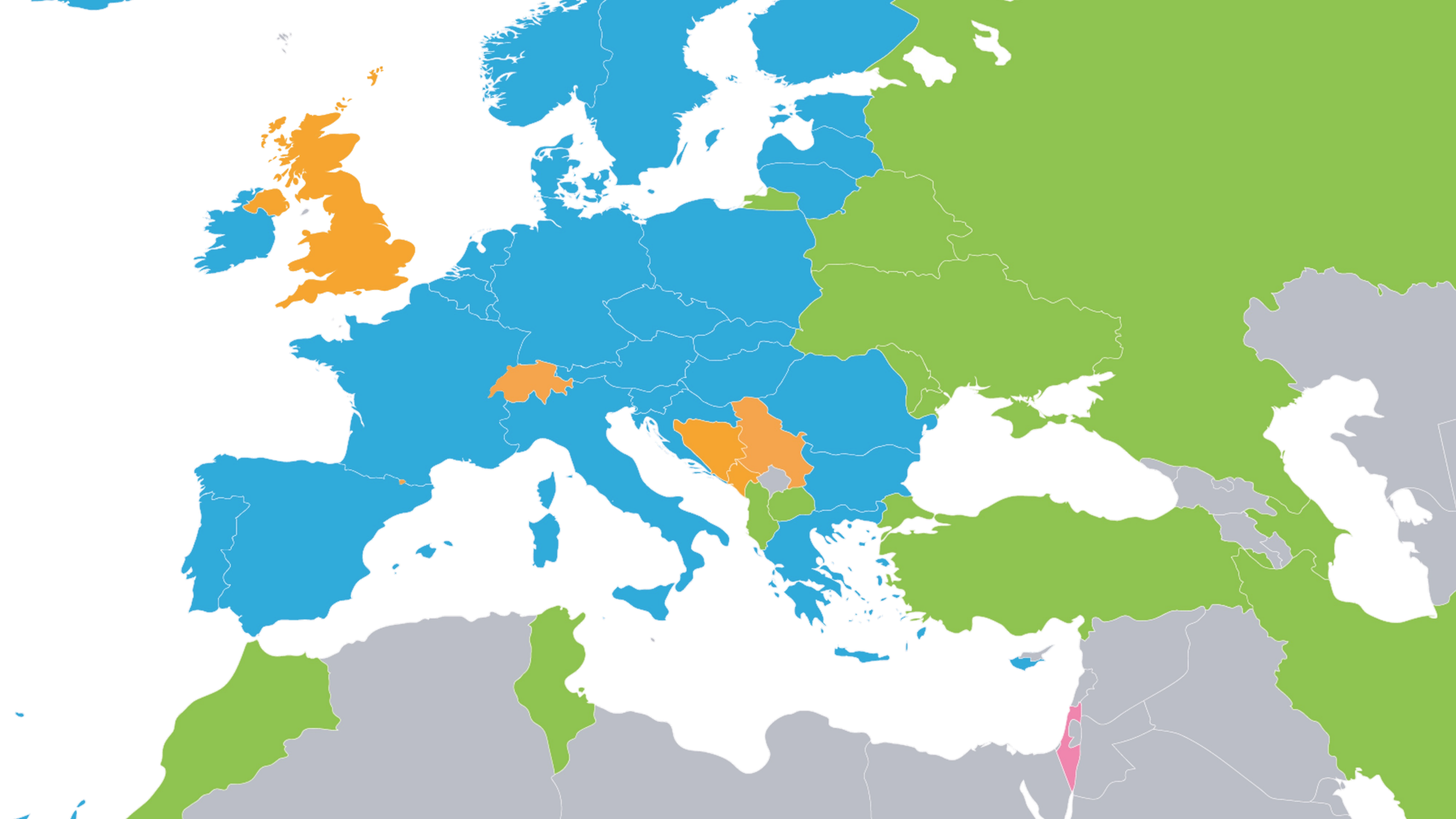




Cross-border traffic accidents and claims handling in Europe

Frits Blees



Europe: a continent and a supranational entity



Europe in a geographical sense

50 States

746 Million inhabitants

449 Million vehicles

European Union/European Economic Area

27 + 3 Member States

450 Million + 6 Million inhabitants

274 Million vehicles

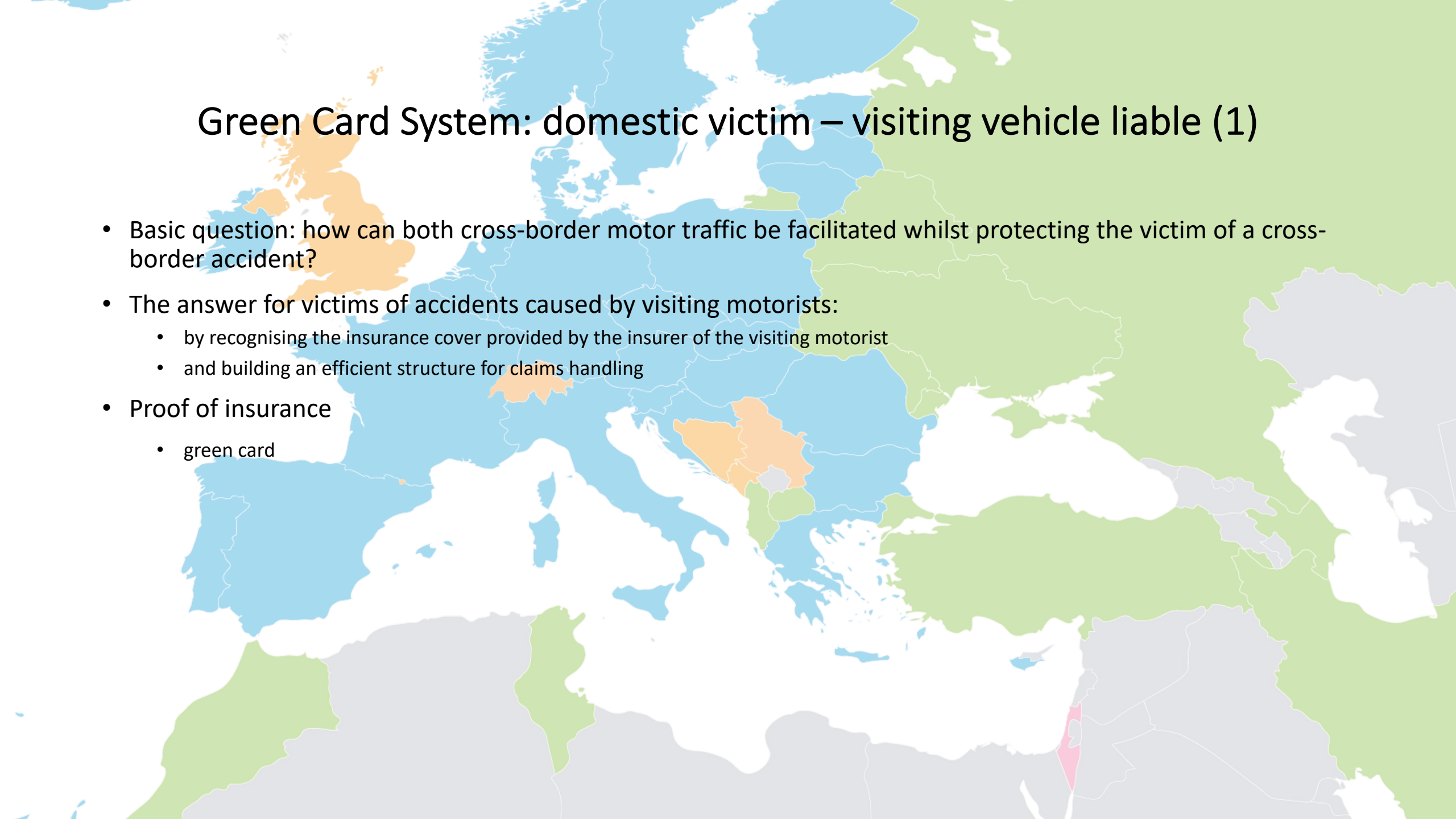
Two types of cross-border traffic accidents

Two systems for facilitation of free movement and the protection of victims

- Visiting vehicle is liable for the accident; domestic victim
 - Green Card system: the green, blue and orange countries
 - 47 countries in Europe, North Africa and the Near East
 - Actors:
 - 46 Green Card Bureaux
 - ± 1580 insurance companies
 - ± 400 nominated correspondents
- Victim is visiting another country; domestic vehicle is liable
 - Protection of visitors Directive (4th Directive) of the EU: the blue countries
 - 27 Member States of the EU + 3 Member States of the EEA (Iceland, Liechtenstein and Norway)
 - Actors:
 - ± 1250 insurance companies
 - ± 330 claims representatives
 - 30 Compensation Bodies
 - 30 Guarantee Funds

Green Card System: domestic victim – visiting vehicle liable (1)

- Basic question: how can both cross-border motor traffic be facilitated whilst protecting the victim of a cross-border accident?
- The answer for victims of accidents caused by visiting motorists:
 - by recognising the insurance cover provided by the insurer of the visiting motorist
 - and building an efficient structure for claims handling
- Proof of insurance
 - green card



Green Card System: domestic victim – visiting vehicle liable (1)

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- The answer for victims of accidents caused by visiting motorists:
 - by recognising the insurance cover provided by the insurer of the visiting motorist
 - and building an efficient structure for claims handling
- Proof of insurance
 - green card or
 - vehicle normally based in participating country: vehicle bears registration plate, insurance plate or other distinguishing sign, of a MS, or the custodian of the vehicle has permanent residence in a MS
- Structure for claims handling:
 - establishment of Bureaux (associations of MTPL insurers)
 - which in the country of accident guarantee handling and settlement of claims (handling Bureau)
 - and which in the home country of the visiting motorist guarantee reimbursement of the handling Bureau's outlays (guaranteeing Bureau)

Green Card System: domestic victim – visiting vehicle liable (2)

Protection of victims – basic principles

- Visiting vehicle is 'covered' on basis of either green card or normally based-concept
- Bureau of country of accident liable for handling and settling claims
 - Direct action of victim against handling Bureau
 - Claims handled according to applicable law = (usually) *lex loci delicti* or *lex damni*
 - Cover according to requirements visited country
- Reimbursement guaranteed by Bureau
 - that issued green card
 - illegally altered or false green cards also guaranteed
 - or of country where vehicle normally based
 - uninsured vehicles also guaranteed
 - no guarantee if registration does not/no longer correspond with vehicle

Green Card System: domestic victim – visiting vehicle liable (3)

Protection of victims – claims handling in practice

- Bureau of country of accident liable but only in exceptional cases handles and settles claims itself
- Insurers authorised to nominate representatives in countries where they provide cover: *nominated correspondents*
- *Nominated correspondents handle and settle claims in the name of the Bureau and on behalf of the insurer.*
- Insurer not allowed to 'instruct' neither Bureau nor nominated correspondent on how to handle and settle the claim
- Direct right of action of victim against (handling) Bureau (although usually correspondents handle court proceedings on behalf of the Bureau)

Green Card System: domestic victim – visiting vehicle liable (4)

Reimbursement procedures

- Compensation of victim before demanding reimbursement
- Reimbursement of compensations paid to injured parties + external costs + handling fee (15 % of compensation + costs with a minimum and maximum)
- Reimbursement within 2 months under penalty of 12 % late payment interest
- Handling Bureau or correspondent can call in guarantee of debtor Bureau if no reimbursement within 2 months
- If vehicle uninsured reimbursement demand directly to Bureau

Green Card System: domestic victim – visiting vehicle liable (5)

Summary

- Covers 47 countries in Europe, North Africa and the Near East
- Insurer covers in other countries on the basis of either
 - Green Card
 - 'Normally based' (registration, insurance or other distinguishing plate)
- Cover complies with legal requirements visited country
- Central role for Bureaux
 - Bureau country of accident: guarantee towards victim
 - Bureaux country of origin liable motorist: guarantee of reimbursement
- Actual claims handling by nominated correspondents
- No influence or interference of insurer with claims handling process
- Direct right of action of victim against Bureau of country of accident

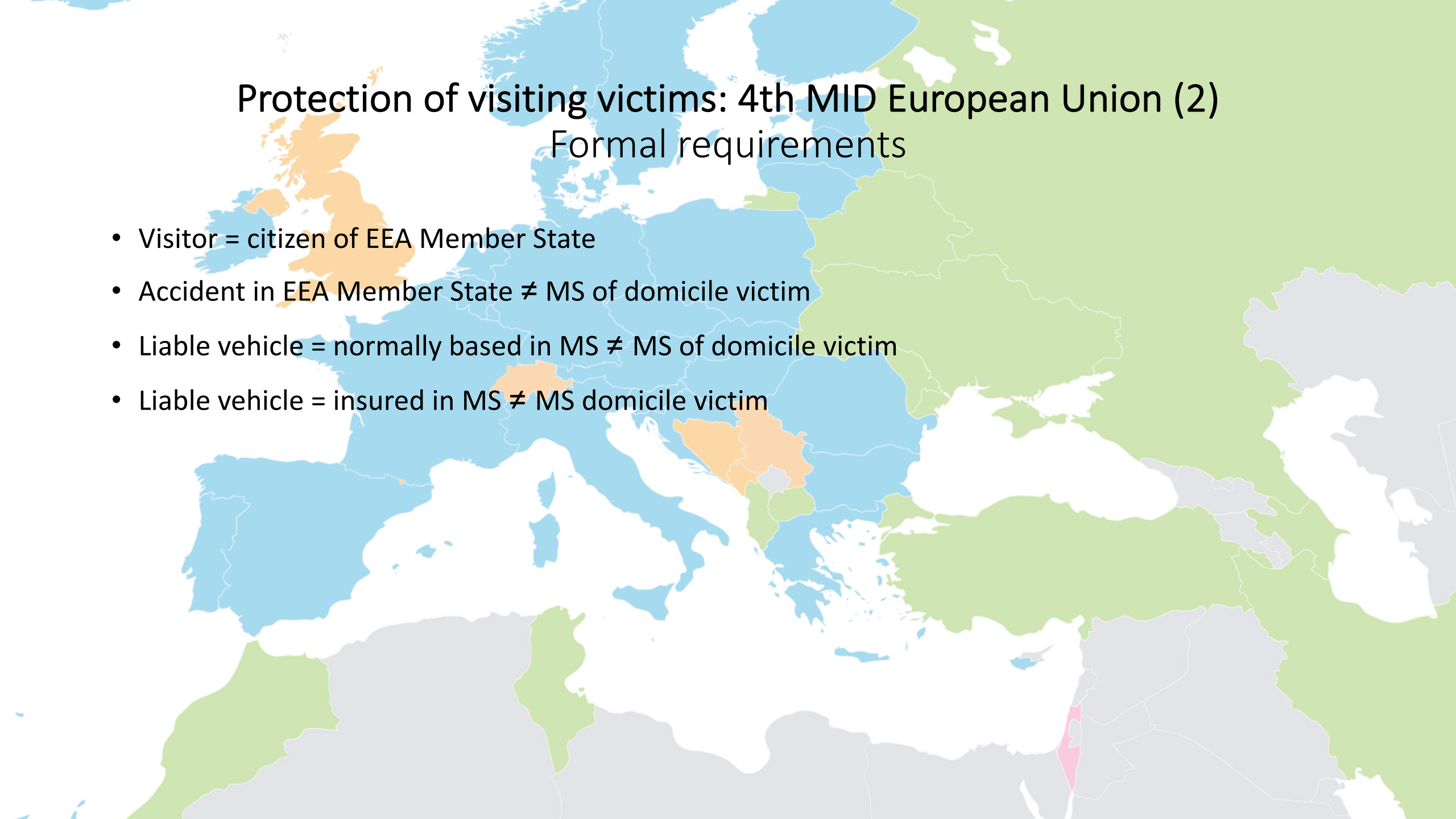
Protection of visiting victims: 4th MID European Union (1)

- Mirror situation of Green Card system: visitor = victim and not liable party
- Visitor can be motorist, cyclist, pedestrian
- Narrower geographical scope: in principle only EEA
- Focus almost entirely on insurers and claims representatives
- Role of Compensation Body not to be compared with Green Card Bureau

Protection of visiting victims: 4th MID European Union (2)

Formal requirements

- Visitor = citizen of EEA Member State
- Accident in EEA Member State \neq MS of domicile victim
- Liable vehicle = normally based in MS \neq MS of domicile victim
- Liable vehicle = insured in MS \neq MS domicile victim





Protection of visiting victims: 4th MID European Union (3)

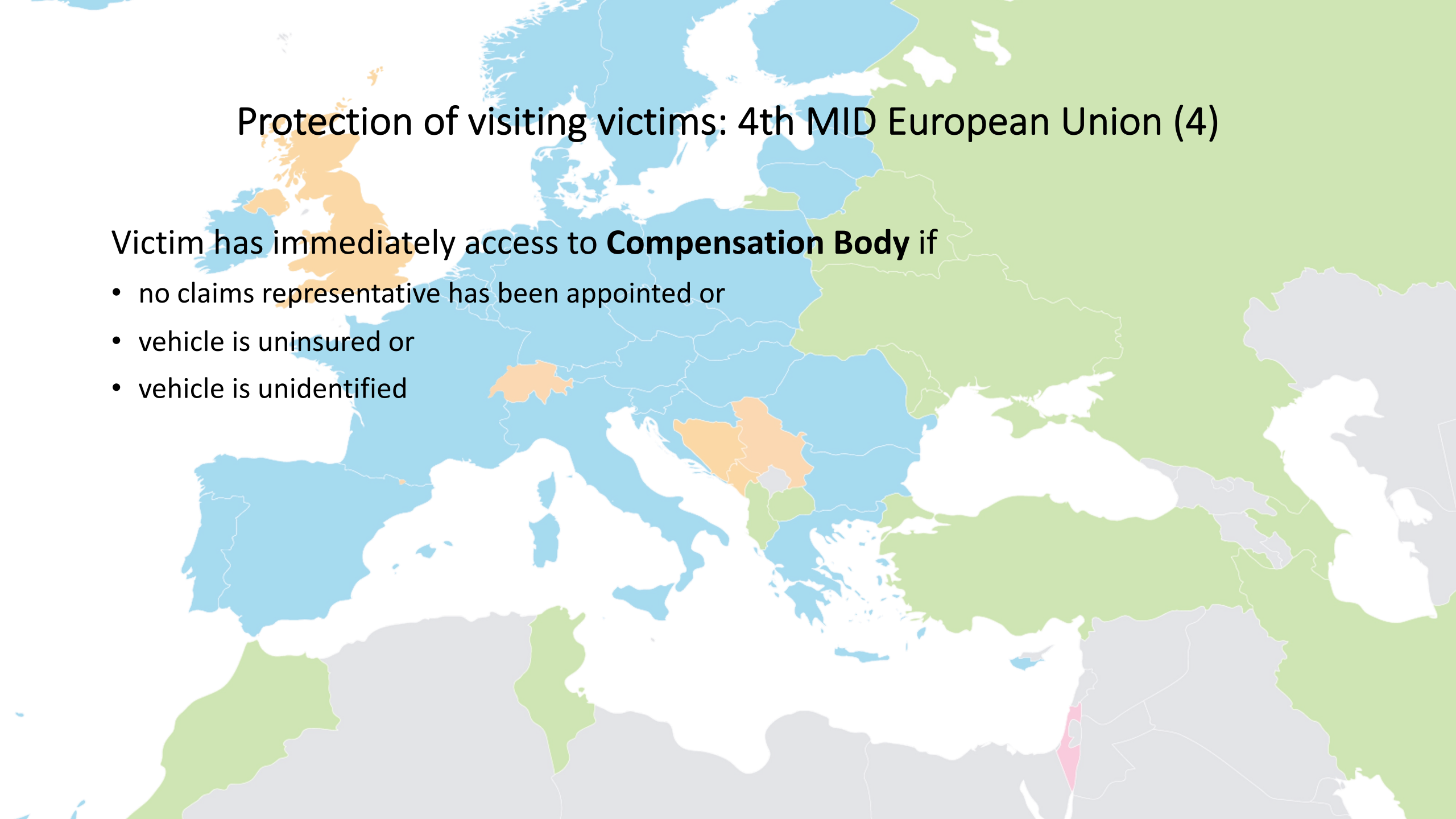
Claims representatives

- EEA insurers appoint claims representatives in all other MS
- Claims representative must be fully authorised to handle and settle claims of visiting victims domiciled in their territory
- Claims representative (or insurer) must provide within three months
 - Offer of compensation if liability not disputed and damages quantified or
 - Reasoned reply on all elements of the claim if liability is contested and/or damages not quantified
- Failure to present offer or reasoned reply in time?
 - Access to Compensation Body
 - Compensation Body first 'invites' insurer to remedy failure within two months
 - If still no offer or reasoned reply: Compensation Body takes over claims handling

Protection of visiting victims: 4th MID European Union (4)

Victim has immediately access to **Compensation Body** if

- no claims representative has been appointed or
- vehicle is uninsured or
- vehicle is unidentified



Protection of visiting victims: 4th MID European Union (5)

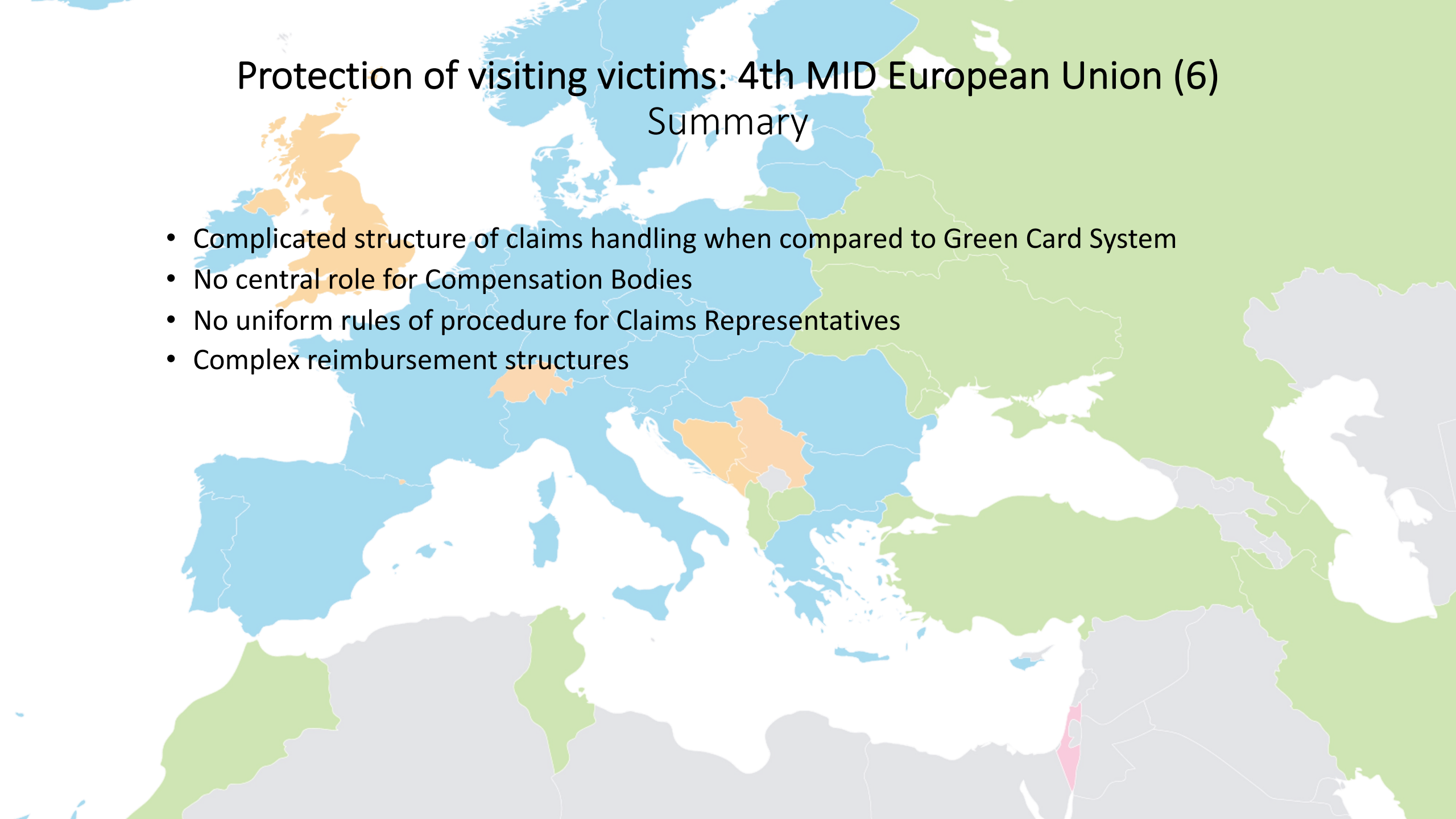
Recourse and reimbursement

- Claims representative – insurer:
 - Based on private agreements;
 - No 'guarantee' by Compensation Body
- Compensation Body MS domicile victim – Compensation Body MS insurance undertaking:
 - If no offer or reasoned reply by insurer or claims representative within 3 + 2 months
 - If no claims representative appointed
- Compensation Body – Guarantee Fund
 - If vehicle uninsured → Guarantee Fund MS normally based
 - If vehicle unidentified → Guarantee Fund MS of accident

Protection of visiting victims: 4th MID European Union (6)

Summary

- Complicated structure of claims handling when compared to Green Card System
- No central role for Compensation Bodies
- No uniform rules of procedure for Claims Representatives
- Complex reimbursement structures





Conclusions

- Accidents caused by visiting motorists:
 - Protection under Green Card system in practically all of Europe
 - Proven efficacy in almost 70 years
 - Very few complaints from victims/injured parties
 - Very few court cases/arbitration procedures between Bureaux on reimbursement issues
- Accidents with visiting victims
 - More limited geographical scope: EEA
 - Claims handling and reimbursement structures more complicated
 - Less central steering than under Green Card system; stronger position of insurers
 - Therefore less information about quantity and quality of claims handling and settlement
 - Yet: recently published 6th Directive contains no new rules → structures work well enough?