



European Economic and Social Committee

INT/857

Insurance against civil liability/motor vehicles

OPINION

European Economic and Social Committee

Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/103/EC of the European Parliament and the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability
[COM(2018) 336 final - 2018/0168 (COD)]

Rapporteur: **Christophe LEFEVRE**

Referral	Council, 06/06/2018
	European Parliament, 11/06/2018
Legal basis	Article 114(1) of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	04/09/2018
Adopted at plenary	19/09/2018
Plenary session No	537
Outcome of vote (for/against/abstentions)	191/0/6

1. Conclusions and recommendations

- 1.1 The European Economic and Social Committee (EESC) welcomes the proposals made by the Commission when amending the Directive on insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability. However, the Committee regrets that the Commission has not taken this opportunity to anticipate the changes connected to driverless motor vehicles, despite the comments included in the impact assessment¹ accompanying the proposal.
- 1.2 As regards improving the protection of victims of motor vehicle accidents in the event of insolvency of the insurer, the Committee endorses the proposal to compensate victims through the body established in the victim's Member State of residence. Nonetheless, the Commission excludes recourse to the body if the victim has referred the matter to the insurer directly or initiated legal proceedings. The Committee therefore recommends that this exclusion should not apply if the insurer goes out of business during this period (bankruptcy, winding up proceedings) or if the victim cedes the appeal payout to the body in order to be compensated more quickly. The Committee recommends that the levels of compensation (items of damage) chosen from between the levels in force in the country in which the accident took place and those in force in the country of residence should be those most advantageous to the victim.
- 1.3 As regards improving recognition of claims history statements, the Committee recommends indicating the name of the driver implicated and his or her degree of responsibility for the accident (full, partial or none). The Committee questions the content of the statement under national legislation covering a vehicle irrespective of the driver, compared to legislation whereby a vehicle is insured for a given driver with the premiums set on the basis of the individual risk profile and accident history, or whereby a driving licence holder is insured regardless of the vehicle used. The Committee asks the Commission to require that these insurance certificates and claims history statements be issued in a form which can be authenticated and to authorise the use of an interconnected database available to law enforcement for the purpose of verifying the validity of the certificates and statements.
- 1.4 As regards checks on insurance to combat uninsured driving, the Committee welcomes the proposal to use number plate recognition technology to check vehicles without having to stop them as part of a nation-wide system. If the vehicle is not covered by an insurance policy, the Committee recommends immobilising the vehicle until a valid insurance certificate is produced.
- 1.5 As regards harmonisation of minimum amounts of cover, the Committee recommends that the Commission set a final deadline for completing the implementation of minimum compensation thresholds.
- 1.6 As regards the scope of the directive, the Committee welcomes the clarification regarding the concept of a means of transport on public or private property, whether stationary or moving, excluding exclusively agricultural use. However, steps will have to be taken to ensure that agricultural vehicles circulating on the public highway are subject to the directive.

¹

<https://ec.europa.eu/transparency/regdoc/rep/10102/2018/EN/SWD-2018-247-F1-EN-MAIN-PART-1.PDF>.

- 1.7 Lastly, as regards consistency with existing provisions in the policy area, the Committee notes that the Commission's proposals support the free movement of persons and goods and internal market principles ensuring the free provision of services and free establishment by insurers.

2. **Background and introduction**

- 2.1 The Commission proposes to amend the Directive relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability, amending Directive 2009/103/EC of the European Parliament and the Council of 16 September 2009.
- 2.2 The European Commission aims to improve the currently inadequate protection of the victims of motor vehicle accidents, to reduce unequal treatment of policyholders with regard to no claims discount systems and to incorporate European Court of Justice rulings delivered since the first EU directive on vehicle insurance was adopted in 1972.
- 2.3 The directive is a legal tool which is vital for the efficient operation of the single market as regards freedom of movement, based on a single premium with no need to take out an additional insurance policy in order to move around in another Member State; it also seeks to guarantee a high degree of convergence with regard to the protection of victims of motor vehicle accidents.
- 2.4 The legislation is based on the international green card system which was not devised by the EU and which 48 countries have now joined. The key aspects of Directive 2009/103/EC are as follows:
- an obligation on motor vehicles to have a motor third party liability insurance policy, valid for all parts of the EU on the basis of a single premium;
 - obligatory minimum amounts of cover which such insurance policies must provide (Member States may require higher cover at national level);
 - a prohibition on Member States from carrying out systematic checks of insurance of vehicles normally based in another Member State;
 - an obligation on Member States to create guarantee funds for compensation of victims of accidents caused by uninsured or unidentified vehicles;
 - protection for victims of motor vehicle accidents in a Member State other than their Member State of residence ("visiting victims");
 - a right for policyholders to obtain a statement of their claims history for the past five years from their insurer.
- 2.5 Directive 2009/103/EC was evaluated² in 2017 in connection with the Commission's 2016 work programme and the March 2017 action plan on financial services, and two CJEU rulings were delivered that same year. As a result, the Commission has set out its own position.

²

https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3714481_en.

2.5.1 Improving the protection of victims of motor vehicle accidents in the event of insolvency of the insurer

2.5.1.1 The Commission proposes that a body be authorised in each Member State to compensate injured persons who normally reside in their territory for at least the amount required of insurance for material damage or personal injuries caused by a vehicle which is insured, if they do not receive, within three months, a reasoned reply to the information provided when making a claim, or if the insurance or reinsurance undertaking is bankrupt or being wound up. This would not apply if the victim has already submitted a claim directly to the insurer or taken legal action.

2.5.1.2 The Commission anticipates that this body would be reimbursed by the body established in the country of the person in the wrong.

2.5.2 Improving recognition of claims history statements, particularly across borders

2.5.2.1 The directive requires that a claims history statement be issued covering the last five years. Insurers are not required to take this into account when calculating the premiums.

2.5.2.2 The Commission recommends standardising the content and form of these claims history statements, which should provide the details needed to adapt the premiums in line with the claims history and to ensure that the statement can be authenticated.

2.5.3 Insurance checks to combat uninsured driving

2.5.3.1 The Commission recommends using number plate recognition technology to check vehicles without stopping them as part of a comprehensive national checking system, which does not interfere with the free movement of people and vehicles.

2.5.3.2 The Commission points out that, in order to verify vehicles' insurance status when they enter the territory of a Member State, data must be exchanged between Member States.

2.5.4 Harmonisation of minimum amounts of cover

2.5.4.1 The Commission further notes that the minimum levels of compensation differ from one country to another, largely due to the fact that these levels were not adjusted during the transition period. The Commission recommends that the minimum amounts of cover be harmonised, with each Member State nonetheless able to set higher minima.

2.5.5 Scope of the directive

2.5.5.1 By incorporating three CJEU rulings³, the Commission clarified the scope of the motor third party liability insurance obligation, excluding accidents in which the vehicle was used for exclusively agricultural use: any activity consistent with the normal function of a vehicle as a

³ Vnuk (2014 C-162/13), Rodrigues de Andrade (2017 C-514/16) and Torreiro (2017 C-334/16).

means of transport on the public highway or on private property, whether the vehicle is stationary or moving.

2.6 Consistency with other EU policies

- 2.6.1 The Commission notes that its proposals support the free movement of persons and goods and internal market principles ensuring the free provision of services and free establishment by insurers.

3. **Comments**

- 3.1 The EESC welcomes the proposals made by the Commission when amending the Directive on insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability. This amendment is the result of feedback provided for under the legislative framework, impact assessments and public consultations and the integration of CJEU case-law.

- 3.2 Improving the protection of victims of motor vehicle accidents in the event of insolvency of the insurer

- 3.2.1 The Committee endorses the proposal to compensate victims through the body in the Member State of residence in order to offset the inaction of insurers or in the absence of a reasoned reply within a reasonable timeframe, and supports the fact that the body in the victim's Member State of residence can apply to the third-country body of the responsible insured party for reimbursement.

- 3.2.2 However, since the proposal precludes the managing body from compensating the victim if the victim has contacted the insurer directly or if legal proceedings are underway, the Committee recommends that this exclusion should not apply in the following circumstances:

- if during this period the insurer goes out of business (bankruptcy, winding up proceedings);
- should the supervisory authorities withdraw the insurer's licence to operate;
- if the victim cedes the payout to the body so that the victim can be compensated very quickly.

The Committee recommends that the levels of compensation (items of damage) chosen from between the levels in force in the country in which the accident took place and those in force in the country of residence should be those most advantageous to the victim.

- 3.3 Improving recognition of claims history statements, particularly across borders

- 3.3.1 The Committee welcomes the move to issue systematically a standardised statement certifying whether the person has been involved in any accidents over the last five years.

- 3.3.2 The Committee further recommends indicating the name of the driver implicated and his or her degree of responsibility for the accident (full, partial or none).

- 3.3.3 The Committee questions the content of the statement under national legislation covering a vehicle irrespective of the driver, compared to legislation whereby a vehicle is insured for a given driver with the premiums set on the basis of the individual risk profile and accident history, or whereby a driving licence holder is insured regardless of the vehicle used.
- 3.3.4 The Committee does however have questions regarding the situation arising from driverless motor vehicles, or possibly regarding the concept of the responsible "driver" when the motor vehicle is being piloted remotely.
- 3.3.5 The Committee notes that the Commission does not plan to legislate on document fraud connected to claims history statements or insurance certificates.
- 3.3.6 The Committee asks the Commission to require that these insurance certificates and claims history statements be issued in a form which can be authenticated and to authorise the use of an interconnected database available to law enforcement for the purpose of verifying the validity of the certificates and statements.
- 3.3.7 The Committee notes that the Commission does not mention how the implementation of these cross-border interconnected systems will be financed.
- 3.4 Checks on insurance to combat uninsured driving
- 3.4.1 The Committee welcomes the proposal to use number plate recognition technology to check vehicles without stopping them, providing that the checks are part of a comprehensive national checking system, are not discriminatory and do not involve stopping the vehicle.
- 3.4.2 However, the Commission remains silent regarding what action should be taken regarding vehicles identified as not being protected by an insurance policy. The Committee recommends immobilising the vehicle until an insurance certificate is produced which either is still valid or which was valid until less than a month previously.
- 3.4.3 The Commission points out that this check on vehicles' insurance status when entering the territory of a Member State requires data to be exchanged between Member States, and that the rights, freedoms and legitimate interests of the people concerned by these data must be safeguarded by the General Data Protection Regulation (GDPR).
- 3.4.4 However, the Commission has nothing to say regarding the managing operator or how the costs involved in setting up and managing an interconnected database of valid or invalid insurance policies would be covered.
- 3.5 Harmonisation of minimum amounts of cover
- 3.5.1 The Committee supports the Commission's analysis regarding varying minimum thresholds, particularly those thresholds which fail to meet requirements as they are below the thresholds provided for by the directive in nearly half of the EU Member States.

3.5.2 Rather than simply recommending that the thresholds be harmonised⁴, the Committee recommends that the Commission set a final deadline (possibly the end of 2019) to finish implementing minimum compensation thresholds, since the deadline has already passed.

3.5.3 The Committee recommends that the levels of compensation (items of damage) chosen from between the levels in force in the country in which the accident took place and those in force in the country of residence should be those most advantageous to the victim.

3.6 Scope of the directive

3.6.1 The Committee welcomes the clarification regarding the concept of a means of transport on public or private property, whether stationary or moving, excluding exclusively agricultural use. However, steps will have to be taken to ensure that agricultural vehicles circulating on the public highway are subject to the directive.

3.7 Consistency with existing policy provisions in the policy area

3.7.1 The Committee would also point out that the Commission's proposals support the free movement of persons and goods, and that they comply with internal market principles ensuring the free provision of services and free establishment by insurers.

Brussels, 19 September 2018.

Luca Jahier

President of the European Economic and Social Committee

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Directive 84/5/EEC, amended by Directive 2005/14/EC.