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PROPOSAL

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	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

Delegations will find attached document COM(2018) 336 final.

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2018/0168 (COD)

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

(Text with EEA relevance)

{SEC(2018) 248 final} - {SWD(2018) 247 final} - {SWD(2018) 248 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Motor Insurance Directive is a key legal instrument that underpins the smooth functioning of the Single Market. It enables seamless crossing of internal EU borders by EU residents with their vehicles for both business and leisure purposes. On the basis of a single premium, EU residents can travel anywhere without the need to buy additional insurance and by the same token the Directive seeks to accomplish a high degree of convergence in terms of protection of potential victims of motor vehicle accidents. The Directive is also instrumental for the functioning of the Schengen Zone.

The first EU Directive on motor insurance¹ was adopted in 1972, with the dual objectives of protecting victims of motor vehicle accidents (with or without a cross-border element), and facilitating the free movement of motor vehicles between Member States. The foundations of EU motor insurance legislation lie in the International Green Card System, a non-EU agreement involving 48 countries, but the EU legislation goes further. Five motor insurance Directives since 1972 progressively strengthened the Directive and enhanced its provisions; they were consolidated into Directive 2009/103/EC (hereafter the Directive). Key elements of the Directive include:

- 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.

To assess the effectiveness, efficiency and coherence of the motor insurance legislation, the Commission Work Programme 2016 announced an evaluation of the Directive². The conclusion of the evaluation was that most elements of the Directive remain fit for purpose, while certain amendments in specific areas would be appropriate.

Furthermore, in the Consumer Financial Services Action Plan of March 2017³, the Commission announced that, following an evaluation, it would decide promptly on possible

¹ Council Directive 72/166/EC of 24 April 1972 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 to the enforcement of the obligation to insure against such liability.

² See the Inception Impact Assessment of 24 July 2017, available [here](#). The completion of the evaluation was postponed to 2017 in order to await the "Andrade" judgement of the CJEU, delivered on 28 November 2017 and the "Torreiro" judgment of the CJEU, delivered on 20 December 2017.

³ COM(2017) 139 final of 23 March 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017DC0139>.

amendments to the Directive to enhance the protection of traffic accident victims where the insurer is insolvent, and to improve the recognition of claims history statements, especially in a cross-border context. The present proposal addresses those two issues, together with three others identified in the evaluation: insurance checks to combat uninsured driving, harmonisation of minimum amounts of cover, and the scope of the directive.

1) Insolvency of the insurer

According to the Directive, compensation bodies must be set up in each Member State to meet costs arising from accidents caused by uninsured or unidentified vehicles. However, such bodies are not currently required to meet costs arising from claims where the motor insurer of the liable party is insolvent. This means that, if national law does not provide for any specific protection scheme, victims of accidents caused by a vehicle insured with an insolvent insurer may be left without compensation.

An accident which involves a liable party with an insolvent insurer poses two main issues. It is not always clear who, if anybody, is responsible for the initial compensation of the victim ("front office"). Second, it is unclear who bears the ultimate financial responsibility for the claim ("back office"). These issues are particularly important when the insurer is providing insurance cross-border via free provision of services. In a number of recent such insolvencies, victims of motor accidents caused by policyholders of the insolvent insurers suffered delays in payment of compensation, while national legal procedures determined the responsibility for and the level of compensation.

2) Claims history

The Consumer Financial Services Action Plan⁴ described a possible action in the area of claims history statements, to benefit citizens moving across borders. In order to facilitate switching to a new insurance provider, the current Directive provides that Member States must ensure the policyholder has the right to request a claims history statement covering the last five years. However, there is no requirement on insurers to take such statements into account when calculating premiums. The evaluation revealed that often such statements are ignored by insurers, especially when they are issued by an insurer in another Member State, and sometimes their authenticity is questioned. To facilitate the authentication of claims history statements by insurers it is beneficial that content and format are the same across the EU. In addition, if insurers take into account claims history for the purpose of determining premiums, there should be no differentiation based on nationality or solely on the basis of the previous Member State of residence of the policyholder.

3) Risks due to uninsured driving

According to the Association of European Vehicle and Driver Registration Authorities (EREG⁵), uninsured driving, circulating with a motor vehicle without a compulsory motor third party liability insurance, is an increasing problem within the EU. The cost for the EU has been estimated at € 870 million in claims in 2011 for the EU as a whole.

Uninsured driving negatively affects a wide range of stakeholders including victims of accidents, insurers, guarantee funds and motor insurance policyholders.

Uninsured driving is a problem both at national level and at the European level. Article 3 of the Directive obliges Member States to *"take all appropriate measures to ensure that civil*

⁴ See footnote 3.

⁵ EREG, Topic Group XI on tackling uninsured driving, 8 April 2013, <https://www.ereg-association.eu/media/1120/final-report-ereg-topic-group-xi-tackling-uninsured-driving.pdf>

liability in respect of the use of vehicles normally based in its territory is covered by insurance". While the Directive does not prescribe which actions should be taken, Member States have the obligation to take effective action to reduce risks of uninsured driving. They are allowed to conduct domestically systematic verification of motor third party liability insurance of registered policies, establish roadside checks and effective penalties for owners of uninsured vehicles.

Uninsured driving has an EU dimension as uninsured vehicles circulate not only in Member States where they are registered but also in other Member States. However, Article 4 of the Directive prohibits checks of insurance on vehicles normally based in another Member State, as a hindrance to free movement of vehicles in the internal market (and indirectly, of persons).

Article 4 of the current Directive prohibits all systematic checks of insurance of vehicles normally based in another Member State, including those where the vehicle does not need to be stopped. Certain new technological developments (number plate recognition technology) allow however for checks without obstructing vehicles and would not interfere with the free movement of persons and vehicles. Therefore the proposal would allow verification of insurance of vehicles, if the checks form part of a general system of checks on the national territory, are not discriminatory and do not require stopping the vehicle and are necessary and proportionate to achieve the end pursued.

In addition, such verification of insurance of vehicles entering the national territory requires the exchange of data between Member States; in this case it is necessary to safeguard the data subject's rights, freedoms and legitimate interest. The provisions of the EU General Data Protection Regulation⁶ apply to the processing of personal data for the purpose of combatting uninsured driving. Domestic legislation would need to respect the conditions and requirements set out in the said Regulation, in particular to ensure that personal data are processed lawfully fairly and in a transparent manner, be collected for specified explicit and legitimate purposes, refer to the relevant legal basis for the processing, comply with the relevant security and confidentiality requirements laid down in the EU General Data Protection Regulation and respect the principles of necessity, proportionality, purpose limitation and proportionate data retention period. Also, personal data protection by design and data protection by default should be embedded in all data processing systems developed and used within the framework of the Member States' legislation. All processing operations including those related to administrative cooperation and mutual assistance between the competent authorities of the Member States should be carried out in compliance with the rules on the protection of personal data laid down in the EU General Data Protection Regulation, and in accordance with the relevant national legislation.

4) Minimum amounts of cover

Article 9 of the Directive lays down minimum obligatory amounts of cover up to which compensation must be provided under a motor third party liability policy. These minimum amounts ensure that there is a sufficient level of minimum protection of victims of motor vehicle accidents across the EU in case of personal injury and material damage, irrespective of the category of vehicle. However, while the Directive aims to establish equal minimum amounts of cover across all EU Member States, currently 13 Member States are subject to lower minimum amounts than the higher amounts laid down in the Directive. This is due to transition periods in accordance with Article 1(2) of the Directive 84/5/ECC, as amended by Directive 2005/14/EC, and allowed some Member States to delay applying the full minimum

⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

amounts. However, due to different reference dates for different Member States for periodically recalculating the minimum amounts, there remains a gap between those 13 Member States which benefitted from transition periods and all other Member States. This is because, although the transition periods have meanwhile expired, the respective dates of the end of the transition periods are still used as reference dates for the five-yearly inflation updating. Therefore these minimum amounts are still not the same across all Member States. Member States are free to require domestically amounts of cover in motor third party liability policies higher than the minima imposed by the Directive, but most of the 13 Member States with lower obligatory amounts do not require higher amounts of cover.

5) Scope of the Directive

A number of judgments of the Court of Justice of the European Union, mainly those in the "Vnuk", "Andrade" and "Torreiro" cases⁷ have clarified the scope of the Directive. The Vnuk judgement of September 2014 clarified the scope of the motor third party liability insurance obligation in Article 3 of the Directive as covering any activities consistent with the "normal function" of a vehicle, regardless of the location where the vehicle is used. The Rodrigues de Andrade judgement of 28 November 2017 clarified that only the "normal use of the vehicle as a means of transport" and "irrespective of the terrain" should be covered by motor third party liability insurance, excluding accidents where the vehicle was used for exclusively agricultural use. These rulings have clarified that motor vehicles are intended normally to serve as means of transport, irrespective of such vehicles' characteristics, and that the use of such vehicles covers any use of a vehicle consistent with its normal function as a means of transport, irrespective of the terrain on which the motor vehicle is used and of whether it is stationary or in motion. The ruling makes it clear that accidents caused during the normal use of a vehicle for the purpose of transportation, including its use on private properties, remains within the scope of the Directive.

Therefore, to ensure legal certainty and clarity, the present proposal codifies the Court jurisprudence in EU legislation. This ensures uniform implementation of the Court case law in national law.

• Consistency with existing policy provisions in the policy area

The proposed amendments are consistent with the general objectives of the Directive to ensure a high level of protection of victims of traffic accidents and facilitate the free movement of persons and vehicles across the EU. They will also improve confidence in the single market for motor insurance by increasing legal certainty connected with cross-border selling of motor insurance under the freedom to provide services, reducing risk caused by the potential insolvency of the insurer of a motor vehicle. The internal market in motor insurance is also of major importance for insurance undertakings as motor insurance constitutes an important part of non-life insurance business in the Union. It should therefore be a key objective of Union action in the field of financial services to reinforce and consolidate the internal market in this area.

In particular, the proposed amendment on insolvency of an insurer complements Article 10 which covers the protection of victims of accidents involving uninsured and unidentified vehicles. The amendment of Article 4 of the Directive enhances the possibilities of Member States to ensure compliance with the insurance obligation of the Directive while maintaining the free circulation of persons and vehicles. Furthermore, the amendment of Article 9 on

⁷ Vnuk judgement (C-162/13), Rodrigues de Andrade Judgement (C-514/16), Torreiro Judgement (C-334/16)

minimum amounts of cover ensures equal minimum protection in all Member States. The amendment on claims history statements complements the existing requirements of Article 16 and ensures easier authentication of claims history statements and equal treatment of policyholders. In addition, the codification of the CJEU jurisprudence clarifies the scope of the Directive.

- **Consistency with other Union policies**

The proposal supports the free movement of persons and goods, which are fundamental freedoms of the European Union. It is also consistent with the principles of the internal market ensuring the free provision of services and free establishment by insurers. For example, the enhanced right as regard the claims history statement will facilitate the free movement of persons and the provisions on the insolvency of insurers will increase public confidence in cross-border selling of motor insurance.

The proposal is also consistent with the EU General Data Protection Regulation ⁸ ensuring the appropriate collection and treatment of data for the purpose of law enforcement permissible within the framework of the Directive.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis of the proposal to amend the Directive is Article 114(1) of the Treaty on the Functioning of the European Union (TFEU), which allows the adoption of measures for the approximation of national provisions having as their object the establishment and functioning of the internal market. The proposed amendments further eliminate certain direct and indirect obstacles to the proper functioning and completion of an integrated market for motor insurance, facilitate the free movement of vehicles between Member States and guarantee comparable treatment irrespective of where an accident occurs within the EU. They will strengthen the single market for motor insurance, by providing confidence to policyholders and potential victims of full compensation, even in case of insolvency of a cross-border motor insurer.

- **Subsidiarity (for non-exclusive competence)**

Under Article 4 of the TFEU, EU action for completing the internal market must be appraised in the light of the subsidiarity principle set out in Article 5(3) of the TEU.

In this context, it is recalled that the Directive protects victims of accidents in EU Member States other than that of their residence, and domestic victims of an accident caused by a driver from another Member State. The measures envisaged in the proposal can only be enacted at EU-level, as they concern cross-border active insurers, cross-border mobile motor insurance policyholders and cross-border insurance checks of vehicles.

Compensation of victims of traffic accidents in case of cross-border insolvency of an insurer is paramount to the smooth functioning of the single market. Uncoordinated action by means of a patchwork of voluntary frameworks and agreements between national motor insurance bureaux cannot guarantee that victims are duly compensated and that risks are equally shared among Member States. A level playing field across all Member States in terms of minimum amounts of cover to ensure an equal minimum protection of victims of traffic accidents across the EU cannot be achieved by the uncoordinated efforts of Member States. Addressing uninsured driving in case of cross-border traffic cannot be achieved by action at national

⁸ See footnote 6.

level. Furthermore, only action at EU level can ensure the protection of victims in case of accidents involving an insolvent cross-border insurer. Only action at EU level can ensure a uniform application of the scope of the Directive. Finally, ensuring equal treatment of claims history statements by insurers for prospective policyholders moving across borders cannot be achieved by uncoordinated action.

- **Proportionality**

The proposal takes full account of the principle of proportionality, namely that EU action should not exceed what is necessary to achieve the objectives of the Treaties. The selected policy options have been carefully assessed and designed in order to strike the right balance between the public interest at stake (in particular, the need to reduce uninsured driving and to ensure an equal minimum level of protection of victims) and potential costs for public authorities, insurers and policy holders, to ensure the cost-efficiency of the proposed measures.

- **Choice of the instrument**

Article 114 of the TFEU allows the adoption of acts in the form of a regulation or directive. A directive was selected given that the legal act to which relate the proposed amendments is also a directive.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

To assess the effectiveness and efficiency of the functioning of the Directive an evaluation was carried out, which included a public consultation held from 28 July until 20 October 2017⁹.

The results of the public consultation showed broad satisfaction from stakeholders with the functioning of most elements of the Directive. There was wide support from all categories of stakeholders for an EU initiative to ensure rapid payment of compensation to victims of accidents in case of insolvency of a motor insurer, especially in a cross-border context. A majority of stakeholders support the option placing ultimate financial responsibility in such cases with the home Member State of establishment of the motor insurer in question, with a first responsibility on the Member State of residence of the victim to ensure rapid compensation.

There was no opposition among stakeholders to the harmonisation of minimum amounts of cover for motor insurance to the higher level which already applies in 15 Member States. Some consumer organisations supported a differentiated higher level of obligatory cover for larger vehicles such as trucks and coaches, but this was opposed by the insurance sector and trucking and coaching companies as not justified by evidence and causing higher insurance costs which would be passed on to end consumers (especially as an accident affecting a coach with many passengers can also be caused by a smaller vehicle).

Regarding recognition of claims history statements by a new insurer, especially in a new Member State, a number of individual citizens related their negative experiences in this respect and called for intervention to ensure that cross-border mobile citizens are treated by insurers no differently from existing residents of a member State, as regards recognition of

⁹ https://ec.europa.eu/info/sites/info/files/2017-motor-insurance-consultation-document_en.pdf

their claims history statements. The insurance sector was opposed to binding obligations on insurers in this regard, as being disproportionate.

Regarding uninsured driving, there was no opposition to authorising unobtrusive insurance checks using number plate recognition technology which does not require stopping vehicles.

Furthermore, there was a broad support to clarify the scope of the Directive in the light of the new Court jurisprudence. Stakeholders from the motor sports sector asked for an exclusion of that sector from the Directive.

The proposal builds also on the results of:

- a public consultation (from 30 September 2015 to 31 January 2016) in the framework of the Call for Evidence on the EU regulatory framework for financial services inviting feedback and empirical evidence on the benefits, unintended effects, consistency and coherence of the financial legislation¹⁰ and a public hearing on the Call for Evidence, held on 17 May 2016¹¹;
- a roundtable on the review of the Directive which took place on 12 July 2017 including stakeholder groups, in particular insurers, consumer organisations, Council of Bureaux and Member States' Authorities;
- exchanges of views with experts from Member States' Authorities (Expert Group on Banking, Payments and Insurance);
- statistics and reports from the Council of motor insurance Bureaux (private law bodies which are entrusted with certain tasks by the Directive).

• **Impact assessment**

In line with its 'Better Regulation' policy, the Commission conducted an impact assessment of policy alternatives¹². The impact assessment is supported by a positive opinion issued by the Regulatory Scrutiny Board on 9 March 2018¹³. In its comments, the Board suggested that the impact assessment should clarify the extent of the envisaged legislative change of the scope of the Directive and the reasons for not fully assessing its implications. Furthermore, the Board requested to link the impact assessment to the evaluation and requested to improve the justification of the proposed legislative measures. The Board also requested to better explain why the Directive is considered futureproof in the light of new technological developments such as autonomous vehicles and electric bicycles. The proposal is in line with the conclusions of the impact assessment.

In response to the Board's comments, the revised impact assessment explains that, as regards the scope of the Directive, it is preferable to codify, in essence, insert the key provision of the consecutive rulings of the Court of Justice of the European Union on the scope in the Directive to ensure legal clarity. This would allow Member States to implement the changes implied by the rulings in an orderly and transparent manner. Furthermore, it would provide more legal certainty for stakeholders on the scope of the Directive, as the court rulings would be directly transposed into national legislation. Codification also facilitates the enforcement of EU law in this domain, as it would be accompanied by a standard transposition exercise.

Furthermore, as regards future technological developments the impact assessment explains that the obligation of the Directive to obtain mandatory motor third-party liability insurance already applies to autonomous and semi-autonomous vehicles. The main rationale is the

¹⁰ http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm

¹¹ http://ec.europa.eu/finance/events/2016/0517-call-for-evidence/index_en.htm

¹² TO BE ADDED before publication of the document.

¹³ TO BE ADDED before publication of the document.

continuous need to protect and compensate victims of accidents involving autonomous vehicles circulating within the EU. A number of accidents caused by autonomous (and semi-autonomous vehicles) have occurred, demonstrating the need to protect EU citizens in case of an accident. Furthermore, the impact assessment explains that new types of motor vehicles, such as electric bicycles, segways, electric scooters already fall within the scope of the Directive. The use of these new types of electric motor vehicles in traffic has the potential to cause accidents whose victims need to be protected and reimbursed swiftly. However, the current Directive also provides Member States with the power to exempt such vehicles from motor third party liability insurance if they would consider this necessary. During the public consultation a number of associations representing the electric bicycles industry called for an exclusion of such vehicles in the Directive itself, arguing that requiring third party liability insurance could undermine the uptake of electric bicycles. This is not considered necessary in light of the power of Member States to exempt electric bicycles or any other new electric motor vehicles. In that case, the national guarantee funds would bear the costs of reimbursing victims of accidents caused by these new types of vehicles. This provides the highest level of protection of victims without the need for any additional EU action.

The impact assessment analysed several policy options for each of the problems identified:

As the Directive already exists, the baseline option in all cases was no change to the Directive. In addition to the baseline scenario, the impact assessment also analysed a range of other possible policy options.

Regarding insolvency of insurers, a subject not currently part of the Directive, a second option was to impose a responsibility for initial compensation of victims but no ultimate responsibility. A third option was to designate both responsibilities, with initial responsibility on the Member State of residence of the victim and ultimate responsibility on the Member State of establishment of the insolvent insurer. The impact assessment concluded that the third option is the preferred policy choice, as it would not only ensure a swift compensation of victims, but would also provide insurers, national compensation bodies and policyholders of motor insurance with more legal certainty on the initial and ultimate settlement of claims, reducing the need for legal proceedings.

Regarding minimum amounts of cover, in addition to the baseline scenario, a second option was to harmonise amounts of cover to the highest obligatory minimum level currently applying in Member States. A third option considered was to impose higher obligatory cover amounts for larger vehicles such as trucks and buses. The impact assessment concluded that the second option is the preferred policy choice as it ensures equal minimum protection of victims across the EU, and there is insufficient evidence to support the third option.

Regarding claims history, in addition to the baseline scenario, a second option was to issue a recommendation to Member States on the treatment of claims history statements. A third option was to only harmonise the template for claims history statements, without imposing any obligatory treatment of such statements by insurers, to facilitate anti-fraud authentication. A fourth option was to further impose on insurers a non-discrimination requirement for the treatment of claims history statements issued by insurers in other Member States and a transparency requirement on the use of the statement. The impact assessment concluded that this latter option was the preferred policy choice, as it would not only facilitate standardisation of claims history statements, but would also ensure equal treatment of claims history between domestic policyholders and those moving across borders.

Regarding uninsured driving, in addition to the baseline scenario, a second option was to authorise unobtrusive checks (currently prohibited) on a voluntary basis for Member States. A third option was to make unobtrusive border insurance checks obligatory. The third option

was considered to have higher potential to reduce uninsured driving as compared to the second option. Nevertheless, the impact assessment considered that the costs linked to the third option might outweigh benefits in many Member States, as levels of uninsured driving are unequal across the EU. Therefore, the impact assessment concluded that the second option (voluntary unobtrusive checks) is the preferred policy choice.

Regarding the scope of the Directive, an annex to the impact assessment explains that existing ECJ case law will be codified via a definition of "use of a vehicle", given that no evidence has been provided by stakeholders that the scope as defined in the case law will generate any excessive costs. Indeed, certain Member States already impose a motor third party liability insurance requirement in line with the case law, without excessively high insurance premiums, including for motor sports events.

The proposal will not have any significant environmental impact, as the proposed amendments will not have any impact on traffic volume.

The proposal is not expected to have a significant social impact other than the benefits already described. The proposed amendments aim at reducing uninsured driving, potentially reducing motor insurance premiums, and at improving the level of protection of victims of motor accidents, potentially benefitting all citizens in the EU. The proposal avoids risking large potential increases of premiums of motor insurance. In particular the proposed measures on minimum cover only entail an alignment of the minimum amounts of cover to ensure equal minimum protection across Member States.

The proposal does not entail any specific impact for small and medium-sized enterprises except in their capacity as regular policy holders of motor insurance. SMEs and micro-enterprises will be affected as operators of vehicles which require insurance. In Member States where the minimum amounts of cover will be revised slightly upwards, small increases in insurance premiums are possible for policyholders in those Member States, including for SMEs and micro-enterprises.

- **Fundamental rights**

The proposal respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to the protection of personal data (Article 8 of the Charter), the right to property (Article 17 of the Charter), and the principle of equality between men and women (Article 23 of the Charter). It also contributes to the objectives of Article 16 of Charter which provides freedom to conduct business, to the objectives of Article 38 of the Charter which provides for a high level of consumer protection and to the objectives of Article 45 of the Charter regarding citizens' freedom of movement and residence.

REFIT

The proposal is consistent with the objectives of simplification and cost reduction. Regarding insolvency of insurers, there will be less costs of litigation as the Directive would set clear roles on initial payment of the victim and the ultimate responsibility for the claim. Furthermore, reducing risk of uninsured driving via unobtrusive checks could reduce claims on compensation bodies and contributions for insurers. In addition, more standardisation of claims history statements would simplify verification of the authenticity of claims history statements provided by foreign insurers. Finally, the proposal does not entail any new reporting requirements to public authorities.

4. BUDGETARY IMPLICATIONS

The proposal has no implications for the EU budget.

The proposal might have an impact on the national budgets of those Member States that would take up the option for unobtrusive border insurance checks of vehicles normally based in another Member State, which would require the use of number plate recognition technology and exchange of information with other Member States on the insurance status of vehicles.

In addition, Member States will have to designate a body responsible for compensation of victims in cases of cross-border insolvency of insurers, but it is anticipated that this could be an additional task for an existing body (either a general insurance guarantee fund, or the national guarantee fund for accidents caused by uninsured or unidentified vehicles). Costs will be funded by contributions from insurance undertakings.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will monitor the implementation of the policy in cooperation with Member States. Five years after the transposition date, the Commission will produce an evaluation of this Directive. The evaluation will examine the effectiveness, efficiency, relevance, coherence and added value of the proposal, including any significant impacts on undertakings.

- **Explanatory documents (for directives)**

In order to fulfil the objective of this proposal and avoid potential loopholes and mismatches in terms of Member State implementation into national law, explanatory documents will be necessary to assist with transposition and to allow effective verification. This justifies the need for Member States to accompany the notification of their transposition measures with explanatory documents in the form of e.g. a correlation table.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 of the proposal amends the Directive. References below refer to the amended or new articles in the Directive, unless otherwise specified.

In Article 1, the definition of "use of a vehicle" is introduced in order to incorporate the judgements of the Court of Justice of the European Union in the Vnuk case C-162/13 of 14 September 2014, the Rodrigues de Andrade case C-514/16 of 28 November 2017 and the Torreiro case C-334/16 of 20 December 2017. The European Court of Justice has clarified in its rulings that motor vehicles are intended normally to serve as means of transport, irrespective of such vehicles' characteristics. Furthermore, the Court has clarified that the use of such vehicles covers any use of a vehicle consistent with its normal function as a means of transport, irrespective of the terrain on which the motor vehicle is used and of whether it is stationary or in motion.

As regards uninsured driving, Article 4 is amended in order to authorise Member States to carry out insurance checks of vehicles normally based in the territory of another Member State and of vehicles normally based in the territory of a third country entering their territory from the territory of another Member state only if, they are non-discriminatory necessary and proportionate, form part of a general system of checks on the national territory and do not require stopping of the vehicle for the purpose of such a check. Those checks have to be conducted in accordance with Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

To ensure an equal level of minimum protection of victims of motor vehicle accidents at EU level:

- Article 9(1) is amended to harmonise obligatory minimum amounts of cover of victims across the EU, without prejudice to any higher guarantees which Member States may prescribe;

- Article 9(2) is amended in order to empower the Commission to adopt delegated acts to update for inflation every five years the harmonised minimum amounts of cover of victims.

To ensure the protection of victims in case of insolvency or winding up or non-cooperation of an insurer, a new Article 10a provides in particular that:

- each Member State shall set up or appoint a body with the task of providing compensation for material damage or personal injuries caused by a vehicle insured by an undertaking which is subject to bankruptcy or winding up proceeding or where the insurer has not provided a reasoned reply within three months of the date when the injured party presented a claim for compensation for which the insurer has not provided a reasoned reply;

- injured parties shall be compensated by such body of the Member State of their residence;

- this body shall have the right to claim reimbursement of this compensation from the body of the Member State where the insurance undertaking which issued the policy is established (this latter body shall bear the ultimate responsibility);

- the Commission shall be empowered to adopt delegated acts in order to define the procedural tasks and the procedural obligations of the bodies set up or authorised pursuant to Article 10a with regard to the reimbursement.

As regards claims history statements, Article 16 is amended in order to:

- harmonise the statements relating to successful third party liability claims against the policyholder in the last five years. Such statements shall be based on a standardised template, to be adopted by the European Commission by implementing act;

- ensure non-discriminatory treatment of the claims history by insurance undertakings, irrespective of nationality or previous Member State of residence of a citizen.

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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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹⁴,

Acting in accordance with the ordinary legislative procedure,

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 potential victims of an accident. It is also a major concern for insurance undertakings, as it constitutes an important segment of non-life insurance business in the Union. Motor insurance also has an impact on the free movement of persons, goods and vehicles. It should therefore be a key objective of the Union action in the field of financial services to reinforce and consolidate the internal market for motor insurance.
- (2) The Commission has carried out an evaluation of the functioning of Directive 2009/103/EC of the European Parliament and of the Council¹⁵, including its efficiency effectiveness and coherence with other Union policies. The conclusion of the evaluation was that Directive 2009/103/EC functions well on the whole, and does not need amendment in most aspects. However, four areas were identified where targeted amendments would be appropriate: compensation of victims of accidents in cases of insolvency of an insurance undertaking, minimum obligatory amounts of insurance cover, insurance checks of vehicles by Member States, and the use of policyholders' claims history statements by a new insurance undertaking.

¹⁴ OJ C , , p. .

¹⁵ Directive 2009/103/EC of the European Parliament and of 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 insure against such liability (OJ L 263, 7.10.2009, p. 11).

- (3) Furthermore, in recent decisions of the European Court of Justice of the European Union, namely *Vnuk*¹⁶, *Rodrigues de Andrade*¹⁷ and *Torreiro*¹⁸, the Court has clarified the meaning of the words ‘use of a vehicle’. In particular, the European Court of Justice has clarified that motor vehicles are intended normally to serve as means of transport, irrespective of such vehicle's characteristics, and it has clarified that the use of such vehicles covers any use of a vehicle consistent with its normal function as a means of transport, irrespective of the terrain on which the motor vehicle is used and of whether it is stationary or in motion. In the interest of legal certainty, it is appropriate to reflect that case law in Directive 2009/103/EC by introducing a definition of ‘use of a vehicle’.
- (4) Member States currently should refrain from performing checks of insurance on vehicles normally based on 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. New technological developments allow for checking insurance of vehicles without stopping them and thus without interfering with the free movement of persons. It is therefore appropriate allow those checks of insurance on vehicles, only if they are non-discriminatory, necessary and proportionate, form part of a general system of checks on the national territory and do not require stopping of the vehicle.
- (5) Member States that opt to set up a system that processes personal data which may subsequently be shared with other Member States, such as data from number plate recognition technology, need to legislate to allow for the processing of personal data for the purposes of combatting uninsured driving, whilst establishing suitable measures to safeguard the data subject's rights and freedoms and legitimate interests. The provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council¹⁹ apply to the processing of personal data for the purpose of combatting uninsured driving. The Member States' legislation should in particular specify the precise purpose, refer to the relevant legal basis, comply with the relevant security requirements and respect the principles of necessity, proportionality, and purpose limitation, and should set a proportionate data retention period. In addition, the principles of personal data protection by design and data protection by default should be applied to all data processing systems developed and used within the framework of the Member States' legislation.
- (6) Directive 2009/103/EC currently lays down different reference dates for the periodic recalculation of the minimum amounts of cover in different Member States, which leads to diverging minimum amounts of cover depending on the Member State. To ensure equal minimum protection of injured parties across the Union, those minimum amounts should be harmonised and a uniform review clause should be introduced, using as a benchmark the harmonised index of consumer prices as published by Eurostat, as well as procedural rules governing such a review and setting out a uniform timeframe.

¹⁶ Judgement of the Court of Justice of 4 December 2014, *Vnuk*, C-162/13, ECLI:EU:C:2014:2146

¹⁷ Judgement of the Court of Justice of 28 November 2017, *Rodrigues de Andrade*, C-514/16, ECLI:EU:C:2017:908.

¹⁸ Judgement of the Court of Justice of 20 December 2017, *Torreiro*, C-334/16, ECLI:EU:C:2017:1007.

¹⁹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

- (7) Effective and efficient protection of victims of traffic accidents requires that those victims are always reimbursed for their personal injuries or for damage to their property, irrespective of whether the insurance undertaking of the party liable is solvent or not. Member States should therefore set up or appoint a body that provides initial compensation for injured parties habitually residing within their territory, and which has the right to reclaim that compensation from the body set up or appointed for the same purpose in the Member State of establishment of the insurance undertaking which issued the policy of the vehicle of the liable party. However, to avoid parallel claims being introduced, victims of traffic incidents should not be allowed to present a claim for compensation with that body if they have already presented their claim or have taken legal action with the insurance undertaking concerned and that claim is still under consideration and that action is still pending.
- (8) Previous claims histories of policyholders who seek to conclude new insurance contracts with insurance undertakings should be easily authenticated in order to facilitate the recognition of such claims history when concluding a new insurance policy. In order to simplify the verification and authentication of claims history statements, it is important that the content and format of the statement of such claims histories are the same across all Member States. In addition, insurance undertakings that take into account claims history statements to determine motor insurance premiums should not discriminate on the basis of nationality or solely on the basis of the previous Member State of residence of the policyholder. To enable Member States to verify how insurance undertakings treat claims history statements, insurance undertakings should publish their policies in respect of their use of claims history when calculating premiums.
- (9) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission regarding the content and the form of the claims history statement. Those implementing powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council²⁰.
- (10) To ensure that the minimum amounts stay in line with the evolving economic reality (and are not eroded over time) the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the adaptation of those minimum amounts of cover of motor third party liability insurance to reflect the evolving economic reality, as well as to define the procedural tasks and the procedural obligations of the bodies set up to provide compensation or entrusted the task of providing compensation pursuant to Article 10a with regard to the reimbursement. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

²⁰ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (11) As part of the evaluation of the functioning of the Directive, the European Commission should monitor the application of the Directive, taking into account the number of victims, the amount of outstanding claims due to delays in payments following cross-border insolvency cases, the level of minimum amounts of cover in Member States, the amount of claims due to uninsured driving relating to cross-border traffic and the number of complaints regarding claims history statements
- (12) Since the objectives of this Directive, in particular to ensure an equal minimum protection of victims of traffic accidents across the Union and to ensure the protection of victims in case of insolvency of insurance undertakings, cannot be sufficiently achieved by the Member States but can rather, by reason of their effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty of the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (13) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents²¹, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (14) Directive 2009/103/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2009/103/EC is amended as follows:

- (1) In Article 1, the following point 1a is inserted:
- “1a. ‘use of a vehicle’ means any use of such vehicle, intended normally to serve as a means of transport, that is consistent with the normal function of that vehicle, irrespective of the vehicle's characteristics and irrespective of the terrain on which the motor vehicle is used and of whether it is stationary or in motion.”;
- (2) Article 4 is replaced by the following:

“Article 4

Checks on insurance

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 such checks on insurance provided that those checks are non-discriminatory, necessary and proportionate to achieve the end pursued, and

²¹ OJ C 369, 17.12.2011, p. 14.

a) are carried out as part of a control which is not aimed exclusively at insurance verification or

b) they form part of a general system of checks on the national territory and do not require the vehicle to stop.

2. On the basis of the law of the Member State to which the controller is subject, personal data may be processed where necessary for the purpose of combatting uninsured driving of vehicles travelling in Member States other than where they are normally based as set out in Article 1. This law shall be in accordance with Regulation (EU) 2016/679* and shall also lay down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests.

* Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).”;

(3) Article 9 is replaced by the following:

“1. Without prejudice to any higher guarantees which Member States may prescribe, each Member State shall require the insurance referred to in Article 3 to be compulsory in respect of the following minimum amounts:

- (a) for personal injuries: EUR 6 070 000 per accident, irrespective of the number of victims, or EUR 1 220 000 per victim;
- (b) for damages to property, EUR 1 220 000 per claim, irrespective of the number of victims.

For Member States that have not adopted the euro, the minimum amounts shall be converted into their national currency by applying the exchange rate as at [*Publications Office – set the date the date of entry in force of this Directive*] published in the Official Journal of the European Union.

2. Every five years from [date of entry into force of this Directive], the Commission shall review the amounts referred to in paragraph 1 in line with the harmonised index of consumer prices (HICP) established pursuant to Regulation (EU) 2016/792 of the European Parliament and of the Council **.

The Commission shall be empowered to adopt delegated acts in accordance with Article 28b concerning the adaptation of those amounts to the HICP within six months after the end of each five year period.

For Member States that have not adopted the euro, the amounts shall be converted into their national currency by applying the exchange rate of the date of the calculation of the new minimum amounts and as published in the Official Journal of the European Union.”

** Regulation (EU) 2016/792 of the European Parliament and of the Council of 11 May 2016 on harmonised indices of consumer prices and the house price index, and repealing Council Regulation (EC) No 2494/95 (OJ L 135, 24.5.2016, p. 11).

(4) the following Article 10a is inserted:

“Article 10a

Protection of injured parties in case of insolvency of an insurance undertaking or lack of cooperation of an insurance undertaking

1. Member States shall set up or authorise a body to compensate injured parties habitually residing within their territory, at least up to the limits of the insurance obligation referred to in Article 9(1) for personal injuries or material damage, caused by a vehicle insured by an insurance undertaking in any of the following situations:
 - (a) the insurance undertaking is subject to bankruptcy proceedings;
 - (b) the insurance undertaking is subject to a winding up procedure as defined in Article 268(d) of Directive 2009/138/EC of the European Parliament and of the Council***;
 - (c) the insurance undertaking or its claims representative has not provided a reasoned reply to the points made in a claim for compensation within three months after the date on which the injured party presented his or her claim to that insurance undertaking.
2. Injured parties may not present a claim to the body referred to in paragraph 1 if they have presented a claim directly to or taken legal action directly against the insurance undertaking and such claim or legal action is still pending.
3. The body referred to in paragraph 1 shall give a reply to the claim within two months after the date on which the injured party has presented his or her claim for compensation.
4. Where the injured party is resident in another Member State than the Member State in which the insurance undertaking referred to in paragraph 1 is established, the body referred to in paragraph 1 and which has compensated that injured party in his or her Member State of residence, shall be entitled to claim reimbursement of the sum paid by way of compensation from the body referred to in paragraph 1 in the Member State in which the insurance undertaking which issued the policy of the liable party is established.
5. Paragraphs 1 to 4 are without prejudice to:
 - (a) the right of Member States to regard compensation paid by the body referred to in paragraph 1 as subsidiary or non-subsidiary;
 - (b) the right of Member States to make provision for the settlement of claims in respect of the same accident between:
 - (i) the body referred to in paragraph 1;
 - (ii) the person or persons liable for the accident;
 - (iii) other insurance undertakings or social security bodies required to compensate the injured party.
6. Member States shall not allow the body referred to in paragraph 1 to make the payment of compensation subject to any requirements other than those laid down in this Directive and in particular not the requirement that the injured party should establish that the party liable is unable or refuses to pay.
7. The Commission shall be empowered to adopt delegated acts in accordance with the procedure referred to in Article 28b in order to define the procedural tasks and

the procedural obligations of the bodies set up or authorised pursuant to Article 10a with regard to the reimbursement."

*** Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335 17.12.2009, p. 1).";

(5) Article 16 is amended as follows:

(a) the following sentence is added at the end of the second subparagraph:

"They shall do so using the form of the claims history statement";

(b) the following subparagraphs are added:

"Member States shall ensure that insurance undertakings or the bodies as referred to in the second subparagraph, when taking account of claims history statements issued by other insurance undertakings or other bodies as referred to in the second subparagraph, do not treat policyholders in a discriminatory manner or surcharge their premiums because of their nationality or solely on the basis of their previous Member State of residence.

Member States shall ensure that insurance undertakings publish their policies in respect of their use of claims history statements when calculating premiums.

The Commission shall be empowered to adopt implementing acts in accordance with Article 28a(2) specifying the contents and form of the claims history statement referred to in the second subparagraph. That statement shall contain information about all of the following:

- (a) the identity of the insurance undertaking issuing the claims history statement;
- (b) the identity of the policyholder;
- (c) the vehicle insured;
- (d) the period of cover of the vehicle insured;
- (e) the number and value of the declared third party liability claims during the period covered by the claims history statement."

(6) the following Articles 28a, 28b and 28c are inserted:

"Article 28a

Committee procedure

1. The Commission shall be assisted by the European Insurance and Occupational Pensions Committee established by Commission Decision 2004/9/EC ****. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council*****.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Article 28b

Exercise of delegated powers

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 9(2) and 10a(7) shall be conferred on the Commission for an indeterminate period of time from the date referred to in Article 30.
3. The delegation of power referred to in Articles 9(2) and 10a(7) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of that decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles 9(2) and 10a(7) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Article 28c

Evaluation

No later than seven years after the date of transposition of this Directive, an evaluation of this Directive shall be carried out. The Commission shall communicate the conclusions of the evaluation accompanied by its observations to the European Parliament, the Council and the European Economic and Social Committee.

**** Commission Decision 2004/9/EC of 5 November 2003 establishing the European Insurance and Occupational Pensions Committee (OJ L3, 7.1.2004, p.34).

***** Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning the mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13).”.

Article 2

Transposition

Member States shall adopt and publish, by [PO: Please insert date 12 months after the date of entry into force] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from [PO: Please insert date 12 months after the date of entry into force].

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

2. 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 3

Entry into force

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

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President