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#### 'I' ITEM NOTE

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	COM (2018) 336
No. prev. doc.:	9365/18
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 - Mandate for negotiations with the European Parliament

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#### I. INTRODUCTION

1. On 24 May 2018, the Commission transmitted the above-mentioned proposal to the Council.<sup>1</sup>
2. The Impact Assessment was presented by the Commission during the meeting of the Financial Services working party on 7 September 2018. There were no interventions from delegations.
3. The European Parliament in plenary adopted 54 amendments to the proposal for a Directive on 13 February 2019. Since it did not adopt a legislative resolution, however, it did not bring its first reading to a close.
4. The European Economic and Social Committee delivered its opinion on 19 September 2018.<sup>2</sup>

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<sup>1</sup> Doc. 9365/18 + ADD1 + ADD2

5. The proposal has been examined by the Working Party on Financial Services in ten meetings during the Austrian, Romanian and Finnish presidencies.
6. The Financial Services working party on 13 December 2019 agreed the text of the proposal as set out in the annex to this document. However, Malta was opposed and Germany has a positive scrutiny reservation.

## **II. CONCLUSION**

5. The Permanent Representatives Committee is therefore invited to:
  - approve the negotiating mandate with regard to the proposed Directive as set out in the annex to this document; and
  - authorise the Croatian Presidency to enter into negotiations with the European Parliament on the basis of that mandate with a view to reaching an agreement at first reading.
6. Unless the Permanent Representatives Committee objects, this document and its annex will be made public by the General Secretariat of the Council after its approval.

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<sup>2</sup> OJ C 440/85 of 6.12.2018

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)

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 Committee<sup>3</sup>,

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.

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<sup>3</sup> OJ C , , p . .

(2) The Commission has carried out an evaluation of the functioning of Directive 2009/103/EC of the European Parliament and of the Council<sup>4</sup>, 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.

(2a) Since the entry into force of Directive 2009/103/EC, there has been an influx of many new types of motor-powered vehicles into the market. Some of them are powered by a purely electrical motor, some of them by an auxiliary equipment. Such vehicles should be taken into account in the definition of vehicle. The definition should be based on general characteristics of such a vehicle, in particular its maximum design speed and its net weight, and should provide for that only vehicles propelled exclusively by mechanical power are covered. The definition should not apply to any wheelchair intended for use by the physically handicapped. The definition should apply independently from the number of wheels of the vehicle.

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<sup>4</sup> 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).

(2b) Light electric vehicles that do not meet the definition should be excluded from the scope of application of the Directive. However, nothing in Directive 2009/103/EC should hinder Member States from requiring motor third party liability insurance, according to conditions set by Member States, for any motor equipment used on land that does not fall within that Directive's definition of "vehicle" and for which that Directive does not require such insurance, or from determining that the victims of accidents caused by any other motor equipment have access to the compensation body as determined in Chapter IV. Member States may equally decide that, where their inhabitants are victims of an accident caused by such other motor equipment in another Member State where motor third party liability insurance is not required for that motor equipment, those inhabitants have access to the compensation body as determined in Chapter IV in the Member State where they are habitually residing. Compensation bodies of Member States have the possibility to enter into a mutual agreement about their ways of co-operating in this kind of situation.

(3) In recent decisions of the European Court of Justice of the European Union, namely *Vnuk*<sup>5</sup>, *Rodrigues de Andrade*<sup>6</sup> and *Torreiro*<sup>7</sup>, 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. Directive 2009/103/EC does not apply if, at the time of the accident, the normal function of such a vehicle is to use it for a purpose other than as a means of transport. This may be the case if the vehicle is not used in the sense of the first subparagraph of Article 3 of the Directive, as its normal function is to use it as, for instance, an industrial or agricultural power source. 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'.

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<sup>5</sup> Judgement of the Court of Justice of 4 December 2014, *Vnuk*, C-162/13, ECLI:EU:C:2014:2146

<sup>6</sup> Judgement of the Court of Justice of 28 November 2017, *Rodrigues de Andrade*, C-514/16, ECLI:EU:C:2017:908.

<sup>7</sup> Judgement of the Court of Justice of 20 December 2017, *Torreiro*, C-334/16, ECLI:EU:C:2017:1007.

(3a) As a matter of principle, a motor insurance should cover accidents in all areas of the Member States. Yet, in certain Member States there are provisions related to the vehicle used exclusively in specific areas with limited access. It should be possible for the Member States to make limited derogations from Article 3 in respect of restricted areas to which unauthorised persons should not enter, for instance location-specific areas and equipment at ports and airports. A Member State so derogating should take the appropriate measures to ensure that compensation is paid in respect of any loss or injury caused by such a vehicle.

(3b) In certain Member States there are provisions regarding the use of the vehicle as a means of deliberately causing damage to people or property. Where applicable, in the most serious offences the Member States are allowed to continue their legal practices of not covering such damage from the compulsory motor insurance or reclaiming from the tortfeasor the amount of insurance compensation that is paid out to the injured party for such damage. In order not to reduce the protection granted by Directive 2009/103/EC, those Member States should be able to ensure that in such cases the injured parties are compensated for such damage in a manner that is as close as possible to that of Directive 2009/103/EC. Unless the Member State has provided for such an alternative compensation mechanism or guarantee, the damage should be covered in accordance with Directive 2009/103/EC.

(3c) The Member States should have the right to not apply Directive 2009/103/EC to use of vehicles in certain motorsport activities, including races, competitions, training, testing and demonstrations e.g. of speed, reliability or skills, allowed in accordance with the national law of the Member State. Such exempted activities should take place in a fenced, restricted and demarcated area, with the purpose of and in a manner that the ordinary traffic, the public or any party unrelated to the activity cannot actually or potentially share the route that is being driven. Such activities should usually entail those on designated motorsport tracks or routes and the areas of immediate vicinity, e.g. security areas, pit stop areas and garages, where the risk of an accident is highly elevated in comparison to normal roads and to which unauthorised persons should not enter. The exemption should only apply if the Member State ensures that the organiser of the activity or any other party has an alternative insurance or guarantee policy covering the damage to any third party including spectators and other bystanders, and that the organiser has taken such an optional alternative insurance or guarantee policy. In order not to reduce the protection granted by Directive 2009/103/EC, those Member States should ensure that in the motorsport activities the injured parties are compensated for such damage in a manner that is as close as possible to that of Directive 2009/103/EC. Unless the Member State has provided for such an exemption and the organisers or other parties have as a condition of this exemption taken an alternative insurance or guarantee policy, the damage should be covered, excluding the other participating drivers and their vehicles, in accordance with Directive 2009/103/EC.

(3d) While being manufactured and transported, vehicles lack transport function and are not considered to be used in the sense of the first subparagraph of Article 3 of Directive 2009/103/EC. However, there should be a business liability insurance to cover the damage which those vehicles may cause, to the extent a Member State does not choose to apply the requirement to have motor third party liability insurance also in respect of such vehicles pursuant to Article 28, paragraph 1 of Directive 2009/103/EC.

(3e) Currently the national laws of many Member States link the insurance obligation to the use of a vehicle in the sense of the first subparagraph of Article 3 of the Directive 2009/103/EC, that is, in those Member States the use of a vehicle is only allowed when the vehicle is registered. The laws of those Member States stipulate that motor insurance cover has to exist during active registration of the vehicle and its use in the above mentioned sense. Those Member States need to take the appropriate measures to ensure that compensation in line with Directive 2009/103/EC is paid in respect of any loss or injury caused in its territory and in the territory of other Member States by vehicles as defined in point 1 of Article 1 which are used in the above- mentioned sense.

(3f) Currently some Member States, where the obligation to ensure against civil liability in respect of the use of a motor vehicle is not linked to registration of a vehicle, choose not to require compulsory motor vehicle insurance for vehicles that have been formally withdrawn from use in accordance with the national law of the Member State, e.g. via a notification to the competent authority or other designated parties performing the function of the competent authority or by taking other verifiable physical measures. Those Member States need to take the appropriate measures to ensure that compensation in line with Directive 2009/103/EC is paid in respect of any loss or injury caused in its territory and in the territory of other Member States by such vehicles.

(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 Council<sup>8</sup> 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.

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<sup>8</sup> 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 entitled to claim compensation from the compensation body of their habitual residence and to receive a response within a reasonable time and, where their claims are justified, 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, allowing for an existing compensation arrangement of a Member State to continue its operations, 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 head office of the insolvent insurance undertaking which issued the policy of the vehicle of the liable party.

(7a) The insurance undertaking may have become insolvent in various ways, e.g. as a result of being declared bankrupt or being in default of performing its obligations once it has renounced its authorisation in its home country or having been the subject of a revocation measure or a decision prohibiting its activity. The compensation body of the Member State in which the insurance undertaking which issued the policy of the liable party has its head office should publish an announcement when it begins its operation with claims of a particular insurance undertaking, when an order or a decision on the bankruptcy or winding-up proceedings has been made public by a competent court, national competent authority or any other competent authority. That compensation body should inform all the other compensation bodies about commencing its operation.

(7b) The Member States should ensure that the compensation body of the Member State in whose territory the injured party habitually resides should be competent to inform and be informed by the other relevant authorities and stakeholders in the EU on the stages of proceedings and procedures. Such information should at least provide a general level of understanding of the situation to and from other relevant authorities and stakeholders. Such information is important to ensure that the compensation body of an injured party is able to, before the payment of compensation is made, ascertain by itself or together with all the relevant parties pursuant to the national legislation, whether the insurance undertaking has already compensated the claimant in respect of his or her claim. The claim presented to the compensation body may even be transferred to the insurance undertaking for further scrutiny or for a decision, where the national provisions of procedure so require. The Member States should ensure that the compensation body requests and receives more detailed information about specific claims.

(7c) The system of reimbursement has no effect on the applicable law regarding coverage levels of injured parties. The same principles are applicable with regard to claims in the cases of solvent and insolvent insurance undertakings. The compensation body of the Member State, in which the insurance undertaking which issued the policy of the liable party has its head office, should make the payment to the compensation body of the Member State in whose territory the injured party habitually resides within a reasonable time after the former compensation body received a claim for recompensation regarding a payment that the latter compensation body has made to the injured party.

(7d) Depending on the different stages of claims handling, on payments made to the injured parties and on reimbursement processes in different compensation bodies, there may be outstanding liabilities between compensation bodies. The right of subrogation should pass from the compensation body that paid out compensation first to that of the other Member State as the reimbursement of compensation bodies progresses. Therefore, the compensation body, to the extent that it has provided compensation for the loss or injury suffered and has not yet been reimbursed, should be subrogated to the rights of the injured party against the person who caused the accident or his insurance undertaking. Each Member State should be obliged to acknowledge this subrogation as provided for by any other Member State.

(7e) To ensure efficient and effective protection of injured parties in the case of insolvency of the responsible insurer, it is necessary that the Member States take the appropriate arrangements to ensure that the funds needed to compensate victims are available when compensation payments are due. In accordance with the principle of subsidiarity, home Member States should consider these arrangements at national level. These arrangements however should be in compliance with EU law and with such principles as *lex specialis* and *lex posterior* in particular. In order to prevent placing an unjustified and disproportionate burden on insurers, if financial contributions by insurance undertakings are imposed, they should be collected only from insurance undertakings authorised by the Member State concerned.

(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 minimum 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 whether and how insurance undertakings treat claims history statements, insurance undertakings should publish a general overview of their policies in respect of their use of claims history when calculating premiums. Insurance undertakings are not required to publish commercially sensitive information, such as details of tariff rules, and they are required to ensure compliance with Directive (EU) 2016/943 of the European Parliament and of the Council<sup>9</sup>.

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<sup>9</sup> Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1-18).

(9) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission regarding the minimum 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 Council<sup>10</sup>.

(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 25a 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.

(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.

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<sup>10</sup> 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).

(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 documents<sup>11</sup>, 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,

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<sup>11</sup> OJ C 369, 17.12.2011, p. 14.

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 2009/103/EC is amended as follows:

(0) In Article 1, point 1 is amended as follows:

“1. ‘vehicle’ means:

a) any motor vehicle propelled exclusively by mechanical power on land but not running on rails with:

- a maximum design speed of more than 25 km/h, or

- a maximum net weight of more than 25 kg.

b) any trailer to be used with a vehicle referred to in point a), whether coupled or un-coupled;

Without prejudice to points a) and b), wheelchair vehicles exclusively intended for use by the physically handicapped are not considered to be vehicles referred to in this Directive;”

(1) In Article 1, the following point 1a is inserted:

“1a. ‘use of a vehicle’ means any use of such vehicle as a means of transport, that is, at the time of the accident, 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.”;

(1a) In Article 3, the first subparagraph is amended:

“Each Member State shall, subject to Article 5, take all appropriate measures to ensure that civil liability in respect of the use of a vehicle normally based in its territory is covered by insurance.”

(1b) In Article 3, the following paragraph is inserted after the first paragraph:

“The Member States may choose not to apply this Directive to use of vehicles in motorsport activities, including races, competitions, training, testing and demonstrations in a restricted and demarcated, fenced area, provided that the Member State ensures that the organiser of the activity or any other party has an alternative insurance or guarantee policy covering the damage to any third party including spectators and other bystanders.”

(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

- 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<sup>12</sup> and shall also lay down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests.”

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<sup>12</sup> 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).

(2a) In Article 5, the following paragraphs are inserted:

“3. A Member State may derogate from Article 3 in respect of vehicles that are temporarily or permanently withdrawn and prohibited from use, provided that a formal administrative procedure or other verifiable measure in accordance with national law has been put in place.

Any Member State so derogating shall ensure that vehicles referred to in the first subparagraph are treated in the same way as vehicles for which the insurance obligation referred to in Article 3 has not been satisfied.

The guarantee fund of the Member State in which an accident has taken place shall then have a claim against the guarantee fund in the Member State where the vehicle is normally based.

4. A Member State may derogate from Article 3 in respect of vehicles used exclusively on areas with restricted access, in accordance with their national laws.

Any Member State so derogating shall ensure that vehicles referred to in the first subparagraph are treated in the same way as vehicles for which the insurance obligation referred to in Article 3 has not been satisfied.

The guarantee fund of the Member State in which an accident has taken place shall then have a claim against the guarantee fund in the Member State where the vehicle is normally based.”

(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 accident, 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<sup>13</sup>.

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.”

(4) [...]

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<sup>13</sup> 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).

(5) Article 16 is amended as follows:

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

“They may 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, where insurance undertakings take 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 a general overview of 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 minimum 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 or the body 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 of the declared third party liability claims during the period covered by the claims history statement."

(5a) The following Article 25a is inserted:

“Article 25a

Protection of injured parties in case of insolvency of an insurance undertaking

1. Each Member State 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) or, where applicable, higher guarantee limits provided for by the Member State for personal injuries or material damage, caused by a vehicle insured by an insurance undertaking which cannot pay out compensation as it falls due, in either of the following situations:

- (a) the moment from which the insurance undertaking is subject to bankruptcy proceedings; or
- (b) the insurance undertaking is subject to a winding up proceedings as defined in Article 268(d) of Directive 2009/138/EC of the European Parliament and of the Council<sup>14</sup>.

Each Member State shall take appropriate measures to ensure that compensation bodies set up or authorised in accordance with the first subparagraph have sufficient funds available to compensate injured parties when compensation payments are due in situations provided for in points (a) and (b) in accordance with the rules set out in paragraph 4. These measures may include financial contributions provided that they are imposed only on insurance undertakings that have been authorised by the Member State imposing the financial contribution.

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<sup>14</sup> 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).

The compensation body of the Member State, in which the insurance undertaking which issued the policy of the liable party has its head office, shall publish an announcement when it begins its operation, when an order or a decision on the proceedings referred to in the first subparagraph has been made public by a competent court, national competent authority or any other competent authority. That compensation body shall inform all other compensation bodies referred to in paragraph 1 about commencing its operation.

2. Injured parties may present a claim to the body referred to in paragraph 1.

3. The Member States shall ensure that the body referred to in paragraph 1 gives a reply, in accordance with the national law, to the claim within three months after the date on which the injured party has presented his or her claim for compensation to the body.

For the purposes of the first subparagraph, the body shall:

- (a) make a reasoned offer of compensation to the extent that the body has established that it is liable pursuant to paragraph 1, point a) or b) and the claim is not contested and the damage has been quantified;
- (b) provide a reasoned reply to the points made in the claim to the extent that the body has established that it is not liable pursuant to paragraph 1, point a) or b) or where liability is denied or the damage has not been fully quantified.

For the purposes of the first subparagraph, where necessary and at the request of the compensation body referred to in paragraph 1, the compensation body or any other competent party of the Member State performing its functions, in which the insurance undertaking which issued the policy of the liable party has its head office, shall inform the compensation body referred to in paragraph 1 within two months about the status of the claim, the reasons for contesting the liability and the timeframe in which that the damage can be quantified.

3a. The compensation body referred to in paragraph 1 shall pay out the compensation to the injured party without undue delay when his or her right to the compensation has been duly quantified and not contested as referred to in point a) of the second subparagraph of paragraph 3.

3b. The Member States shall ensure that the body referred to in paragraph 1 is competent to inform and be informed, in due time, by the following on the stages of proceedings and procedures referred to in paragraphs 1 and 3:

- (a) the insurance undertaking of the vehicle the use of which caused the accident, the claims representative or administrator or liquidator;
- (b) the compensation body in the Member State in which the insurance undertaking which issued the policy has its head office;
- (c) other compensation bodies and national competent authorities of the Member States.

The Member States shall ensure that the body referred to in paragraph 1 is competent to inform and be informed, in due time, by parties referred to in points a) to c) of the first subparagraph on the details of specific claims, where relevant.

4. Where the injured party is habitually residing in another Member State than the Member State in which the insurance undertaking referred to in paragraph 1 has its head office, 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 full 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 has its head office. The compensation body of the Member State in which the insurance undertaking which issued the policy of the liable party has its head office, shall make the payment to the body referred to in paragraph 1 in a reasonable time not exceeding six months, unless otherwise agreed in writing by these compensation bodies, after it has received a claim for recompensation regarding a payment that has been made to the injured party by the body referred to in paragraph 1.

The compensation body that has provided compensation for the loss or injury suffered pursuant to the first subparagraph, shall be subrogated to the rights of the injured party against the person who caused the accident or his insurance undertaking. Each Member State shall acknowledge this subrogation as provided for by any other Member State.

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 legal or natural person 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 25a with regard to the reimbursement.”

(5b) In Article 28(1), the following subparagraph is inserted after the first subparagraph:

“The Member States may require motor third party liability insurance that meets the requirements of this Directive for any motor equipment used on land that is not referred to as a vehicle in Article 1, point 1, and to which Article 3 does not apply.”

(6) the following Articles 28a, and 28b 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<sup>15</sup>. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>16</sup>.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

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<sup>15</sup> Commission Decision 2004/9/EC of 5 November 2003 establishing the European Insurance and Occupational Pensions Committee (OJ L3, 7.1.2004, p.34).

<sup>16</sup> 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 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 25a(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 25a(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 25a(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 1a*  
Evaluation

No later than five years after the date of application of Article 25a of Directive 2009/103/EC as referred to in Article 2(2) of this Directive, the Commission shall submit to the European Parliament and to the Council a report on the situation of functioning, cooperation and funding of the compensation bodies referred to in Article 25a of Directive 2009/103/EC. If appropriate, the report shall be accompanied by a legislative proposal. With regard to the funding of the compensation bodies, that report shall include at least:

- (a) an assessment of the financing capacities and financing needs of the compensation bodies in relation to their potential liabilities, taking into account the risk of insolvency of motor insurers in the Member States' markets;
- (b) an assessment of the harmonisation of the funding approach of the compensation bodies;
- (c) if the report is accompanied by a legislative proposal, an assessment of the impact of contributions upon Motor Third Party Liability Insurance contract premiums.

No later than seven years after the date referred to in the first sub-paragraph of Article 2(1) of this Directive, an evaluation of Directive 2009/103/EC, with the exception of those elements of Directive 2009/103/EC that are concerned by the evaluation referred to in the first paragraph above, 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."

## Article 2

### Transposition and application

1. Member States shall adopt and publish, by *[PO: Please insert date 24 months after the date of entry into force of this Directive]* 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 24 months after the date of entry into force of this Directive]*.

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. Article 25a shall apply as of the date of entry into force of the Commission Delegated acts referred to in Article 25a(7) or the date referred to in the second subparagraph of paragraph 1 above, whichever is the later date.

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

## Article 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*

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