices produced to third persons by vehicle accidents are aimed to re-balance and strengthen the RCA mandatory insurances market due to the need to complete the package of measures adopted by the Financial Supervisory Authority in view of stabilizing the RCA insurances market and of protecting the consumers' interests by amending the primary legislation in this field,

considering that the exceptional circumstances manifested by the dysfunctionality of car mandatory insurances market of Romania represent an extraordinary situation which has to be regulation, in compliance with the legislation in competition field,

taking into account that the evolution of national and community legislation regulating this kind of insurance required the reform of RCA insurances system of Romania and its alignment to the validated practices by the experience of several member states of European Union,

as all these aspects relate to the public interests, being an extraordinary situation whose regulation cannot be delayed and which imposes immediate measures to be taken by means of an emergency

ordinance to assure the meeting of the objectives aimed at stabilizing the RCA insurances market and the protection of consumers 'interests,

based on Art. 115 para. (4) of Romania's Constitution, republished,

Romania's Government adopts the present emergency ordinance.

## CHAPTER I Object and application field

### ARTICLE 1

#### Regulation object

The present emergency ordinance regulates the civil liability insurances for car owners covering prejudices produced to third persons by vehicle accidents of vehicles and trams, further on called RCA insurance, as well as the organization and operation of the Motor Vehicles Insurers Office of Romania, further on called BAAR.

### ARTICLE 2

#### Definitions

The terms and phrases used in the present emergency ordinance have the meaning provided by Art. 1 para. (2) of Law no. 237/2015 regarding the authorization and supervision of insurance and reinsurance activity, as well as the following meanings:

1. vehicles accident – event involving at least one vehicle and which resulted in material prejudices and/or in the damage of health and body integrity or death of one or several persons;
2. Multilateral agreement – agreement between the national offices of the insurers in the member states of European Union or between parties to the Agreement regarding the European Economic Space and of other states associated to the European Union concluded for the application of the provisions of Art. 2 of the Directive 72/166/EEC of the Council as regards the control of civil liability insurance for car owners, which came into force for the national office of Romania based on the Commission's Decision 2007/482/EC;
3. insured – the owner or user of a vehicle or tram whose delinquent civil liability is contractually taken over by a RCA insurer based on the valid RCA contract for the prejudices produced to third persons in vehicle/tram accidents;
4. RCA insurer – insurer authorized to practice RCA insurance;
5. damage advise – insurer's notification by the prejudiced person, insured or his proxies regarding the occurrence of the insured event, accompanied by the required documents to establish the RCA insurer's liability;

6. BAAR – independent and autonomous professional association of all the insurance companies, irrespective of their organization form or the state in which they have their registered premise, which, based on the law, have the right to practice in Romania the civil liability insurance for the prejudices made to third persons by vehicle accidents;

7. bonus/malus - system by which the insured/user falls within one of the bonus classes (which leads to the reduction of the insurance premium) or one of the malus classes (which leads to the increase of the insurance premiums), depending on the damages history of the insured/used during the reference period;

8. Green Paper - international insurance certificate issued in the name of the national car office, according to the Recommendation no. 5 of January 25<sup>th</sup>, 1949, adopted by the Sub-committee for road transport of the Inland Transport Committee within the Economic Commission for Europe of the United Nations Organization;

9. CEDAM – data basis on RCA contracts records, managed and developed by BAAR;

10. compensation claim – the document through which the prejudiced party expresses his/her compensation claims to RCA insurer;

11. direct compensation – optional mechanism of damages management through which the RCA insurer of the prejudiced person recovers the damage counter value from the RCA insurer of the guilty person for the prejudice;

12. RCA contract – the civil liability insurance contract for car owners for prejudices produced to third persons by vehicle and tram accidents;

13. contractor – natural or legal person concluding the RCA contract and who undertakes to RCA insurer to pay the insurance premium;

14. total economic damage – the damage of a vehicle whose repair value exceeds the market value of the respective vehicle;

15. prejudiced person – the person entitled to receive compensations for the prejudice suffered as a result of an occurred risk covered by a RCA contract;

16. RCA insurance policy – the document showing the conclusion of RCA contract and confirming the existence of civil liability insurance for prejudices produced to third parties by vehicle and tram accidents;

17. prejudice – the negative effect suffered by the prejudiced person by an occurred risk covered by a RCA contract;

18. repurchase – the prejudice part borne by the insured person in the conditions of the present emergency ordinance;

19. telematics technology – a technology using the technique of long distance sending and use of information, combining information technology by satellites and other modern communication procedures;

20. the territory where the vehicle is usually stationed:

a) the territory of the state from which the vehicle obtained a registration plate, either permanent, or temporary; or

b) in cases there is no incorporation/registration plate for a certain type of vehicle, but the vehicle has a RCA contract, or a distinctive sign similar to the incorporation/registration plate, the territory of the state in which the RCA contract or the respective sign was issued; or

c) for a certain type of vehicle, in cases there is no incorporation/registration plate, RCA contract or any distinct sign, the territory of the state in which the vehicle owner is permanent resident; or

d) in case the vehicle has no incorporation/registration plate, or the plate does not match or no longer matches the vehicle and it was involved in an accident, the territory of the state where the accident took place, in view of solving the compensation claim by the national car office or the compensations payment body;

21. car repairing unit – legal person whose registered activity object is execution of vehicles maintenance and repair works and is authorized for such activity by the Romanian Automobile Register, according to the law;

22. user – natural or legal person who, based on a contract signed with the owner/co-owner was assigned the use right of a vehicle for a certain period of time;

23. vehicle – transport means, with or without its own propelling, dedicated to the inland travel, including any type of trailer, irrespective if coupled or not, except for those running on rails, bicycles or animal –drawn transport which do not have the legal obligation to be incorporated or registered.

### ARTICLE 3

#### Territorial limits of RCA insurance covering

The territorial covering limits of the civil liability insurance for prejudices produced by vehicle accidents are:

a) Romania's territory;

b) the territories of the member states of European Union, of the state part of the Agreement regarding the European Economic Space and the territory of the Swiss Confederation;

c) the territories of the states located between two member states of European Union where there is no national car office;

d) the territories of the states where there are competent national car offices which signed the Multilateral Agreement.

### ARTICLE 4

Obligation of concluding the RCA contract. ARTICLE 4 was derogated by Emergency Ordinance 54/2016 on 19/09/2016.

The natural or legal persons owning vehicles subject to incorporation or registration in Romania, as well as the trams have the obligation to be insured for the cases of civil liability consequent to prejudices

produced by accidents generated by vehicles within the territorial limits provided in Art.3.

## ARTICLE 5

### Exceptions from the obligation to conclude the RCA contract

By exception from the provisions of Art. 4, the natural and legal persons are not obliged to conclude a RCA contract if they use the vehicles exclusively for training, races, competitions or rallies, legally organized; the vehicle owners or the competition organizers can make an optional insurance against the risks derived from such activities.

## CHAPTER II

### General provisions regarding RCA contract

## ARTICLE 6

### Concluding RCA contract

(1) RCA contract is concluded for a period ranging between one month and 12 months, multiple of one month, depending on the insured's option.

The paragraph was derogated by the Emergency Ordinance 54/2016 on 19/09/2016.

(2) By exception from the provisions of para. (1), RCA contract can also be concluded for a shorter period than one months in the following cases:

a) for vehicles incorporated/registered in other member states for which insurance is required in view of their import to Romania, for a period of maximum 30 days since the date of ownership obtainment, proved by justifying documents;

b) for vehicles dedicated to export, for a period of maximum 30 days.

(3) The payment of insurance premiums is made in full or by installments, according to the agreement between the insured person and RCA insurer; the RCA contract also produces effects if the installment of the insurance premium was not paid on the term agreed between the insured person/contractor/user and RCA insurer if the RCA insurer did not exert its right to terminate the RCA contract; the RCA contract is a writ of execution for the due and unpaid installments.

(4) RCA produces effects based on the provisions of the present emergency ordinance, of the regulations issued by the Financial Supervisory Authority, further on called A.S.F., for its application, as well as on the conclusion of RCA contract between the insured person and a RCA insurer, issued including by electronic means, according to A.S.F. regulations.

(5) The parties can also agree to include other additional clauses than those set up by the present emergency ordinance and by the regulations issued by A.S.F. in its application, except for those restricting the rights of the prejudiced person.

(6) The insured undertakes to pay the insurance premium to RCA insurer, and RCA insurer undertakes that on the occurrence of the insured risk to pay the compensation to the prejudiced third party for the prejudices produced by vehicle and tram accidents and for the expenses the latter made during the civil trial, according to legal conditions and RCA contract.

(7) On signing the RCA contract, as well as during its running, the insured person has the obligation to allow the RCA insurer the access to CEDAM data basis for the records of previous accidents and compensation claims and to supply the information requested by RCA insurer for risk assessment and the calculation of the insurance premium, as set up by A.S.F. regulations.

(8) The liability of RCA insurer starts:

a) since the day following that in which the validity of the previous RCA contract expires, for the insured person meeting the obligation to conclude the RCA insurance the latest on the last validity day of the previous contract;

b) since the day following that in which the RCA contract was concluded, for persons who did not have a valid RCA insurance at the moment of concluding a new insurance;

c) since the moment of concluding RCA contract, but not earlier than the date of coming into force of the provisional circulation authorization or the vehicle incorporation/registration for the traded vehicles which are to be incorporated/registered.

(9) IN case the information supplied by the insured person is not real at the moment of signing RCA contract, the insurance premium can be recalculated and changed by the RCA insurer after the previous notification of the insured person and his/her accord.

(10) In the case provided by para. (9), if the insured person does not express his/her accord for the change of contractual conditions, he/she can denounce the RCA contract within 20 days since the date of notification receipt.

(11) In view of maintaining the bonus/malus class, the parties can agree by RCA contract the possibility to repurchase, respectively the payment by the insured person of the counter value of the compensation for the event, the insured person compensating the RCA insurer by its quantum after paying the due compensation to the prejudiced person.

## ARTICLE 7

### RCA contract

(1) RCA contract includes information regarding:

a) the number and date of RCA contract conclusion;

b) the parties of RCA contract;

c) validity period;

- d) maximum limits of liability set up by RCA insurer;
- e) the insurance premium;
- f) number of instalments and their maturity;
- g) the intermediary, if the case;
- h) bonus/malus class;
- i) number of vehicle incorporation/registration;
- j) vehicle identification number;
- k) the states in which this document is valid.

(2) The contractual conditions for RCA insurance are established by the present emergency ordinance and A.S.F. regulations issued for its application.

(3) RCA insurers request the information required to assess the risk, according to their own criteria set up in the premium tariff and verify the accuracy of information regarding vehicle identification and technical data, the data of its owner/user.

(4) RCA insurers take the accountability for all RCA contracts and for the errors or omissions occurred in RCA contracts issuance, either directly, or by insurance intermediaries, defined according to Law no. 32/2000 regarding the activity and supervision of intermediaries in insurance and reinsurance, with further amendments and supplementations.

(5) The minimal liability limits covered by RCA insurance, according to the regulations of European Union are the following:

a) for material prejudices produced in one and the same accident, irrespective of the number of prejudiced persons, the compensation limit for accidents is established at EUR 1,000,000, in RON equivalent at the exchange rate of foreign currency market on the accident date, as announced by the National Bank of Romania;

b) for body injuries and deaths, including for patrimonial prejudices in one and the same accident, irrespective of the number of prejudiced persons, the compensation limit for accidents is established at EUR 5,000,000, in RON equivalent at the exchange rate of foreign currency market on the accident date, as announced by the National Bank of Romania.

(6) Liability limits are revised every 5 years, depending on the evolution of consumption price European index (IEPC) set up according to Regulation (EC) no. 2.494/95 of the Council of October 23<sup>rd</sup>, 1995 regarding harmonized indices of consumption prices, with further amendments, and are provided in A.S.F. regulations.

(7) RCA contract give the right to the prejudiced person, in case a prejudice occurs, to address to any car repairing unit for the repair, according to the law.

## CHAPTER III

### Termination, suspension of RCA contract and multiple insurance

#### ARTICLE 8

##### Termination of RCA contract

(1) RCA contract is terminated:

a) on the date the vehicle owner notifies RCA insurer about the transfer of the property right over the vehicle, accompanied by justifying documents;

b) on the date the vehicle is deregistration;

c) on reaching the term set up in RCA contract.

(2) RCA contract is rightfully annulled if:

a) the insured risk was produced or its occurrence became impossible before the obligation of RCA insurer has started;

b) the occurrence of the insured risk became impossible after the obligation of RCA insurer has started;

(3) In cases provided by para. (2), when the insured person has paid in full or by instalments the insurance premium, he/she is entitled to recover it proportionally to the unexpired period of RCA contract, if no compensations are paid or are due for events occurred during the insurance validity period; if the RCA insurer is obliged to pay some compensations for events covered by RCA contract, the RCA insurer is entitled to recover from the insured the insurance premium returned to him, upon request.

(4) The insured person can denounce RCA contract if the operation authorization of the RCA insurer is withdrawn or a competent court of law pronounced the decision to open the bankruptcy procedure of RCA insurer.

#### ARTICLE 9

##### Suspension of RCA contract

(1) RCA contract can be suspended upon the request of the insured person who concluded a RCA contract in the following cases:

a) for the period the vehicle circulation right is suspended according to legal provisions;

b) for the period the vehicle is immobilized.

(2) The procedure of RCA contract suspension is established by a joint order of the minister of internal affairs, minister of transports and A.S.F.

(3) The insured person has the obligation to immobilize the vehicle during the whole period of RCA contract suspension within a private space, outside the public domain, to avoid any potential damages.

#### ARTICLE 10

##### Multiple RCA insurance

(1) In case for the same vehicle there were several RCA valid contracts on the accident date, the compensation is borne in equal parts by all RCA insurers.

(2) The compensation is paid in full by the RCA insurer addressed by the prejudiced person, and later the RCA insurer will act against the other RCA insurers to recover the compensation paid in their name.

(3) The insured person has the obligation to inform the RCA insurer about having signed other RCA contracts with other RCA insurers and can choose to keep in force only one RCA contract; the option right is exerted only once during a calendar year and he can choose to terminate the contracts coming into force after the first RCA contract signed.

#### CHAPTER IV RCA insurance purpose

#### ARTICLE 11

##### General provisions

(1) Based on the same premium, valid on the whole territory of member states, RCA insurance covers prejudiced produced to third persons by vehicle and tram accidents.

(2) RCA insurer pays compensations for the prejudices produced to third persons by vehicle and tram accidents and for their expenses during the civil trial, according to:

a) the minimum level imposed by the legislation of the member state of European Union, of the states part of the Agreement regarding the European Economic Space on whose territory the accident was produced, or at the level provided by the legislation of Romania in case the latter is higher;

b) the minimum level imposed by the legislation of Romania, in case the prejudiced persons are citizens of some member state of European Union, of the states part of the Agreement regarding the European Economic Space, during a travel directly connecting two territories applying the Treaty for European Union Operation, if there is no competent national car office on the crossed territory in which the accident occurred.

(3) The compensations are paid at an amount equal to the prejudice extent up to the maximum liability limit of RCA insurer, which is equal to the highest value between the liability limit provided by the applicable legislation, according to the provisions of para (2), and that provided by the RCA contract.

## ARTICLE 12

### Covered risks

(1) RCA insurer has the obligation to compensate the prejudiced party for the prejudices proved to have suffered following the accident produced by means of the insured vehicle.

(2) Without exceeding the liability limits provided in RCA contract, according to Art. 7 para. (5) and (6) and if the insured event occurred during the validity period of RCA contract, the RCA insurer is paying compensations for:

- a) body injuries or death, including for prejudices without patrimonial character;
- b) material prejudices, including annulment and incorporation costs, stamp tax costs, expenses with prejudice limitation proved by documents, expenses to reduce vehicle value after repairs provide by documents or valuation;
- c) prejudices representing the consequence of the lack of use of the damaged vehicle, including the temporary replacement of the vehicle, based on the option of the prejudiced person;
- d) court expenses paid by the prejudiced person or expenses related to an alternative settlement of the dispute if the solution is favorable to the prejudiced person;
- e) expenses related to the transport of the damaged vehicle, belonging to the prejudiced third party, from the accident place to the damage finding center, to the repair unit chosen by the prejudiced person for vehicle repair, closest to the accident place or to the domicile of the prejudiced person, by the case, if the respective vehicle cannot be moved by its own means and the insurer does not provide transportation.

(3) Irrespective of the vehicle accident place – on public roads, on roads which are not opened to public circulation, within premises and in any other places, both during travel, and while the insured vehicle is stationary, the RCA insurer pays compensations up to the liability limit provided in the RCA contract for:

- a) the prejudice produced by the devices or installations the vehicle was equipped with, including for the prejudice produced due to the accidental separation of the trailer, semi-trailer or the side-car towed by the vehicle;
- b) the prejudice produced by the guilt of the insured vehicle driver;
- c) the prejudice produced by the good action, when the prejudice is caused by the vehicle features, action or lack of action, by means of another good engaged in vehicle movement by the accidental leak, spreading or fall of the transported substances, materials or objects;
- d) the prejudices produced to third parties as a consequence of vehicle doors opening during running or when the vehicle is stopped or stationary by its passengers, without making sure they do not endanger the travel safety of the other participants in the traffic;
- e) the prejudices produced to third persons if the vehicle is driven under the influence of alcoholic drinks or drugs.

(4) The provisions of para. (3) letter b) are applied also in cases where on the accident date, the vehicle driver:

- a) drove the vehicle without the express or assumed consent of the insured person;
- b) is not the owner of a driving license certifying his right to drive the respective vehicle;
- c) did not meet the technical legal obligations regarding the condition and safety of the respective vehicle.

(5) The family members of the insured person, of the car driver or of any other person whose civil liability is engaged in an accident of vehicles and is covered by the RCA compulsory insurance are not excluded due to this kinship relation from the benefit of insurance for their own body injuries.

## ARTICLE 13

### Exemptions from compensation granting

RCA insurer does not pay compensations for:

a) the cases in which the owner, user or driver of the guilty vehicle does not have a civil liability if the accident was produced:

(i) in a force major case;

(ii) due to the exclusive guilt of the prejudiced person;

(iii) due to the exclusive guilt of third person, except for the cases provided by Art. 12 para. (3) letter d);

b) the prejudices produced to the goods belonging to the vehicle driver responsible for the accident, as well as to those produced as a result of his body injury or death, irrespective who is requesting such compensations;

c) in the following cases:

(i) the prejudices were produced on the goods belonging to natural or legal persons if provoked by a RCA insured vehicle in the property or used by the same natural or legal person and which is driven by a representative of the same legal person or by another person for whom the natural or legal person is responsible;

(ii) the damaged good and the insured vehicle are part of the spouses' joint patrimony;

(iii) the damaged good is used by the owner of the insured vehicle which produced the damage;

d) the prejudices caused when on the accident date the validity of RCA insurance cannot be proved or the RCA insurer has no liability, according to legal provisions;

e) the part of the prejudice exceeding the liability limits set up by the RCA contract, produced in one and the same accident, irrespective of the number of prejudiced persons and the number of liable persons for the prejudice occurrence;

f) any kind of fines and penal expenses the owner, user or driver of the insured vehicle would have to pay if responsible for the prejudice occurrence;

g) the expenses made during the criminal trial by the owner, user or driver of the insured vehicle responsible for the prejudice occurrence, even if during the criminal trial the civil part was also solved;

h) the amounts the vehicle driver responsible for the prejudice occurrence is obliged to pay to the owner or user who entrusted him the insured vehicle, for the damage or destruction of that vehicle;

i) the prejudices produced to carried goods, if the owner or user of the vehicle producing the accident or the responsible car driver has a contractual relation with the prejudiced persons on the accident date;

j) the prejudices produced to the persons or goods in the vehicle which produced the accident, if the RCA insurer can prove that the prejudiced persons knew that the respective vehicle was stolen;

k) the prejudices produced by the devices or installations mounted on vehicles, when they are used as working equipment or installations, and they stand for risks of professional activity;

l) the prejudices produced by accidents occurred during loading and unloading operations, as they stand for risks of professional activity;

m) the prejudices produced as a result of the transport of dangerous products: radioactive, ionizing, inflammable, explosive, corrosive, combustible, which determined or worsened the prejudice occurrence;

n) prejudices caused by the use of a vehicle during a terrorist attack or a war if the event is directly connected to the respective attack or war.

#### ARTICLE 14

##### Mutual fault

(1) In case the prejudiced person has contributed, due to his own guilt, to the accident occurrence or to the prejudice increase, the person called to account for will be held liable only for that part of the prejudice which can be imputed to him; in such cases, the liability extent of each person will be that proved by any kind of evidences.

(2) In case the liability extent of each person cannot be established, it will be set up in equal quotas, depending on the number of parties involved in the accident, each party having the right to compensation proportionally to the extent in which it was not liable for the accident occurrence.

#### ARTICLE 15

##### Compensations quantum

(1) The compensations are paid in a quantum equal to the prejudice extent up to the maximum liability limit of RCA insurer, which is equal to the highest value between the liability limit provided by the applicable legislation and that provided by the RCA contract, and the insurer is obliged to communicate the maximum compensation value in case of vehicles damage, upon the prejudiced person's request or of his proxy, within 7 calendar days since the date the damages were found out.

(2) In case of total economic damage, the insurer can assess the damaged vehicle by a valuation system specialized in finding out the market value. The prejudiced person can choose the repair up to the vehicle market value, calculated in a specialized valuation system, or the case solving as a total damage by the payment of the difference between the vehicle market value and the wreck value.

(3) Compensations are paid for the amounts for which the insured person pays as indemnification and for the court expenses and/or the expenses related to the alternative settlement of the dispute of the prejudiced persons by body injury or death and by goods damage or destruction.

(4) In case of body integrity or health injury or in case of death, the compensations are paid both to the persons outside the vehicle which produced the accident, and to the persons inside that vehicle, except for the vehicle driver guilty for the accident occurrence.

(5) In case of body integrity or health injury or in case of death of other persons besides the car driver guilty for the accident occurrence, compensations are also paid for the prejudices produced to the husband/wife or the persons in the care of the owner or driver of the insured vehicle.

(6) For the damage or destruction of goods, compensations are paid for the goods outside the vehicle which produced the accident, and for the goods inside that vehicle only if they were not carried based on an existing contractual relation with the owner or user of the respective vehicle, as well as if they did not belong to the owner, user or driver of the vehicle guilty of accident occurrence.

(7) Compensations, as provided in para. (1) -(6) are also paid if the vehicle driver guilty for the accident is another person than the insured one.

(8) Compensations are also paid when the prejudiced persons do not have the domicile, residence or premise in Romania.

(9) In case of body integrity or health injury or in case of death of another person or of goods damage or destruction, compensations are paid if the vehicle which produced the accident is identified and insured, even if the accident author remained unidentified.

## CHAPTER V

### Obligations of the insured person

#### ARTICLE 16

Notification of RCA insurer in case of an insured event occurrence:

(1) As a result of an accident of vehicles, the insured person notifies the RCA insurer about that within 5 working days since the accident occurrence.

(2) The insured person provides the RCA insurer information about the accident causes and circumstances, the required documents to substantiate the case.

(3) The insured person announces the RCA insurer within the term provided in para. (1) about the fact that:

a) the prejudiced party requested compensation from it;

b) the penal or administrative procedures were opened against it regarding the produced event and immediately informs the RCA insurer about the progress of such procedures and their result;

c) the prejudiced party exerted its right to be compensated by forwarding a request to a court of law or to another authority in case the contractor became aware of that;

d) the information written in RCA contract suffered changes during the contract running.

(4) The terms provided in para. (1) and (3) are not applied if the insured person proves his impossibility to meet this obligation.

(5) The insured person's failure to meet the obligation provided in para. (3) does not limit the right of the prejudiced person to be compensated.

(6) The insured person's failure to come at the insurer's request does not limit the right of the prejudiced person to be compensated.

## ARTICLE 17

### Information of prejudiced person

The insured person sends to the prejudiced party, upon its request, the required information to raise the compensation claims, especially:

a) surname, name and address of the person who drove the insured vehicle at the damage moment;

b) surname, name and address or name, premise of the contractor or insured person;

c) name, premise of RCA insurer which issued the RCA contract, series and number of RCA contract, as well as incorporation/registration number of the insured vehicle or its identification number.

## ARTICLE 18

### Setting up RCA insurance premium and information of insured person

(1) RCA insurer sets up an insurance premium covering all the obligations derived from the conclusion of RCA contracts.

(2) For a 6 months' period, calculated since the expiry date of the term provided in Art. 36 para. (3), A.S.F. will calculate an indicative quarterly reference tariff, based on an average damage statistically established for each category of vehicle separately, based on the effective damage payments made by RCA insurers in the market and compared to the statistical frequency of events occurrence by the category of vehicle segments. A.S.F. will publish the reference tariffs, the average damage and the statistical frequency of events occurrence by vehicle categories. A.S.F. will assess the effects of this measure and will draft a report to be forwarded to the Competition Council.

The paragraph was amended by the Rectification of 26/09/2016 to 26/09/2016

(3) The reference tariff provided in para. (2) is applied after its approval by and comes into force after the end of the period provided in Art. 36 para. (3).

(4) To calculate the premium tariff, the RCA insurers will use risk criteria, loading indices, increase and/or correction coefficients and other adjustment instruments of the tariffs set up by A.S.F. based on some statistical bases, assuring in this way a proportionality between the tariffs practiced during successive periods and the damages evolution for the respective segment of insured persons. In case RCA insurers want to expand the range of factors used to assess risk or to increase the granularity of the used factors, they can set up other risk criteria established by A.S.F. regulations.

(5) To set up the amount representing the insurance premium, the RCA insurer considers the history of paid in damages during the last 5 years of contractual relations for accidents produced by means of the insured vehicle, as well as the use of telematics technologies.

(6) The application criteria of bonus/malus system will be established by A.S.F. regulations. The bonus/malus class can be established also by considering the history of the driver/drivers. The number of bonus/malus classes should be equal and the calculation coefficients for the increase (malus) or for reduction (bonus) will have equal percentages. The bonus/malus system is made of the basic category B0, 8 bonus classes and 8 malus classes.

(7) RCA insurer releases to the insured person/user, within 15 days since the registration date of the latter's request, a certificate regarding the registered damages during the last 5 years of contractual relations, or the absence of such damages.

(8) RCA insurer has the obligation to notify the insured persons, upon their request, as regards the calculation way of the insurance premium.

(9) RCA insurer communicates to A.S.F., upon its request, the following information:

- a) way of setting up the insurance premium;
- b) statistical data base on which the insurance premium was established;
- c) actuarial report underlying the establishment of premium tariff;
- d) any other information about the calculation way of the insurance premium.

(10) RCA insurer has the obligation to open the damage file on the registration date the damage advise; the procedure regarding damages finding out is established by A.S.F. regulations, according to Art. 38 para. (5).

(11) The personnel performing damages finding out is A.S.F. advised. The conditions to be met by the persons intending to perform the damages finding out are: higher specialty education, professional certification, the proof of attending on-going professional training courses with an authorized trainer and the certification/assessment performed by the Institute of Financial Studies.

## ARTICLE 19

### Compensation claim

(1) The prejudiced person has the right to forward the compensation claim to RCA insurer or to his own RCA insurer in case of direct compensation, if a risk covered by RCA insurance occurred, respectively by BAAR, in case the risk is covered by it in the conditions provided by Art. 32.

(2) Compensation claim can also be forwarded by electronic means.

## ARTICLE 20

### Solving the compensation claim

(1) Within 30 days since the forwarding date of the compensation claim by the insured person or by the prejudiced party, but no later than 3 months since the damage advise date, the RCA insurer is obliged:

a) either to answer the request of the applying party making a justified written compensation offer, sent by registered letter with receipt confirmation in case the insured person's liability is proved in the production of risks covered by RCA insurance and the prejudice was quantified;

b) or to notify the prejudiced party in writing by registered letter with receipt confirmation, the reasons for which it did not fully or partially approved the compensation claims.

(2) If within 30 days at most since the forwarding date of the compensation claim by the prejudiced party or by the insured person the RCA insurer did not notify the prejudiced party the rejection of the compensation claim, as well as the rejection reasons, the RCA insurer would be obliged to pay the compensation.

(3) RCA insurer can make investigations using authorized experts regarding the accident occurrence if there are justified suspicions about its occurrence and if it does not make the object of a penal investigation in progress; the insurer notifies in writing the prejudiced/insured person within 5 working days since the damage advise date and the drafting of finding Minutes about its intention to carry on investigations; if based on the expertise report the compensation is proved to be due to the prejudiced person, the provisions of Art. 12 para. (2) letter c) are also applied; The failure to notify the intention to conduct investigations within the term provided in thesis II terminates this right of RCA insurer which will be obliged to pay the compensation; the substantiated result of investigations is communicated to the prejudiced party within 3 working days since the end of the investigation/forwarding the expertise report, but without exceeding the terms provided in para. (1). If the RCA insurer makes its own investigations, this does not generate additional obligations to the entities provided in Art. 38 para. (1).

(4) The compensation is paid by RCA insurer within maximum 10 days since the end of the 30 days term provided in para. (1) conditioned by the forwarding of the required documents to establish the liability and to quantify the prejudice or since the date the RCA insurer received a final court decision or the accord of the entity settling the dispute about the compensation amount it is obliged to pay; the documents underlying the compensation claim are established by A.S.F. regulations.

(5) If the RCA insurer does not fully meet its obligations within the term provided in para. (4) or if it diminished without justification the compensation or delays the compensation payment, it will be obliged to pay some penalties of 0.2% per day of delay, calculated at the level of the due compensation amount or at the difference of unpaid amount. The penalties will be paid at the same time with the compensation.

(6) In cases regarding body injuries and moral prejudices making the object of a dispute, the penalties and their payment are established by the court of law.

## ARTICLE 21

### Compensations establishment

(1) The compensation is established and performed according to the provisions of Art 15, and in case the compensation is established by a court decision, the rights of the prejudiced persons by accidents produced by vehicles in the property of insured persons in Romania are exerted against the RCA insurer, within the limits of its obligation, with the mandatory summoning of the person/persons responsible for the accident occurrence as forced interveners.

(2) For the prejudices produced on goods, the compensations are set up based on the reference prices on the market on the occurrence date of the insured risk, calculated with a specialized valuation system.

(3) The rights of the prejudiced persons by accidents produced on Romania's territory by vehicles in the property of RCA insured persons by the insurers with their registered premise in states within the competence area of a national car office are exerted against the RCA insurer through BAAR or by appointed correspondents, by the case, if the provisions of Art. 23 are met.

(4) In case of body integrity or health injury or of death resulting from an accident of vehicles, compensation is established by amicable way and/or in court.

(5) The amicable compensation establishment is achieved based on the following assessment general criteria:

a) compensations due to prejudiced persons as a result of body integrity or health injury of the persons are assessed based on the scoring obtained by summing up the points communicated by the National Institute of Forensic Medicine and provided by A.S.F. regulations.

b) compensations assessment considers an average assumed level of the sufferance endured by the prejudiced persons;

c) the value of a traumatic point is equal to the double of minimum gross basic salary per country secured for payment on the accident date;

d) compensations can be adjusted depending on the particularities of each case based on justifying documents;

e) the scoring for the sufferance caused by the body of health injury of the persons includes not only the prejudices related to the physical pains; for the prejudiced related to psychic traumas, the prejudiced person can bring in proving documents.

## ARTICLE 22

### Compensations payment

(1) Compensations are paid by the RCA insurer to the prejudiced natural or legal persons in the account mentioned by the prejudiced person or by its proxy or in cash, according to the law.

(2) Compensations cannot be pursued by the creditors of RCA insured person.

(3) Compensations are paid to the insured persons if they prove they compensated the prejudiced persons and the compensations are not to be recovered according to the provisions of Art.24.

(4) In case the rights of the prejudiced person were subrogated to its optional insurer, the possible compensation difference between that resulting according to the optional insurance contract and that resulting from the RCA contract remains in the account of the optional insurance contract, as it cannot be recovered from the insured person if the compensation paid from the optional contract does not exceed the maximum limit of the compensation which can be paid by the RCA insurer for the prejudices caused in one and the same vehicle accident, provided by the legislation in force.

(5) In case the parties do not reach an understanding about the compensation quantum, the amount which does not make the dispute object is paid by the RCA insurer before being solved by negotiations, by alternative dispute settlement or by a court of law.

(6) In cases the compensations are set up by alternative disputes settlement or by a court decision, the RCA insurer pays compensations based on the agreement resulted from the dispute alternative settlement or based on the definitive court decision.

## ARTICLE 23

### Compensations representative

(1) RCA insurer have the obligation to appoint in each state belonging to the European Economic Space and the Swiss Confederation a compensations representative for the settlement of prejudices provoked by vehicles subject to insurance obligation in Romania of the residents in those states, on condition the accident took place on the territory of another state than the residence state of the prejudiced person.

(2) Compensations representative is mandated to substantiate the damage cases in the name of and on behalf of RCA insurer and to represent the RCA insurer. To this end, the compensations representative makes the damage file and takes all the required measures to solve the compensation claims of the prejudiced party, as well as the prejudices caused by a vehicles accident:

a) for which the RCA insurance was issued by a RCA insurer or its subsidiary in another member state than the state in which the prejudiced party is resident or has its registered premise;

b) produced in another member state than the state in which the prejudiced party is resident or has its registered premise; and

c) for the prejudice produced in another member state than the state in which the prejudiced party is resident or has its registered premise.

(3) The compensations representative can act for several RCA insurers.

(4) The compensations representative must be mandated to represent RCA insurer with full powers, including the disposition right in front of the prejudiced party, to receive the required competence to answer the justified compensation claims of the prejudiced party and to be able to analyze the case in the official language of the member state in which the prejudiced party is resident or has its registered premise.

(5) The appointment of a compensations representative does not exclude the right of the prejudiced party to directly act against the person who caused the prejudice or against its RCA insurer, by the case.

(6) RCA insurer is obliged to inform BAAR about the surname and name, date of birth and address or the working point of the compensations representative, in case it is represented by a natural person, or about the name and premise, in case it is represented by a legal person, as well as about all the changes related to the representative within 7 days since the appointment or the occurrence of the respective changes.

## CHAPTER VI

### The right of RCA insurer to request the recovery of paid amounts

#### ARTICLE 24

##### Conditions

RCA insurer has the right to recover the amounts paid as compensation from the liable person for the production of prejudice in the following cases:

- a) the accident was intentionally produced, established by the law;
- b) the accident was produced during the perpetration of other actions incriminated by legal provisions regarding the circulation on public roads as infractions made on purpose, even if such actions were not produced on such roads or during the perpetration of other intentionally made infractions;
- c) the accident was produced when the author of the intentionally perpetrated infraction attempted to avoid penal pursuit;
- d) the person liable for the prejudice occurrence drove the vehicle without the contractor's consent;
- e) the insured person refused without justification to meet his obligations provided Art. 16, preventing in this way the RCA insurer to conduct its own investigation according to the provisions of Art. 20 para. (3), and the insurer can prove that this action led to the unjustified payment of compensation.

## CHAPTER VII

### Direct compensation between RCA insurers

#### ARTICLE 25

##### General provisions

(1) The prejudiced person can obtain the prejudice repair from his own RCA insurer based on the mechanism of direct compensation provided by the present article.

(2) Following the direct compensation, the RCA insurer of the prejudiced person recovers the damage counter value from the RCA insurer of the person guilty for the prejudice occurrence.

(3) Direct compensation is applicable if the following conditions are cumulatively met:

- a) the car accidents are produced on Romania's territory;

- b) the vehicles involved in car accidents are incorporated/registered in Romania;
- c) prejudices are produced exclusively on vehicles;
- d) both vehicles involved in the car accident have a valid RCA insurance on the event date;
- e) prejudices exclude body injuries.

(4) The procedure of direct compensation is established by multilateral conventions concluded between RCA insurers. The conditions of direct compensation are voluntarily agreed between the insured person and the insurer.

(5) The provisions of para. (1) -(4) do not affect the right of the prejudiced person following a car accident produced by vehicles with RCA insurance to exert the direct action to recover the prejudice produced against the RCA insurer of the guilty person for the car accident occurrence.

## CHAPTER VIII Verification of RCA insurance

### ARTICLE 26 Special verification conditions of vehicles incorporated/registered on Romania's territory

When incorporating/registering the vehicles, when making changes in the incorporation/registration certificate or the identity book of a vehicle and on the regular technical verifications it is mandatory to present the proof of RCA contract existence, in the conditions of the present emergency ordinance.

### ARTICLE 27 Verification of incorporated/registered vehicles

(1) No control procedure is performed on the documents of civil liability insurance for vehicles usually stationary on the territory of the member states or of those within the competence of the national offices which signed the Multilateral Agreements or for those usually stationary on the territory of some third states if they enter Romania's territory from the territory of another member state

The paragraph was derogated by the Emergency Ordinance 54/2016 on 19/09/2016.

(2) By exception from the provisions of para. (1), the controls are allowed if they have an unsystematic, indiscriminating character and do not exclusively aim at verifying RCA insurance.

(3) For the vehicles which are not in the situation provided by para. (1), it is compulsory to verify the documents confirming the existence of a valid RCA insurance in Romania at the control points for crossing the state border by the personnel of the border police.

(4) The persons who are not in any of the situations provided by Art. 28 or the persons who cannot prove at the control the existence of a valid RCA insurance are obliged to conclude the border insurance provided by Art.29.

ARTICLE 28  
Vehicles registered abroad

The persons entering Romania's territory by vehicles incorporated or registered outside Romania's territory are assumed to be insured, in the conditions of the present emergency ordinance, if:

- a) the competent national car office in the state on whose territory the vehicle is usually stationed is a signatory state of the Multilateral Agreement;
- b) show international insurance documents for prejudices produced by vehicle accidents, valid in Romania.

CHAPTER IX  
Border insurance

ARTICLE 29  
General provisions

(1) Border insurance is aimed to cover by insurance the civil liability risks for vehicles incorporated/registered in a third state which enter Romania's territory without having a valid RCA contract or whose RCA contract expired during the period of their stay in Romania.

(2) The car driver of a vehicle incorporated/registered in another state, unless he has a valid Green Paper and except the car driver whose civil liability insurance on the territory of the residence member state is secured by the national office of that state, concludes a border insurance contract.

(3) Border insurance is concluded on the date the vehicle enters Romania's territory or, the latest, on the expiry date of the international insurance document for prejudices produced by vehicle accidents, valid in Romania, for a 30 days period.

(4) For the vehicles usually stationed in other states than those within the competence area of a national office, the border insurance can be extended for new periods of 30 days each.

(5) When concluding a border insurance, based on an insurance premium, the car driver is given a document called RC Border Insurance for vehicles, valid in all member states and the Swiss Confederation.

ARTICLE 30  
Requirements and covered risks

(1) The requirements regarding the form of border insurance certificate are provided by BAAR Regulation.

(2) Border insurance covers the prejudices suffered following some events produced within the territorial covering limits during the validity period provided by the border insurance certificate.

(3) The insurers mandated by BAAR exert the activity of concluding border insurance in the name and on behalf of BAAR, on contractual bases.

(4) The driver of the vehicle whose used on Romania's territory is conditioned by signing a border insurance has to show the border insurance certificate during the whole period the vehicle travels on Romania's territory, after the expiry of the international insurance document validity for prejudiced produced by vehicle accidents, until it exits Romania's territory.

(5) The drivers of the vehicles who do not meet the obligation to conclude the border insurance are sanctioned according to legal provisions applicable in Romania.

## CHAPTER X Romanian Motor Insurers' Bureau

### ARTICLE 31

#### General provisions

(1) BAAR is established as a professional, independent and autonomous association of all the insurance companies, irrespective of their organization for and the state where they have their registered premise, which, based on the law, have the right to practice in Romania the mandatory civil liability insurance for prejudices produced to third persons by vehicle accidents.

(2) BAAR has the following assignments:

- a) of national car office;
- b) of compensations payment body, according to the provisions of Art. 32;
- c) of information center, according to the provisions of Art. 33;
- d) of compensation body, according to the provisions of Art. 34;
- e) to assure the development and management of CEDAM data basis;
- f) to publish statistics regarding car insurances at national and international level;
- g) to draft and publish analyses and comparative surveys regarding the tariffs used by RCA insurers in member states and other relevant information for RCA insurance;
- h) to publish statistics regarding the evolution of compensation levels in case of body integrity or health injury or for death;
- i) to provide to the competent authority subordinated to the Ministry of Internal Affairs with assignments of organization and coordination of the activity of recording and issuance of registration certificates and of the plates with the registration numbers the data regarding the vehicles insured for civil liability for damages produced to third persons by circulation accidents, in the conditions provided by Art. 1 para. (2) of the Emergency Government Ordinance no. 189/2005 for setting up measures regarding registered road vehicles, approved with amendments by Law no. 432/2006.

(3) In order to meet its assignments as the car national office, compensations payment body and compensation body, BAAR has set up its own structure called the National Protection Fund, by

contribution of all its members, proportionally to the volume of gross premiums collected from the sale of RCA contracts/Green Paper; the cash available of the National Protection Fund, the contribution and the payment terms to it are established by A.S.F. Regulations, upon BAAR proposal, so that BAAR can meet at any moment its assignments as the car national office, compensations payment body and compensation body.

(4) For the failure to pay in time the amounts due to BAAR, delay interests and penalties are paid, calculated according to regulations in force applicable to the collection of budgetary receivables; the interests and penalties paid will be transferred in BAAR account.

(5) The document establishing and customizing the obligation of an insurer to pay the contribution to BAAR is, according to the law, a debenture; on its maturity, the debenture turns into a writ of execution, based on which BAAR initiates the foreclosure procedure for receivables recovery, according to the provisions of the Code of Civil Procedure.

(6) By exerting its assignments provided in para. (2) letter a) and b), BAAR compensates the prejudiced persons as a guarantor of the compensation obligation and, after compensation payment, subrogates its rights to them, getting a recourse right against the person or persons in charge with the prejudice repair, as regards the paid compensation, the expenses related to the substantiation and liquidation of the compensation claims, as well as for the legal interest related to the expenses made.

(7) BAAR concludes memoranda/collaboration protocols on the information exchange with the authorities, institutions and companies contributing to traffic safety on public roads; in order to meet its assignments provided in para. (2) letter a)-d), BAAR concludes agreements with its equivalent entities in the other states.

(8) In view of meeting A.S.F. objectives regarding prudential supervision, BAAR provides, upon A.S.F. request or on its own initiative, data and synthetic information on RCA insurance, in compliance of legislation in competition field.

(9) The association management, the criteria to be met by the persons proposed for management positions, the articles of incorporation, the charter and their amendments, the levels of subscriptions, of contributions to the fund and of the tax for data bases management are set up by BAAR with A.S.F. previous accord.

(10) The budget of income and expenses of the association, as well as the preliminary one and its execution are approved by A.S.F.

(11) Upon the request of motor vehicle owners, BAAR issues within 15 calendar days a certificate regarding the recorded damages.

## ARTICLE 32

### BAAR assignments as compensations payment body

(1) As a compensations payment body, BAAR secures, without the benefit of discussion, the compensation of prejudiced persons, residents of member states, by accidents produced on Romania's territory or on the territory of another member state than their residence state, by means of some vehicles usually stationed on Romania's territory, or on the territory of another state whose national car

office has not signed the Multilateral Agreement, without RCA insurance, although, according to legal provisions, RCA insurance had to be concluded for them, or by means of some unidentified vehicles, in the following conditions:

a) if the vehicle or tram was identified, but it was not insured for RCA, compensations are paid both for material damages, and for the body integrity or health injury or for death;

b) if the vehicle or tram remains unidentified, compensations are paid for the body integrity or health injury or for death; by exception from thesis I, compensations are also paid for material damages, by applying a francize of EUR 500 in RON equivalent, at NBR exchange rate announced on the accident date, if as a result of such an accident a person died or it provoked an injury of body integrity or health of a person who requires more than 60 days of medical care to be healed; the accident produced by a vehicle which remained unidentified is the accident in which the respective vehicle entered a direct collision with the injured person or with the damaged good, and then left the accident place;

c) if the risk occurred during the period of RCA contract suspension, according to Art. 9.

(2) BAAR intervenes as compensations payment body also in case of accidents provoked on Romania's territory or on the territory of another member state by means of a vehicle without RCA insurance, exported from another member state in Romania, if the accident took place within 30 days since the export acceptance

(3) No compensations are paid to the persons who, on the accident date, have the possibility of recovering the prejudices suffered based on an optional or mandatory insurance, or based on the law, or those who entered of their free will in the vehicle drove by the guilty person for the accident, if it can be proved they were aware that no RCA contract was in force for the respective vehicle.

(4) No entity which has compensated in any way the prejudiced persons or has offered them services related to the suffered prejudiced, including medical services, based on some concluded contracts, or based on the law, has the right to request from BAAR the recovery of its expenses.

(5) The prejudice quantum suffered by the prejudiced persons by accidents produced by vehicles on Romania's territory, as well as the persons who can benefit of compensations and intervention conditions of BAAR as compensations payment body are established according to the provisions of the present emergency ordinance and of the norms adopted for its application, in force in Romania on the accident date.

(6) For the damage cases solved through compensation bodies or guarantee funds of the residence states of the prejudiced persons or from the states on whose territory the accidents were produced, the prejudice quantum is established by those bodies, on condition to comply with the clauses of their agreement concluded with BAAR.

(7) BAAR cannot pay compensations for the prejudices caused in one and the same accident exceeding the liability limits of RCA insurer, provided by the legislation in force on the date of the accident occurrence in Romania, or by the legislation in force of the other states on whose territory the accident took place, of which the francize provided by the law will be deducted, by the case.

## ARTICLE 33

### BAAR assignments as information center

(1) As information center, BAAR has the following assignments:

a) to supply, upon the request of the prejudiced persons or of the information centers in the other signatory states of the Agreement regarding information exchange between information centers, data regarding:

(i) name and address of RCA insurer for the vehicle drove by the guilty person for the accident;

(ii) name and address of the compensations representative of RCA insurer, issuant of RCA contract for the vehicle drove by the guilty person for the accident, in the residence state of the prejudiced person;

(iii) number of RCA contract;

(iv) name and address of the authorized body to receive and solve the compensation requests in the residence state of the prejudiced person, for the vehicle drove by the guilty person for the accident, or for the case the respective vehicle owner benefits of derogation from the obligation to conclude the RCA contract;

b) to provide, upon the written request of the prejudiced persons proving to have a legitimate interest, the following categories of information regarding the vehicle drove by the driver guilty for the accident:

(i) surname and name or name of the owner, as well as the domicile or premise address;

(ii) surname and name or name of the user, as well as the domicile address.

(2) In view of meeting its assignments provided in para. (1) letter b), BAAR has access right to consult the records with incorporated or registered vehicles in Romania, managed by public authorities, in the conditions established by the protocol signed between A.S.F. and the Driving Licenses and Vehicles Registration Division within the Ministry of Internal Affairs.

(3) The information provided by RCA insurer according to Art. 23 para. (6) are sent to the national information centers of the member states.

(4) The request provided in para. (1) letter b) can be made by the prejudiced person directly or through the information center in the residence state.

(5) The supply of personal data according to para. (1) letter b) is done in compliance of the provisions of Law no. 677/2001 for the persons 'protection regarding the personal data processing and their free circulation, with further amendments and supplementations.

(6) BAAR cannot process personal data it has access to according to para. (2) in any other purposes than those for which the present emergency ordinance establishes it has access right.

(7) The protocol provided in para. (2) also sets up the organizational and technical measures to assure the safety of the processed personal data, according to the legislation regarding personal data protection, as well as the required measures to assure:

a) the control of access to the systems;

b) users 'control;

- c) the control of access to data;
- d) setting up users 'profile according to their relevant tasks in the conditions of the present emergency ordinance;
- e) the required mechanisms to exert the right by the respective person;
- f) the required mechanisms to verify processing legality;
- g) the safety of personal data processing.

#### ARTICLE 34

##### BAAR assignments as compensation body

(1) As compensation body, BAAR intervenes in the following cases:

- a) if within 3 months since the date of making a compensation claim, the person resident in Romania suffered a prejudice caused by a vehicles accident which took place on the territory of a state located at the territorial covering limits, except for Romania, or on the territory of a third state whose national office adhered to the Green Paper system, by means of a vehicle usually stationed on the territory of a member state of the European Economic Space, except for Romania, was not compensated or did not receive a justified answer from the RCA insurer or from the compensations representative of RCA insurer in Romania;
- b) if the RCA insurer did not appoint a compensations representative on Romania's territory;
- c) if within two months since the accident occurrence the RCA insurer cannot be identified.

(2) BAAR, as a compensation body, does not have passive capacity to stand trial or is not a civil liable party in relation to the prejudiced persons following vehicle accidents.

(3) Legal persons who subrogated their rights to the prejudiced persons by accidents produced in the conditions of para. (1) letter a) cannot file compensation claims to BAAR.

#### CHAPTER XI

##### Contraventions and sanctions

#### ARTICLE 35

##### Contraventions and sanctions

(1) Contravention means the perpetration of the following facts:

- a) payment default in time by RCA insurers of the compensations due from RCA insurance to the prejudiced persons or to the insured persons, in the conditions of the present emergency ordinance and of the regulations issued based on Art. 38 para. (5);

b) payment default in time by RCA insurers of the amounts destined to BAAR, as well as of the percentage contribution from the value of gross premiums collected for RCA insurance;

c) failure of insurance intermediaries to deposit with RCA insurers the amounts collected as insurance premiums, if the fact is not an infraction;

d) RCA insurers' incompliance with the provisions of Art. 12 para. (1) - (3), Art. 15, Art. 18 para. (1) și (7) - (10) and Art. 20 para. (1) - (5);

e) insurers' incompliance with A.S.F. regulations issued based on Art. 38 para. (5);

f) insurers' incompliance with the interdiction to recover the compensation difference between the optional insurance and the mandatory civil liability insurance for car owners, provided by Art. 22 para. (4).

(2) Contraventions perpetration provided in para. (1) is sanctioned as follows:

a) the facts of RCA insurers provided in para. (1) letter a), b), d)-f), by written warning, or by derogation from the provisions of Art. 8 para. (2) of Government Ordinance no. 2/2001 regarding contraventions legal regime, approved with amendments and supplementations by Law no. 180/2002, with further amendments and supplementations, by fine from RON 5,000 to RON 1,000.000 ;

b) the facts of persons in the management of RCA insurers or of the persons in key positions or in other critical positions within them, provided by para. (1) letter a), b), d)-f), by written warning or by fine from RON 1,000 to RON 100,000;

c) the facts of insurance intermediaries, provided by para. (1) letter c), by written warning or by fine from RON 1,000 to RON 100,000.

(3) Finding out contraventions provided by para. (1) is done by the persons with assignments regarding the supervision and control within A.S.F. The application of contravention sanctions provided by para. (2) and (5)-(7) is done by by decision, with the adequate compliance with the provisions of Art. 163 para. (12), (16) and (17) and of Art. 165 of Law no. 237/2015.

(4) Depending on the fact nature and seriousness, can also apply other contravention sanctions:

a) to RCA insurers;

b) to persons in the management of RCA insurers or the persons in key positions of other critical positions within them;

c) to insurance intermediaries.

(5) The contravention sanctions applied to RCA insurers according to para. (4) letter a) are the following:

a) temporary or definitive interdiction, total or partial of exerting insurance activity for RCA insurance;

b) withdrawal of operating authorization.

(6) The contravention sanctions applied to persons in the management of RCA insurers or the persons in key positions of other critical positions within them, according to para. (4) letter b) are the following:

a) interdiction of the right to occupy positions requiring A.S.F. approval for a period between one year and 5 years since the communication of the sanctioning decision or until another date specifically mentioned in it;

b) withdrawal of A.S.F. approval.

(7) The contravention sanctions applied to insurance intermediaries, according to para. (4) letter c) are the following:

a) temporary or definitive interdiction of intermediation activity in insurances;

b) withdrawal of the authorization.

(8) Sanctions provided by para. (5) -(7) can be cumulatively applied with those provided by para. (2).

(9) The violation by natural or legal persons of the insurance obligation provided by Art. 4 and of the obligation provided by Art. 9 para. (3) represent a contravention and are sanctioned by a fine from RON 1,000 to RON 2,000 and by retaining the incorporation/registration certificate of the vehicle until the document regarding insurance conclusion is presented; their finding out and application is performed by the police personnel.

(10) The document issued by A.S.F. which finds out and customizes the payment obligation of RCA insurers and of the persons in the management of RCA insurers or the persons in key positions of other critical positions within them represents a debenture, which on its maturity date turns into a writ of execution.

(11) A.S.F. publishes its decisions regarding the measures provided by para. (5) -(7) in Romania's Official Journal, Part I.

(12) Application of sanctions and sanctioning measures does not remove the material, civil or penal liability, by the case.

(13) The contraventions provided in the present article are subject to the provisions of the Government Ordinance no. 2/2001, approved with amendments and completions by Law no. 180/2002, with further amendments and supplementations, to the extent they are not contrary to the provisions of the present emergency ordinance.

(14) A.S.F. immediately communicates to the European Commission the following:

a) the provisions of the present article;

b) the amendments and/or supplementations to the present article.

## CHAPTER XII Transitory provisions

### ARTICLE 36 Transitory provisions

(1) The documents and legal facts concluded or, by the case made or produced before the coming into force of the present emergency ordinance cannot generate other legal effect than those provided by the law in force on the date of their conclusion or, by the case of their making or producing.

(2) On the date of the present emergency ordinance coming into force, the null, annulable legal documents or affected by other ineffectiveness causes concluded based on the Law no. 136/1995 regarding insurances and reinsurances in Romania, with further amendments and supplementations, and of the norms issued for its application remain subject to the provisions of the former law, being not regarded as valid, or by the case, effective according to the provisions of the present emergency ordinance.

(3) Within 30 days since the date of the present emergency ordinance coming into force, A.S.F. will set up the premium tariffs (maximal) by categories of vehicles to be applied by RCA insurance companies. They will be adopted according to Art. 4 para. (3) of the Competition Law no. 21/1996, republished.

Application.

(4) The present emergency ordinance applies to all RCA insurance contracts/policies issued after the coming into force of the present emergency ordinance and related to all prejudices to be compensated based on them.

(5) Within 6 months since the date of the present emergency ordinance coming into force, BAAR will take over the whole patrimony of the Protection Fund of Street Victims and will be reorganized according to the provisions of the present emergency ordinance.

(6) The National Protection Fund, as BARR own structure, will be made of the Joint Fund Green Paper owned and managed by BAAR and of 95% of the cash available to be taken over from the Protection Fund of Street Victims; the 5% difference from the respective cash available will be used for BAAR operating expenses.

(7) Starting the date BAAR takes over the patrimony of from the Protection Fund of Street Victims, the latter will be dissolved.

## CHAPTER XIII Amicable accident settlement

### ARTICLE 37

#### Amicable accident settlement

(1) for the events involving two vehicles and which result only in material prejudiced, the insurance companies can also be informed based on a standardized form issued by the insurance companies, called amicable accident settlement, in which the drivers of the involved vehicles fill in information regarding the date and place of the accident, the identification data of the car drivers involved, of the owners of the involved vehicles, the data of the involved vehicles and of their own companies of RCA insurance, as well as information regarding the accident occurrence circumstances.

(2) The form, size, content and procedures regarding the use of the standardized form are established by A.S.F. regulations.

CHAPTER XIV  
Final provisions

ARTICLE 38  
Final provisions

(1) The police units, professional emergency services, medical units within the medical public and private systems, family physicians and the other public competent authorities to investigate vehicle accidents or to assess the health condition of the victims of such an event, by the case, will communicate, upon the request of RCA insurers, of BAAR and of the Policy Holders Guarantee Fund, within 30 days at most since the request, the information they have regarding the causes and circumstances of the occurrence of the insured risks and the prejudices or injuries provoked so that the RCA insurers and BAAR can establish the due compensations. The information category is established by collaboration protocols between the parties.

(2) The present emergency ordinance is supplemented by the provisions of Law no. 287/2009 regarding the Civil Code, republished, with further amendments, and by those of the Emergency Government Ordinance no. 195/2002 regarding circulation on public roads, republished, with further amendments and supplementations.

(3) A.S.F. can request the insurers to previously notify the increase of tariffs or to submit to its previous approval their increase only if a general national system of prices control is introduced, according to the legislation of European Union in force.

(4) A.S.F will assess after one year since the coming into force of the present emergency ordinance the application of the provisions of Art. 6 para. (1) and will substantiate if it is justified to conclude RCA contracts for shorter periods than 6 months.

(5) While applying the present emergency ordinance, within 45 days since the coming into force of the present emergency ordinance, A.S.F. will issue regulations regarding: other elements of RCA contract, conditions and criteria of the insurer's authorization to practice RCA insurance, the format of RCA insurance policy, the way of finding out, assessing the damages and establishing the compensations, the compensations payment conditions, facilities and penalties applicable to the insured persons, the list of the required documents to settle a compensation claim, as well as other elements regarding the RCA insurance.

(6) Until A.S.F. issues the regulations according to the provisions of para. (5), the regulations issued by A.S.F. for the application of Law no. 136/1995, with further amendments and supplementations, and of Art. 51 of Law no. 32/2000, with further amendments and supplementations, are still applied, to the extent they do not contradict the provisions of the present emergency ordinance.

(7) In these regulatory documents, the phrase RCA insurance policy is replaced by the phrase RCA contract and the phrase Protection Fund of Street Victims is replaced by BAAR.

ARTICLE 39  
Change of Law no. 237/2015 regarding the authorization and supervision of insurance and reinsurance

activity

ARTICLE 1 paragraph (2) point 8 of Law no. 237/2015 regarding the authorization and supervision of insurance and reinsurance activity, published in Romania's Official Journal, Part I no. 800 of October 28<sup>th</sup>, 2015, is changed and will have the following content:

" 8. national car office – professional organization established according to Recommendation no. 5 of January 25<sup>th</sup>, 1949, adopted by the Sub-committee for road transport of the Inland Transport Committee within the Economic Commission for Europe of the United Nations Organizations, and which rallies the insurance companies authorized in a state to practice civil liability insurance for car owners".

#### ARTICLE 40

Repealing

(1) On the date of coming into force of the present emergency ordinance, it is repealed Law no. 136/1995 regarding insurances and reinsurances in Romania, published in Romania's Official Journal, Part I no. 303 of December 30<sup>th</sup>, 1995, with further amendments and supplementations.

(2) On the processing date provided by Art. 36 para. (5), Art. 51 is repealed of Law no. 32/2000 regarding the activity and supervision of intermediaries in insurances and reinsurances, published in Romania's Official Journal, Part I no. 148 of April 10<sup>th</sup>, 2000, with further amendments and supplementations.

#### ARTICLE 41

Coming into force

The present emergency ordinance comes into force on its publication in Romania's Official Journal, Part I, except for the provisions of Art. 35 which come into force at 10 days since the publication date of the present emergency ordinance.

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The present emergency ordinance translates the provisions of the Directive 2009/103/EC of European Parliament and of the Council of September 16<sup>th</sup>, 2009 regarding the civil liability insurance for car owners and the control of the obligation to insure such liability, published in the Official Journal of European Union, series L, no. 263 of October 7<sup>th</sup>, 2009, as well as the provisions of Art. 21 para. (2) and Art. 181 para. (3) of the Directive 2009/138/ EC of European Parliament and of the Council of November 25<sup>th</sup>, 2009 regarding the access to activity and the performance of insurance and reinsurance activity (Solvency Directive II), published in the Official Journal of European Union, series L, no. 335 of December 17<sup>th</sup>, 2009.

PRIME MINISTER  
DACIAN JULIEN CIOLOȘ

Counter signing:  
Minister of Public  
Finance,  
Anca Dana Dragu  
Minister of External  
Affairs,  
Lazăr Comănescu  
p. Minister of Internal  
Affairs,  
Ioan Buda,  
Secretary of State, s  
Minister of Transports,  
Petru Sorin Bușe

Bucharest, September 14<sup>th</sup>, 2016.

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