



DIRECTIVE 2005/14/EC OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL

of 11 May 2005

amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and
90/232/EEC and Directive 2000/26/EC of the European Parliament and
of the Council relating to insurance against civil liability in respect of the
use of motor vehicles

(Fifth Motor Insurance Directive)

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the first and third sentences of Article 47(2), Article 55 and Article 95(1) thereof,

Having regard to the proposal from the Commission,

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

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

- 1) Insurance against civil liability in respect of the use of motor vehicles (motor insurance) is of special importance for European citizens, whether they are policyholders or victims of an accident. It is also a major concern for insurance undertakings as it constitutes an important part of non-life insurance business in the Community. Motor insurance also has an impact on the free movement of persons and vehicles. It should therefore be a key objective of Community action in the field of financial services to reinforce and consolidate the single insurance market in motor insurance.
- 2) Very significant advances in this direction have already been achieved by Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability, by second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, by third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and by Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (Fourth Motor Insurance Directive).
- 3) The Community system of motor insurance needs to be updated and improved. This need has been confirmed by the consultation conducted with the industry, consumers and victims' associations.

- 4) In order to exclude any possible misinterpretation of the provisions of Directive 72/166/EEC and to make it easier to obtain insurance cover for vehicles bearing temporary plates, the definition of the territory in which the vehicle is normally based should refer to the territory of the State of which the vehicle bears a registration plate, irrespective of whether such a plate is permanent or temporary.
- 5) In accordance with Directive 72/166/EEC, vehicles bearing false or illegal plates are considered to be normally based in the territory of the Member State that issued the original plates. This rule often means that national insurers' bureaux are obliged to deal with the economic consequences of accidents which do not have any connection with the Member State where they are established. Without altering the general criterion of the registration plate to determine the territory in which the vehicle is normally based, a special rule should be laid down for accidents caused by vehicles without a registration plate or bearing a registration plate which does not correspond or no longer corresponds to the vehicle. In this case and for the sole purpose of settling the claim, the territory in which the vehicle is normally based should be considered to be the territory in which the accident took place.
- 6) In order to facilitate the interpretation and application of the term 'random checks' in Directive 72/166/EEC, the relevant provision should be clarified. The prohibition of systematic checks on motor insurance should apply to vehicles normally based in the territory of another Member State as well as to vehicles normally based in the territory of a third country but entering from the territory of another Member State. Only non-systematic checks which are not discriminatory and are carried out as part of a control not aimed exclusively at insurance verification may be permitted.
- 7) Article 4(a) of Directive 72/166/EEC permits a Member State to act in derogation from the general obligation to take out compulsory insurance in respect of vehicles belonging to certain natural or public or private legal persons. For accidents caused by such vehicles, the Member State so derogating must designate an authority or body to compensate for the damage to victims of accidents caused in another Member State. In order to ensure that due compensation is paid not only to the victims of accidents caused by these vehicles abroad but also the victims of accidents occurring in the same Member State in which the vehicle is normally based, whether or not they are resident in its territory, the aforementioned Article should be amended. Furthermore, Member States should ensure that the list of persons exempt from compulsory insurance and the authorities or bodies responsible for compensation of victims of accidents caused by such vehicles is communicated to the Commission for publication.
- 8) Article 4(b) of Directive 72/166/EEC permits a Member State to act in derogation from the general obligation to take out compulsory insurance in respect of certain types of vehicles or certain vehicles having a special plate. In that case, the other Member States are allowed to require, at the entry into their territory, a valid green card or a frontier insurance contract, in order to ensure the provision of compensation to victims of any accident which may be caused by those vehicles in their territories. However, since the elimination of border controls within the Community means that it is not possible to ensure that vehicles crossing frontiers are covered by insurance, compensation for victims of accidents caused

abroad can no longer be guaranteed. Furthermore, it should also be ensured that due compensation is awarded not only to the victims of accidents caused by those vehicles abroad, but also in the same Member State in which the vehicle is normally based. For this purpose, Member States should treat the victims of accidents caused by those vehicles in the same way as victims of accidents caused by non-insured vehicles. Indeed, as provided for in Directive 84/5/EEC, compensation to victims of accidents caused by uninsured vehicles should be paid by the compensation body of the Member State in which the accident took place. Where payments are made to victims of accidents caused by vehicles subject to the derogation, the compensation body should have a claim against the body of the Member State in which the vehicle is normally based. After a period of five years from the date of entry into force of this Directive, the Commission should, if appropriate, in view of the experience with the implementation and application of this derogation, submit proposals for its replacement or repeal. The corresponding provision in Directive 2000/26/EC should also be deleted.

- 9) In order to clarify the scope of application of the motor insurance directives in accordance with Article 299 of the Treaty, the reference to the non-European territory of the Member States in Articles 6 and 7(1) of Directive 72/166/EEC should be deleted.
- 10) Member States' obligations to guarantee insurance cover at least in respect of certain minimum amounts constitute an important element in ensuring the protection of victims. The minimum amounts provided for in Directive 84/5/EEC should not only be updated to take account of inflation, but also increased in real terms, to improve the protection of victims. The minimum amount of cover for personal injury should be calculated so as to compensate fully and fairly all victims who have suffered very serious injuries, whilst taking into account the low frequency of accidents involving several victims and the small number of accidents in which several victims suffer very serious injuries in the course of one and the same event. A minimum amount of cover of EUR 1 000 000 per victim or EUR 5 000 000 per claim, regardless of the number of victims, is a reasonable and adequate amount. With a view to facilitating the introduction of these minimum amounts, a transitional period of five years from the date of implementation of this Directive should be established. Member States should increase their amounts to at least a half of those levels within 30 months of the date of implementation.
- 11) In order to ensure that the minimum amount of cover is not eroded over time, a periodic review clause should be introduced using as a benchmark the European Index of Consumer Prices (EICP) published by Eurostat, as provided for in Council Regulation (EC) No 2494/95 of 23 October 1995 concerning harmonised indices of consumer prices. The procedural rules governing such a review need to be established.
- 12) Directive 84/5/EEC, which allows Member States, in the interest of preventing fraud, to limit or exclude payments by the compensation body in the case of damage to property by an unidentified vehicle, may impede legitimate compensation of victims in some cases. The option of limiting or excluding compensation on the basis that the vehicle is not identified should not apply where the body has paid compensation for significant personal injuries to any victim of the same accident in which the damage to property was caused. Member States may provide for an excess up to the limit set out in the said Directive for which the

victim of the damage to property may be responsible. The conditions in which personal injuries are to be considered significant should be determined by the national legislation or administrative provisions of the Member State where the accident takes place. In establishing these conditions, the Member State may take into account, inter alia, whether the injury has required hospital care.

- 13) At present, an option contained in Directive 84/5/EEC allows Member States to authorise, up to a specified ceiling, excesses for which the victim would be responsible in the event of damage to property caused by uninsured vehicles. That option unjustly reduces the protection of victims and creates discrimination with respect to victims of other accidents. It should therefore no longer be permitted.
- 14) Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services should be amended in order to permit branches of insurance undertakings to become representatives with respect to motor insurance activities, as already happens with respect to insurance services other than motor insurance.
- 15) The inclusion within the insurance cover of any passenger in the vehicle is a major achievement of the existing legislation. This objective would be placed in jeopardy if national legislation or any contractual clause contained in an insurance contract excluded passengers from insurance cover because they knew or should have known that the driver of the vehicle was under the influence of alcohol or of any other intoxicating agent at the time of the accident. The passenger is not usually in a position to assess properly the intoxication level of the driver. The objective of discouraging persons from driving whilst under the influence of intoxicating agents is not achieved by reducing the insurance cover for passengers who are victims of motor vehicle accidents. Cover of such passengers under the vehicle's compulsory motor insurance does not prejudice any liability they might incur pursuant to the applicable national legislation, nor the level of any award of damages in a specific accident.
- 16) Personal injuries and damage to property suffered by pedestrians, cyclists and other non-motorised users of the road, who are usually the weakest party in an accident, should be covered by the compulsory insurance of the vehicle involved in the accident where they are entitled to compensation under national civil law. This provision does not prejudice the civil liability or the level of awards for damages in a specific accident, under national legislation.
- 17) Some insurance undertakings insert into insurance policies clauses to the effect that the contract will be cancelled if the vehicle remains outside the Member State of registration for longer than a specified period. This practice is in conflict with the principle set out in Directive 90/232/EEC, according to which the compulsory motor insurance should cover, on the basis of a single premium, the entire territory of the Community. It should therefore be specified that the insurance cover is to remain valid during the whole term of the contract, irrespective of whether the vehicle remains in another Member State for a particular period, without prejudice to the obligations under Member States' national legislation with respect to the registration of vehicles.

- 18) Steps should be taken to make it easier to obtain insurance cover for vehicles imported from one Member State into another, even though the vehicle is not yet registered in the Member State of destination. A temporary derogation from the general rule determining the Member State where the risk is situated should be made available. For a period of 30 days from the date when the vehicle is delivered, made available or dispatched to the purchaser, the Member State of destination should be considered to be the Member State where the risk is situated.
- 19) Any person wishing to take out a new motor insurance contract with another insurer should be in a position to justify his accident and claims record under the old contract. The policyholder should have the right to request at any time a statement concerning the claims, or the absence of claims, involving the vehicle or vehicles covered by the insurance contract at least during the preceding five years of the contractual relationship. The insurance undertaking, or any body which may have been appointed by a Member State to provide compulsory insurance or to supply such statements, should provide this statement to the policyholder within 15 days of the request.
- 20) In order to ensure due protection of victims of motor vehicle accidents, Member States should not permit insurance undertakings to rely on excesses against an injured party.
- 21) The right to invoke the insurance contract and to claim against the insurance undertaking directly is of great importance for the protection of victims of motor vehicle accidents. Directive 2000/26/EC already provides victims of accidents occurring in a Member State other than the Member State of residence of the injured party, which are caused by the use of vehicles insured and normally based in a Member State, with a right of direct action against the insurance undertaking covering the person responsible against civil liability. In order to facilitate an efficient and speedy settlement of claims and to avoid as far as possible costly legal proceedings, this right should be extended to victims of any motor vehicle accident.
- 22) To enhance the protection of victims of motor vehicle accidents, the 'reasoned offer' procedure provided for in Directive 2000/26/EC should be extended to any kind of motor vehicle accident. This same procedure should also apply mutatis mutandis where the accident is settled by the system of national insurers' bureaux provided for in Directive 72/166/EEC.
- 23) In order to make it easier for the injured party to seek compensation, the information centres set up in accordance with Directive 2000/26/EC should not be confined to providing information concerning the accidents covered by that Directive, but should be able to provide the same kind of information for any motor vehicle accident.
- 24) Under Article 11(2) read in conjunction with Article 9(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, injured parties may bring legal proceedings against the civil liability insurance provider in the Member State in which they are domiciled.

- 25) As Directive 2000/26/EC was adopted before the adoption of Regulation (EC) No 44/2001, which replaced the Brussels Convention of 27 September 1968 on the same matter for a number of Member States, the reference to that Convention in that Directive should be adapted as appropriate.
- 26) Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Directive 72/166/EEC

Directive 72/166/EEC shall be amended as follows:

1. Article 1(4) is amended as follows:

- a) the first indent shall be replaced by the following:
'—the territory of the State of which the vehicle bears a registration plate, irrespective of whether the plate is permanent or temporary, or'
- b) the following indent shall be added:
'—in cases where the vehicle does not bear any registration plate or bears a registration plate which does not correspond or no longer corresponds to the vehicle and has been involved in an accident, the territory of the State in which the accident took place, for the purpose of settling the claim as provided for in the first indent of Article 2(2) of this Directive or in Article 1(4) of Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles;

2. Article 2(1) is replaced by the following:

'1. Member States shall refrain from making checks on insurance against civil liability in respect of vehicles normally based in the territory of another Member State and in respect of vehicles normally based in the territory of a third country entering their territory from the territory of another Member State. However, they may carry out non-systematic checks on insurance provided that they are not discriminatory and are carried out as part of a control which is not aimed exclusively at insurance verification.'

3. Article 4 is amended as follows:

- a) in point (a), second subparagraph:
 - i. the first sentence shall be replaced by the following:
'A Member State so derogating shall take the appropriate measures to ensure that compensation is paid in respect of any loss or injury caused in its territory

and in the territory of other Member States by vehicles belonging to such persons.'

- ii. the last sentence shall be replaced by the following:
 'It shall communicate to the Commission the list of persons exempt from compulsory insurance and the authorities or bodies responsible for compensation. The Commission shall publish the list.'

- b) in point (b), the second subparagraph shall be replaced by the following:
 'In that case Member States shall ensure that vehicles as mentioned in the first subparagraph of this point are treated in the same way as vehicles for which the insurance obligation provided for in Article 3(1) has not been satisfied. The compensation body of the Member State in which the accident has taken place shall then have a claim against the guarantee fund provided for in Article 1(4) of Directive 84/5/EEC in the Member State where the vehicle is normally based.'

After a period of five years from the date of entry into force of Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles, Member States shall report to the Commission on the implementation and practical application of this point. The Commission, after having examined these reports, shall, if appropriate, submit proposals on the replacement or repeal of this derogation

4. in Articles 6 and 7(1) 'or in the non-European territory of a Member State' shall be deleted.

Article 2

Amendments to Directive 84/5/EEC

'Article 1

1. The insurance referred to in Article 3(1) of Directive 72/166/EEC shall cover compulsorily both damage to property and personal injuries.
2. Without prejudice to any higher guarantees which Member States may lay down, each Member State shall require insurance to be compulsory at least in respect of the following amounts:
 - a) in the case of personal injury, a minimum amount of cover of EUR 1 000 000 per victim or EUR 5 000 000 per claim, whatever the number of victims;
 - b) in the case of damage to property, EUR 1 000 000 per claim, whatever the number of victims.

If necessary, Member States may establish a transitional period of up to five years from the date of implementation of Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and

Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles (13), within which to adapt their minimum amounts of cover to the amounts provided for in this paragraph.

Member States establishing such a transitional period shall inform the Commission thereof and indicate the duration of the transitional period.

Within 30 months of the date of implementation of Directive 2005/14/EC Member States shall increase guarantees to at least a half of the levels provided for in this paragraph.

3. Every five years after the entry into force of Directive 2005/14/EC or the end of any transitional period as referred to in paragraph 2, the amounts referred to in that paragraph shall be reviewed, in line with the European Index of Consumer Prices (EICP), as set out in Council Regulation (EC) No 2494/95 of 23 October 1995 concerning harmonised indices of consumer prices (14).

The amounts shall be adjusted automatically. Such amounts shall be increased by the percentage change indicated by the EICP for the relevant period, that is to say, the five years immediately preceding the review, and rounded up to a multiple of EUR 10 000.

The Commission shall communicate the adjusted amounts to the European Parliament and the Council and shall ensure their publication in the Official Journal of the European Union.

4. Each Member State shall set up or authorise a body with the task of providing compensation, at least up to the limits of the insurance obligation for damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which the insurance obligation provided for in paragraph 1 has not been satisfied.

The first subparagraph shall be without prejudice to the right of the Member States to regard compensation by the body as subsidiary or non-subsidiary and the right to make provision for the settlement of claims between the body and the person or persons responsible for the accident and other insurers or social security bodies required to compensate the victim in respect of the same accident. However, Member States may not allow the body to make the payment of compensation conditional on the victim establishing in any way that the person liable is unable or refuses to pay.

5. The victim may in any event apply directly to the body which, on the basis of information provided at its request by the victim, shall be obliged to give him a reasoned reply regarding the payment of any compensation.

Member States may, however, exclude the payment of compensation by that body in respect of persons who voluntarily entered the vehicle which caused the damage or injury when the body can prove that they knew it was uninsured.

6. Member States may limit or exclude the payment of compensation by the body in the event of damage to property by an unidentified vehicle.

However, where the body has paid compensation for significant personal injuries to any victim of the same accident in which damage to property was caused by an unidentified vehicle, Member

States may not exclude the payment of compensation for damage to property on the basis that the vehicle is not identified. Nevertheless, Member States may provide for an excess of not more than EUR 500 for which the victim of such damage to property may be responsible.

The conditions in which personal injuries are to be considered significant shall be determined in accordance with the legislation or administrative provisions of the Member State in which the accident takes place. In this regard, Member States may take into account, inter alia, whether the injury has required hospital care.

7. Each Member State shall apply its laws, regulations and administrative provisions to the payment of compensation by the body, without prejudice to any other practice which is more favourable to the victim.

Article 3 **Amendment to Directive 88/357/EEC**

The second sentence in the fourth subparagraph of Article 12a(4) of Directive 88/357/EEC shall be deleted.

Article 4 **Amendments to Directive 90/232/EEC**

Directive 90/232/EEC shall be amended as follows:

1. in Article 1, the following paragraph shall be inserted between the first and second paragraphs:

'Member States shall take the necessary measures to ensure that any statutory provision or any contractual clause contained in an insurance policy which excludes a passenger from such cover on the basis that he knew or should have known that the driver of the vehicle was under the influence of alcohol or of any other intoxicating agent at the time of an accident, shall be deemed to be void in respect of the claims of such passenger.'

2. the following Article shall be inserted:

'Article 1a

The insurance referred to in Article 3(1) of Directive 72/166/EEC shall cover personal injuries and damage to property suffered by pedestrians, cyclists and other non-motorised users of the roads who, as a consequence of an accident in which a motor vehicle is involved, are entitled to compensation in accordance with national civil law. This Article shall be without prejudice either to civil liability or to the amount of damages.'

3. in Article 2, the first indent shall be replaced by the following:

'— cover, on the basis of a single premium and during the whole term of the contract, the entire territory of the Community, including for any period in which the vehicle remains in other Member States during the term of the contract; and'

4. the following Articles shall be inserted:

'Article 4a

1. By way of derogation from the second indent of Article 2(d) of Directive 88/357/EEC (15), where a vehicle is dispatched from one Member State to another, the Member State where the risk is situated shall be considered to be the Member State of destination, immediately upon acceptance of delivery by the purchaser for a period of thirty days, even though the vehicle has not formally been registered in the Member State of destination.

2. In the event that the vehicle is involved in an accident during the period mentioned in paragraph 1 of this Article while being uninsured, the body referred to in Article 1(4) of Directive 84/5/EEC in the Member State of destination shall be liable for the compensation provided for in Article 1 of the said Directive.

Article 4b

Member States shall ensure that the policyholder has the right to request at any time a statement relating to the third party liability claims involving the vehicle or vehicles covered by the insurance contract at least during the preceding five years of the contractual relationship, or to the absence of such claims. The insurance undertaking, or a body which may have been appointed by a Member State to provide compulsory insurance or to supply such statements, shall provide this statement to the policyholder within 15 days of the request.

Article 4c

Insurance undertakings shall not rely on excesses against the injured party to an accident as far as the insurance referred to in Article 3(1) of Directive 72/166/EEC is concerned.

Article 4d

Member States shall ensure that injured parties to accidents caused by a vehicle covered by insurance as referred to in Article 3(1) of Directive 72/166/EEC enjoy a direct right of action against the insurance undertaking covering the person responsible against civil liability.

Article 4e

Member States shall establish the procedure provided for in Article 4(6) of Directive 2000/26/EC (16) for the settlement of claims arising from any accident caused by a vehicle covered by insurance as referred to in Article 3(1) of Directive 72/166/EEC.

In the case of accidents which may be settled by the system of national insurers' bureaux provided for in Article 2(2) of Directive 72/166/EEC, Member States shall establish the same procedure as in Article 4(6) of Directive 2000/26/EC. For the purpose of applying this procedure, any reference to insurance undertaking shall be understood as a reference to national insurers' bureaux as defined in Article 1, point 3 of Directive 72/166/EEC.

5. Article 5(1) is replaced by the following:

'1. Member States shall ensure that, without prejudice to their obligations under Directive 2000/26/EC, the information centres established or approved in accordance with Article 5 of that Directive, provide the information specified in that Article to any party involved in any traffic accident caused by a vehicle covered by insurance as referred to in Article 3(1) of Directive 72/166/EEC.'

Article 5 **Amendments to Directive 2000/26/EC**

Directive 2000/26/EC shall be amended as follows:

1. the following recital 16a shall be inserted:

'(16a) Under Article 11(2) read in conjunction with Article 9(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (17), injured parties may bring legal proceedings against the civil liability insurance provider in the Member State in which they are domiciled.

2. Article 4(8) is replaced by the following:

'8. The appointment of a claims representative shall not in itself constitute the opening of a branch within the meaning of Article 1(b) of Directive 92/49/EEC and the claims representative shall not be considered an establishment within the meaning of Article 2(c) of Directive 88/357/EEC or:

- an establishment within the meaning of the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (18) — as far as Denmark is concerned,
- an establishment within the meaning of Regulation (EC) No 44/2001 — as far as the other Member States are concerned.

3. in Article 5(1)(a), point 2(ii) shall be deleted.

4. the following Article is inserted:

'Article 6a **Central body**

Member States shall take all appropriate measures to facilitate the availability in due time to the victims, their insurers or their legal representatives of the basic data necessary for the settlement of claims.

This basic data shall, where appropriate, be made available in electronic form in a central repository in each Member State, and be accessible by parties involved in the case at their express request.'

Article 6 Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 11 June 2007 at the latest. They shall forthwith inform the Commission thereof.

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

The methods of making such reference shall be laid down by Member States.

2. Member States may, in accordance with the Treaty, maintain or bring into force provisions which are more favourable to the injured party than the provisions necessary to comply with this Directive.

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

Article 7 Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Union.

Article 8 Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 11 May 2005.

For the European Parliament
The President
J. P. BORRELL FONTELLES

For the Council
The President
N. SCHMIT