



EUROPEAN COMMISSION

SEC(2018) 248

REGULATORY SCRUTINY BOARD OPINION

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}

{SWD(2018) 247}

{SWD(2018) 248}



Brussels,
Ares(2018)

Opinion

Title: Impact Assessment / Revision of the Motor Insurance Directive

(version of 09/02/2018)*

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Context

The 1972 Directive on Motor Insurance (MID) protects victims of motor vehicle accidents and facilitates the free movement of vehicles between Member States.

A simultaneous evaluation of the directive identified several issues, including the following:

No EU-level rules ensure swift payment to victims in the event that a motor insurer becomes insolvent. This includes when the insurer is providing insurance cross-border.

In practice, Member States have different minimum obligatory amounts of cover for motor insurance.

A high level of uninsured driving raises insurance premiums for those who do have insurance.

When a policyholder moves to another EU Member State, motor insurers in their new state of residence do not always take claims history into account.

The envisaged revision of MID aims to address these issues. It also envisages clarifying the scope of the Directive to reflect recent rulings by the European Court of Justice.

(B) Main considerations

The Board notes that most of the targeted problems are of modest size and merit a proportionate impact assessment.

However, the report contains significant shortcomings that need to be addressed. As a result, the Board expresses reservations and gives a positive opinion only on the understanding that the report shall be adjusted in order to integrate the Board's recommendations on the following key aspects:

- (1) The extent of the envisaged legislative change of the scope of the MID and the reasons for not assessing its implications are not sufficiently clear.**
- (2) The link to the evaluation is not fully adequate.**

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

(3) Some of the proposed legislative measures are weakly justified.

(C) Further considerations and adjustment requirements

(1) The report reflects diverging interpretations and views, among Member States, the motor sport industry, consumer associations and other stakeholders, concerning the actual scope of the Directive. The report underlines the need to provide legal certainty and envisages a legislative change that is not impact assessed on the grounds that this would only codify established CJEU case law. However, it is not clear whether this change strictly reflects the CJEU rulings or actually extends the scope of the Directive. The report leaves to be understood (in annex) that the envisaged clarification would reflect a wide interpretation of the scope, including for example the use of vehicles for motor sports, despite the fact that the Court has (in the Torreiro Judgment C-334/16) explicitly refrained from ruling whether or not the present scope of MDI covers this area. The report should clarify the purpose of the envisaged legislative change: is it to strictly reflect the formulations of the Court in the Directive, or rather to set out explicitly a wide material and territorial scope of the Directive in order to provide legal certainty and ensure a high level of protection for victims of motor vehicle accidents? In the former case, the report should explain the real added value of such “codification”, which would still leave open a margin for further divergent interpretations of the scope of the Directive and disorderly implementation. In the latter case, the report should properly consider different options concerning the clarification/revision of the scope of the Directive and assess the corresponding impacts.

(2) The report should better reflect the evaluation on two specific points. First, the report should bring forward evaluation conclusions demonstrating why there is no need to future proof the directive, notably in terms of e-bikes and driverless cars. Second, the report should assess REFIT aspects and, based on the evaluation results, any potential for removing unnecessary burdens in the directive.

(3) The report should include stronger evidence to justify legislation in the area of minimum coverage and claims history. The report should better consider the effective impact of options for the minimum coverage given that the amounts covered in many Member States go beyond that minimum and that there are increasingly fewer and less severe accidents with personal injury or damage exceeding the minimum coverage. For claims history, the problem seems to be confined to relatively few cases in a few countries. To be more proportionate, the approach should therefore include soft law options (for instance in the form of a recommendation from EIOPA). The report could also consider more disentangled options.

(4) The report needs to include a consolidated baseline, which would include the clarified scope of the MID. Furthermore, the report should better frame the issue of uninsured driving, emphasising the respective responsibilities of Member States and the EU and the potential for addressing the problem through other channels such as infringements, police co-operation, etc. The report could also address more holistically the issue of tackling uninsured driving, such as considering exchanges of information between Member States on uninsured drivers. Finally, the monitoring and evaluation section should include information on how data for KPIs will be collected.

The Board takes note of the quantification of the various costs and benefits associated to the preferred option of this initiative, as assessed in the report considered by the Board and summarised in the attached quantification tables.

Some more technical comments have been transmitted directly to the author DG.

(D) RSB scrutiny process

The lead DG shall ensure that the report is adjusted in accordance with the recommendations of the Board prior to launching the interservice consultation.

The attached quantification tables may need to be adjusted to reflect any additional impacts that may need to be considered and any changes in the choice or the design of the preferred option in the final version of the report.

Full title	Revision of the material and geographical scope of the Motor Insurance Directive with the aim to focus only on traffic related accidents.
Reference number	2016/FISMA/030
Date of RSB meeting	07/03/2018

ANNEX: Quantification tables extracted from the draft impact assessment report submitted to the Board on 09/02/2018

(N.B. The following tables present information on the costs and benefits of the initiative in question. These tables have been extracted from the draft impact assessment report submitted to the Regulatory Scrutiny Board on which the Board has given the opinion presented above. It is possible, therefore, that the content of the tables presented below are different from those in the final version of the impact assessment report published by the Commission as the draft report may have been revised in line with the Board's recommendations.)

1. Summary of costs and benefits

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	Amount	Comments
Direct benefits		
Guaranteed initial compensation of a victim in case of insolvency of an insurer	EUR 500 000 – 2.5 million ¹ annually	Avoids potential litigation over both initial and final payment. Avoids delays of compensation of victims due to litigation. Compensation in line with the time limitations set out in the MID. Ensures full compensation of victims in line with the requirements set out in the MID. Avoids partial or no compensations. Accounts for public costs of trial as well as costs of litigation to parties.
Equal minimum amounts of cover	Not quantifiable	Setting equal amounts of minimum cover will not gain any direct cost-savings. Policyholders / victims will benefit in the case of accidents where the total amounts would currently not be covered. ²
Allow non-obstructive motor insurance checks	Potentially EUR 835 – 870 million annually (upper bound) ³	The foreseen amendment will merely remove the current ban on insurance checks. As such, it remains unclear how many Member States will implement such checks. The figures are based on estimates of claims in relation to uninsured driving. Given that not all Member States will

¹ Based on 5-year average number of insurer insolvencies (approximately one per year), available data on reimbursed sums in past insolvency cases (since 1998) and European Commission estimates on costs of litigation. Costs considered include: court fees, lawyer's fees, bailiffs' fees, expert fees and (potential) translation fees.

² Quantification of this effect is not possible due to lack of micro data on the frequency of cases and amounts concerned in the respective Member States.

³ Based on EREG and Council of Bureaux estimates in 2011; The benefit will depend heavily on the amount of Member States adopting such checks, the amount of cross-border traffic in these Member States and the effectiveness of the checks imposed.

		impose checks and that such checks will not be able to capture all cases of uninsured driving, a figure in the range of EUR 250 – 500 million appears more realistic in practice (possibly to increase over time as more Member States adopt checks).
Codification of the CJEU rulings	Not quantifiable	The benefit of the ECJ judgements is compensation of victims of accidents taking place on private land with no public access, in those Member States where such land is not currently covered by obligatory MTPL insurance, minus cover under any non-obligatory insurance cover already provided (general liability insurance etc.). However, this benefit applies even in the absence of codification, therefore the benefits of codification are the legal smoothness of introduction of the newly interpreted scope of the Directive in certain Member States. The codification of rulings will increase the legal certainty and thereby reduce the scope for litigation. This will benefit both insurers as well as public bodies.
Non-discrimination requirement for the treatment of claims history	EUR 4.2– 12.7 million ⁴	Policyholders moving to another Member State will benefit from lower premiums as there will be no discriminatory treatment of claims histories. The figure assumes that 10% of drivers are currently affected by discriminatory treatment.
<i>Indirect benefits</i>		
Allow non-obstructive motor insurance checks	Not quantifiable	Policyholders will ultimately benefit in terms of lower premiums as insurers pass on savings from fewer uninsured claims. The pass-on rate will crucially depend on the competition of insurers in the respective Member State and the

⁴ This estimate is based on the EU average premium paid (EUR 250 – Source: Insurance Europe), the amount of people of working age moving to another Member State per year (1,692,000 in 2014 – Source: ESTAT) while assuming that 20% of people are affected by discriminatory treatment of claims history and that premiums will be 10-30% higher compared to cases where the claims history is effectively taken into account.

		extent to which Member States actually impose such checks. There is insufficient data available to estimate this effect with reasonable accuracy.
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II. Overview of costs – Preferred option

		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
<i>Set out rules on initial compensation of victims and ultimate responsibility for the claim</i>	Direct costs				Minimal increase of costs due to annual contributions to national guarantee funds.	The rules will have cost implications for national guarantee funds that will now have to reimburse victims	Minimal additional costs due to compensations in case of insolvency of insurer
	Indirect costs		Possible increase in premiums due to increase of contributions of insurers to compensation bodies				
<i>Set equal minimum amounts of cover</i>	Direct costs					Affected Member States will be required to increase minimum amounts and related national legislation	
	Indirect costs		Possible small increase in premiums in	Insurers in Member States affected by			In affected Member States, compensati

			a minority of Member States	an increase in minimum cover will face have to recalculate insurance premiums			on funds have to reimburse victims in accordance with minimum amounts
<i>Allow non-obstructive motor insurance checks.</i>	Direct costs					Member States opting to introduce checks will be required to set up respective systems and face corresponding costs	The operation of insurance check systems will require maintenance, replacements and upgrades on a regular basis
	Indirect costs						
<i>Impose a non-discrimination clause for the treatment of claims history statements and a disclosure requirement</i>	Direct costs			EUR 4.0-8.1 million ⁵ Adaptation of templates to the harmonised format; information to policyholders about their rights			
	Indirect costs						

⁵ This estimate assumes that the change of template would require, on average, the equivalent of 1-2 weeks FTE per insurer in order to carry out the necessary changes to IT systems (assuming an average annual salary of EUR 75,000), plus and additional EUR 2,500 – 5,000 to cover other administrative and legal costs.