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From: Presidency
To: Working Party on Financial Services and the Banking Union (Insurance)
Financial Services Attachés

Subject: IRRD: 20.07.22
- Presidency non-paper on the interconnectedness of the IRRD and MID



Interconnectedness of the IRRD and MID

Background

During the previous discussion on the resolution funding under the IRRD and also during bilateral meetings some Member States have pointed out the interconnectedness of the IRRD proposal with the Motor Insurance Directive (MID). The Presidency sees a potential gap in the present state of the MID text, which does not envisage the resolution as a means of handling the failing undertaking under the IRRD proposal. The short analysis hereunder shall help to seek the views of Member States on this issue and to propose a possible solution.

The missing resolution in MID

Directive 2021/2118/EU (Amendment to MID) introduced a guarantee system compensating parties injured as a result of accidents where the insurance undertaking concerned is insolvent. Such an event may occur, for example, as a result of insolvency declaration, the failure of an insurance undertaking to comply with its obligations once it has renounced its authorisation in its home Member State, or as a result of its authorisation being withdrawn or a decision of supervisory authority prohibiting its activity.

This may result in the opening of insolvency or liquidation proceedings, which may expose the injured parties to the risk of not being properly compensated by the responsible insurance undertaking. For this reason, Article 10a of Directive 2009/103/EC, as amended by Directive 2021/2118/EU, requires each Member State to establish or designate a body entrusted with the task of providing compensation to injured parties residing within its territory, at least up to the limits of the insurance obligation, for damage to property or personal injuries caused by a vehicle insured by the insurance undertaking, from the moment when the insurance undertaking is subject to bankruptcy proceedings or the



insurance undertaking is subject to winding-up proceedings as defined in Article 268(1), point (d), of Directive 2009/138/EC.

Similarly, this obligation is laid down in Article 25a in respect of damage resulting from accidents:

occurring in a Member State which is different from the Member State of residence of the injured parties,

caused by the operation of a vehicle normally based in a Member State other than injured parties residence, or

insured by an insurance undertaking established in a Member State which is different from the Member State of residence of the injured parties.

According to our view this creates an inconsistency between Directive 2009/103/EC, as amended by Directive 2021/2118/EU, and the IRRD proposal allowing for the resolution of insurers instead of leaving it to the insolvency proceedings. This inconsistency could be addressed by the addition of point (c) into Articles 10a(1) and 25a(1), which would allow for the settlement of an insolvent insurer liabilities arising from liability insurance in case of resolution.

Article 10a is amended as follows:

1. Each Member State shall set up or authorise a body entrusted with the task of providing compensation to injured parties resident within its territory, at least up to the limits of the insurance obligation, for damage to property or personal injuries caused by a vehicle insured by an insurance undertaking, from the moment when:

(a) the insurance undertaking is subject to bankruptcy proceedings;

*(b) the insurance undertaking is subject to winding-up proceedings as defined in Article 268(1), point (d), of Directive 2009/138/EC; **or***



(c) the insurance undertaking is subject to resolution tools provided for in Title III of Directive (EU) xx/xx [IRRD]

Article 25a is amended as follows:

1. Each Member State shall set up or authorise a body entrusted with the task of providing compensation to injured parties resident within its territory, in the cases referred to in Article 20(1), at least up to the limits of the insurance obligation, for damage to property or personal injuries caused by a vehicle insured by an insurance undertaking, from the moment when:

(a) the insurance undertaking is subject to bankruptcy proceedings;

(b) the insurance undertaking is subject to winding-up proceedings as defined in Article 268(1), point (d), of Directive 2009/138/EC; **or**

(c) the insurance undertaking is subject to resolution tools provided for in Title III of Directive (EU) xx/xx [IRRD]

Question to the Member States:

Q1. Would Member States support the extension of the IRRD proposal to include the above-mentioned amendment of Articles 10a(1)(c) and 25a(1)(c) of Directive 2009/103/EC, as amended by Directive 2021/2118/EU?

Q2. Do Member States have any other view regarding this matter?