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IMPACT ASSESSMENT

Accompanying the document

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 insure against such liability

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INTRODUCTION: POLITICAL AND LEGAL CONTEXT

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 (see Box 1), but the EU legislation goes further. Since 1972, several amendments have progressively strengthened the Directive and enhanced its provisions. Five motor insurance Directives were consolidated into Directive 2009/103/EC (hereafter the Directive or MID). Key elements of the Directive include:

- An obligation on motor vehicles to have a motor third party liability (MTPL) 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.
- An obligation on Member States to create guarantee funds for compensation of victims² of accidents caused by uninsured or untraceable 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.

Box 1: International Green Card system and EU Motor Insurance Legislation

The Green Card is an international certificate of third party liability insurance that makes it possible for travellers to drive cross-border without having to buy supplementary insurance. The system is run by a Council of Bureaux and was set up in 1949 under the auspices of the United Nations Economic Commission for Europe (UNECE). There are three categories of Green Card Members: EEA Member States, Members under Section III of the Internal Regulations (Andorra, Croatia, Serbia and Switzerland) and standard Green Card Members. Vehicles from EEA Member States and Section III States can travel freely between the relevant territories even without the Green Card as the number plates of vehicles from such Member States are presumed to be the proof of insurance.

The evolution of EU motor insurance legislation involved the adoption of five successive Directives, continuously improving the legal framework and strengthening the protection of victims of traffic accidents. The first Directive of 1972 set out the obligation for all vehicles to be covered by a MTPL insurance policy and mandated the abolition of border checks on motor

¹ Council Directive 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 The Directive uses both terms "victim" and "injured party" to encompass persons covered by protection afforded by it. For the sake of simplicity, the term "victim" will be used throughout this report.

insurance; it also made it possible for Member States to derogate some natural or legal persons' vehicles or certain types of vehicles. The second Directive of 1983 imposed for the first time the minimum amounts of cover, obliged Member States to set up compensation bodies for uninsured or untraced drivers (also known as national guarantee funds) and prohibited certain exclusion clauses in insurance contracts. The Third Directive of 1990 established the principle that the insurance cover should include the whole territory of the EEC on the basis of a single premium and stipulated that in the cases of disputes on which an insurer or body should pay the compensation, the victim must be compensated without delay irrespective of the dispute. The Fourth Directive of 2000 introduced facilities for the protection of 'visiting victims'; to that end it required Member States to set up information centres and compensation bodies, and imposed an obligation for insurers to have claims representatives in other Member States. The Fifth Directive of 2005 banned systematic border checks on insurance, required cover for damage both to property and personal injuries, established guarantees for compensation for victims of accidents involving vehicles that are exempt at Member State level, codified case law on exclusion clauses, provided for specific cover for exported vehicles, prohibited "excess" or "co-pay" against victims and also required insurers to provide five years of claims history statements for policyholders.

All these Directives were consolidated into Directive 2009/103/EC. All references in this text are made in relation to this Directive.

To assess the effectiveness, efficiency and coherence of the motor insurance legislation, the Commission Work Programme 2016 announced **an evaluation of the Directive**³. A public consultation was held between July and October 2017, and the evaluation report is annexed to this Impact Assessment (see Annex 7). The evaluation looked into all elements of the Directive, including for example terminology and definitions, insurance checks, visiting victims and autonomous vehicles. The evaluation identified a number of issues which are further assessed in this impact assessment: the protection of victims of accidents in cases of insolvency of an insurer, minimum amounts of cover, portability of claims history statements (which are used to calculate no-claims discounts), and checks on insurance of vehicles.

Furthermore, in the **Consumer Financial Services Action Plan** of March 2017⁴, the Commission announced that, following an evaluation, it would decide promptly on possible amendments to the Directive to enhance the protection of traffic accident victims and to improve the cross-border portability of claims history statements⁵.

There have also been in recent years a number of ECJ judgments clarifying the scope of the Directive. Against a background of linguistic differences in different language versions of the Directive, the CJEU has interpreted the scope in a number of preliminary rulings. Particularly noteworthy judgements of the CJEU have been those in

³ See the Inception Impact Assessment of 24 July 2017, available [here](#). The completion of the Evaluation was postponed 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.

⁴ COM(2017) 139 final of 23 March 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017DC0139>

⁵ These issues are discussed in sections 2.1.1. and 2.2.2. below.

the so-called "Vnuk", "Andrade" and "Torreiro" cases⁶. The Vnuk judgement of September 2014 in particular clarified the scope of application of the Directive (the types and uses of motor vehicles for which an MTPL insurance policy is obligatory) in a manner different to that in which it was hitherto implemented in certain Member States, leading to requests from certain Member States and stakeholders in the public consultation to re-examine the appropriate scope of the Directive. Since it is proposed to codify the ECJ rulings in the MID, and not change the scope of the Directive as interpreted by the Court, the proposed legislative change is not subject to detailed impact assessment but explained and analysed in section 2.3 and Annex 11.

Following the evaluation and against the background of applicable frameworks (international Green Card System, EU and national rules, applicable law and multilateral agreements), it was concluded that overall the provisions of the Directive function well. At the same time, the evaluation showed that a number of specific elements of the Directive merited targeted amendments, including those aspects highlighted in the Consumer Financial Services Action Plan. These are discussed in the present impact assessment.

PROBLEM DEFINITION

The main problems identified in this impact assessment (see problem tree) concern the following issues:

- 1) Insufficient/unequal protection of injured parties in certain circumstances (insolvency of insurers, inconsistent minimum amounts of cover), and
- 2) Differential treatment and freeriding behaviour negatively affecting policyholders (differentiation between claims history statements by insurers in cross-border cases, increased premiums due to uninsured driving).

An additional problem, the lack of uniform application of the scope of the MID across the EU in particular in light of recent ECJ judgements, was identified by the evaluation and the possible scenarios for this topic are assessed in Annex 11. As explained in the introduction, for this topic the proposed policy choice was a codification of existing case-law and therefore does not require impact assessment according to the guidelines, but it is desirable to record the reasoning.

Four problem drivers underly these problems: absence of EU-wide rules on compensation of victims for cross-border cases of insolvent insurers, inconsistent minimum amounts of cover for motor insurance across Member States, risks due to uninsured driving (which can lead to higher premiums for policyholders), and lack of

⁶ See Annex 11 for more details of the different rulings including the Vnuk judgement of 14 September 2014 (C-162/2013).

acceptance of claims history statements by insurers in case of policyholders moving to another Member State.

Insufficient/unequal protection of victims in certain circumstances

Insufficient or unequal protection of injured parties across the EU arises from absence of rules for compensation in cases of insolvency of an insurer and unequal minimum obligatory amounts of insurance in different Member States.

2.1.1. Compensation of victims in the case of insolvency of an insurer

According to the Directive compensation bodies⁷ must be set up in each Member State to meet costs arising from accidents caused by uninsured or untraced 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 MTPL insurer may be left without compensation⁸. As a consequence, in recent cases⁹ as shown in confidential Annex 8 where an insolvent insurer was providing services across-borders under the free provision of services it was not clear which party was ultimately responsible for refunding claims of victims, and delays in compensation of victims occurred.

An accident which involves a liable party with an insolvent insurer poses two main issues. First of all, to ensure an effective and efficient protection of victims, it is not always clear which compensation body is responsible for the initial compensation of the victim ("front office"). Second, to allow for fair risk sharing in case of cross-border provision of services it is unclear who bears the ultimate financial responsibility for the claim ("back office"). For cross-border cases, this could be the guarantee fund of the home Member State of the insolvent insurer or alternatively the guarantee fund of the host Member State. As the MID does not deal with this, it depends on national law, which might not cover cross-border cases, and therefore the level of protection of victims of accidents in case of insolvency of an insurer is currently unequal across Member States.

As shown in the evaluation report (Annex 7), which provides a detailed overview of all possible insolvency scenarios, a distinction is made between domestic cases and cases with a cross-border dimension (Tables 8 and 9).

For insolvencies which involve insurers that are based in the same Member State, according to the Council of Bureaux (CoB), all but one Member State (Sweden) have put

⁷ This obligation is provided by Article 10 of the MID, on "Body Responsible for compensation".

⁸ Compensation in cases of insolvency are not covered by guarantees of article 10 compensation bodies, this was clarified in case CJEU C-409/11Csonka.

⁹ A detailed list of recent insolvency cases and their consequences can be found in confidential Annex 8.

in place mechanisms to deal with such insolvencies domestically. However, the level of protection of victims by these domestic schemes is sometimes lower than the protection foreseen in the MID. As a consequence, in case of insolvency without cross-border provision of services (and in the absence of application of a voluntary agreement between Member States – see Annex 10), victims are not always fully protected in all EU Member States and therefore might not be compensated or only partly compensated. Furthermore, victims might be compensated in accordance with national requirements but not in full, unlike for accidents caused by uninsured or untraced vehicles.

For cases where an insurer is selling MTPL policies cross-border either using freedom of services or a branch, a number of "voluntary agreements" between Member States have been set up under the umbrella of the CoB. The CoB currently administers three voluntary agreements between national compensation bodies, one for domestic (non-visiting) victims of accidents (1995 Agreement) and one for visiting victims in other Member States (2008 Agreement) and one for insolvency cases in case of insurers operating on a freedom of services basis (2006 Agreement). However, as shown in the evaluation report¹⁰, these voluntary agreements have some deficiencies as they are not mandatory, thus do not cover all EU Member States, and contain negotiated "opt-out clauses" or limitations for certain national guarantee schemes.

Table 1: Overview of rules applicable for different scenarios of insolvencies of an insurer:

TYPE OF RULE	COVERAGE	GEOGRAPHICAL SCOPE	DEFICIENCIES
National Legislation	National insolvencies	All EU Member States except SE	Lower level of compensation of victims compared to MID in some Member States
CoB 1995 Agreement	Domestic (non-visiting) victims of accidents	EEA with the exception of: HR, LV, LT, LU, MT, RO, IS, NO Reservations by BG, IT, IE, PT, SE, UK,	Incomplete geographical scope; the agreement was modified on some occasions and not all Members States signed the modifications. Voluntary Reservations made by some Member States
CoB 2006 Agreement	Visiting victims in other Member States	EEA with the exception of BG, HR, LV, LT, LU, Derogations made by, IE, MT, UK, LI.	Incomplete geographical scope Derogations announced by some signatories Only applicable to situations of FoS and not FoE.
CoB 2008 Agreement	Insolvency cases in case of insurers operating on a freedom of services basis	EEA with the exception of EE, HR, IE, RO, SE, UK, IS, NO	Incomplete geographical scope Not applicable in case the accident occurred in an EEA country other than where the vehicle is normally based Not applicable if the national law does not foresee intervention of the Guarantee

¹⁰ Annex 7. See also Annex 10 on voluntary agreements between Member States.

Source: Council of Bureaux

For cross-border activities, according to the CoB¹¹, the voluntary agreements that tackle this issue have shown in practice a number of significant flaws. In particular, some national bodies have not signed, some others have withdrawn from agreements previously signed and some have signed with reservation clauses and limits. As a consequence, in recent cases (See confidential Annex 8 for a list of recent cross-border failures of motor insurers) where an insolvent insurer was providing services across-borders it was often not clear which party was ultimately responsible for refunding claims of victims, and delays in compensation of victims occurred while discussions or litigation occurred.

This demonstrates that in some national or cross-border cases of insolvency of the insurer, victims will not always be protected at the same level. In absence of a voluntary agreement or in case of specific opt outs, victims risk not being compensated in a timely and full manner in line with the deadlines set out in the CoB internal rulebooks. In particular, evidence from recent insolvency cases (see Box 2 below for one example) has shown that victims are likely to experience negative consequences. These include considerable delay in payment of claims due to ongoing court proceedings or claims which are reimbursed only partially. This implies that victims could be compensated considerably less and with a longer delay than if they were victim of an accident in case of an uninsured or untraced vehicle.

As shown in the evaluation report in Annex 7 and in confidential Annex 8, in the period 1998-2017, eight cases of insolvency of such insurers have been reported affecting nine Host Member States (and based in five home Member States). Based on a preliminary estimation due to ongoing cases, there were approximately 11,500 claims against policyholders of those insurers after their insolvency for a total value of is approximately EUR 180 million¹². This is certainly an underestimation of the total problem, as for 3 out of 8 insolvencies information on claims is not available. A rough extrapolation of the total value leads to an approximate value of EUR 288 million. One specific example is described in the box below.

Box 2: Case study on insolvency: Setanta Ltd

Evidence from delays in claims were reported for the insolvency of Setanta Insurance (“Setanta”) a Maltese incorporated insurance company with Irish management which sold motor insurance cross-border to policyholders in Ireland only. Setanta was placed into voluntary liquidation in Malta in April 2014. More than two years later, in November 2016, there were still 1400 claims

¹¹ In their contribution to the public consultation, a summary of the public consultation can be found in Annex 2. An assessment of the voluntary agreements can be found in Annex 12.

¹² Information from the Council of Bureaux. As some insolvency cases are still ongoing, there could be a further increase both in number of claims and total value.

unpaid for an estimated value of EUR 90 million¹³ to the detriment of victims. If Setana were a solvent insurer, the claims would have been treated without delay.

Morover there was a court case in Ireland to determine whether the compensation of victims would be undertaken by the general Irish Insurance compensation fund (which would cover only 65 percent of the value of claims) or the motor insurance bureau (which would reimburse 100 percent of the value of claims); no attempt was made to bring about compensation of victims by any body in Malta, as there was no legal possibility to do so. On 8 of June 2017, an Irish court ruling attributed the settlement to the Irish Insurance compensation fund (ICF), resulting in a payment of claims of up to 65 percent or €825,000, whichever is the lesser, to the detriment of victims of motor insurance accidents¹⁴.

If Setana had been a solvent insurer, or even in case of an accident with an uninsured or untraceable vehicle, the claims would have been treated without delay and with 100% of compensation (up to the minimum amounts laid down by the MID, currently just over €6 million for personal damage and €1 million for material damage provided in the Motor Insurance Directive).

Therefore, as demonstrated above, in the event of an insurer becoming insolvent, victims of traffic accidents have difficulties to obtain compensation in some Member States, in a timely way and in full. This is in particular in the case where the liable party is insured by a cross-border insurer. Furthermore, fair and effective risk-sharing in case of insolvency and cross-border provision of services is not guaranteed. In the absence of clear rules on the ultimate liability of a claim in cross-border situations, a compensation fund which has reimbursed a victim in case of an insolvent insurer cannot get recourse to the fund of the home Member State of the insolvent insurer. This topic was highlighted as a possible area for action in the 2017 Consumer Financial Services Action Plan.

2.1.2. Insufficient level of cover of MTPL insurance

The Directive **lays down minimum obligatory amounts of cover** up to which compensation must be provided under a MTPL 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 damage to property, irrespective of the category of vehicle. These amounts are reviewed every five years in order to take into account inflation. In the case of personal injury, the minimum amount of cover for most Member States is currently set at €1 220 000 per victim or in case of multiple victims €6 070 000 per claim, irrespective of the number of victims. For cases of material damage, the minimum amount is determined at €1 220 000 per claim, independent of the number of victims¹⁵.

¹³ Information was reported in the press, available for example at: <https://www.irishtimes.com/business/financial-services/still-1-666-outstanding-claims-against-setanta-insurance-1.2926779>, consulted on 7 December 2017

¹⁴ See <http://www.kennedyslaw.com/casereview/setanta-liquidation-irish-supreme-court-finds-in-favour-of-mibi/>

¹⁵ This follows the most recent revision for those member States without transitional periods, which was calculated by the Commission in 2017 and notified to Member States.

However, as shown in the evaluation report at Annex 7 and in Annex 4, a number of Member States currently apply lower amounts than laid down in the Directive. This is due to different reference dates for periodically recalculating the minimum amounts. When the minimum amounts of cover were introduced in 2005 (Directive 2005/14/EC), some Member States were allowed a transitional period until 2012 to apply the full minimum amounts. Although the transition periods have meanwhile expired, the respective dates of the end of the transitional period are still used as reference dates for the periodic inflation updating. Therefore these minimum amounts are still not the same across all Member States. In addition, the procedure and timing of periodic adaptation of the minimum amounts in the Member States are not precise enough to allow for smooth adaptations. In particular, the procedure lacks a clear methodology and exact reference dates to calculate inflation and does not provide deadlines for Member States for its implementation. As a consequence, the limits adopted in accordance with the procedure are not legally enforceable, resulting in different levels of obligatory minimum amounts of cover across Member States.

Another question raised in the Commission's public consultation concerned the question whether the current minimum amounts of cover are sufficient to protect victims under all possible circumstances. In particular, accidents involving vehicles with a large number of passengers such as buses or coaches may result in a large number of claims concerning personal injuries. Accidents involving lorries may cause both personal injuries and severe material damage. Finally, vehicles transporting dangerous goods, such as chemicals, can cause significant environmental damage. There is anecdotal evidence that in some circumstances the current minimum amounts may not be sufficient to cover the cost of claims, especially where there are multiple victims. This is one of the reasons why some Member States (BE, CY, ES, FI, FR, IE, SE and UK) have set the minimum amounts of cover considerably higher than the minimum amounts prescribed in the Directive. Therefore it is possible that victims of accidents involving buses and coaches, lorries or vehicles transporting dangerous goods might not be sufficiently compensated in a number of Member States.

Box 3: Examples of road accidents with heavy vehicles and buses and coaches

According to the European Road Safety Observatory¹⁶, in 2014, there were 3,850 fatalities in road accidents involving heavy goods vehicles and 750 involving buses and coaches in the EU as a whole.

Examples of accidents with buses and heavy vehicles resulting in high fatalities and high material damage:

¹⁶ https://ec.europa.eu/transport/road_safety/sites/roadsafety/files/pdf/statistics/dacota/bfs2016_hgvs.pdf

- 15 December 2017: a train collided with a bus, close to Millas, France resulting in 5 fatalities and 15 wounded children¹⁷.
- 23 October 2015: bus accident in Puisseguin, France, resulting in 43 fatalities and 8 injured parties (4 seriously injured).
- 13 March 2012: a bus accident involving Belgian citizens following a crash in a motorway tunnel between Sierre and Sion in Switzerland resulting in 28 fatalities (of which 22 children) and 25 wounded¹⁸.
- 2 June 2008: bus accident in Allinges, France resulting in 7 fatalities (children) 18 injured parties, of which 4 seriously injured.
- 22 July 2007: accident with a bus transporting Polish citizens at Laffrey, France, leading to 26 fatalities.
- 17 May 2003: bus accident, in Dardilly France, resulting in 28 fatalities and 46 injured parties.
- On 28 February 2001, a collision between a car and a train in Selby, UK, resulting in 13 fatalities and 70 injured parties of which 30 seriously injured, led to one of the largest motor insurance pay-outs for an accident in the UK, reaching approximately £50 million¹⁹.

These examples show that very serious accidents with buses and heavy vehicles often involve a high number of victims and the total material damage can be high. As a consequence, in such case the current minimum amounts of cover provided in the MID might not be sufficient to compensate all victims. In the Member States of the examples, this did not pose a problem as for respectively France, Belgium and UK, the minimum amounts of cover set at national level are above those provided for in the Directive. In BE, FR and UK guarantees for personal injury are unlimited. In BE the minimum amount for material damage is set at EUR 111 Million as shown in Table 10 in the Evaluation at Annex 7. However, it is of course possible that in certain such accidents with many victims the vehicle responsible is not the bus or heavy vehicle itself but a smaller vehicle.

It is relevant to note that data show that the overall amount of fatalities with buses and coaches and heavy goods vehicles has decreased by approximately 50 percent in the period 2005 to 2014 in the EU as a whole as shown in Figure 1.2 of Annex 4. This is an indication that there are fewer accidents overall and that accidents are less severe.

Accidents with personal injury or damage beyond the levels of minimum amounts are exceptional. A recent study²⁰ in France showed that since 1999, 1881 victims of severe accidents received in France compensation beyond EUR 1 Million, which is on average 125 of such victims per year. The study shows that the number of such victims is steadily decreasing, down to 30 such victims in 2015. On the other hand, the average costs of compensation for these victims is increasing and was in 2015 estimated at EUR 5,486,925 per severe injured victim, up from EUR 4,612,779 in 2014. This is an indication that the minimum amounts only apply in a limited number of cases of very

¹⁷ Reported in the press on 15 December 2017: <http://ici.radio-canada.ca/nouvelle/1073300/france-accident-train-autobus-scolaire>

¹⁸ Reported in the press: http://www.lavenir.net/cnt/dmf20120315_016

¹⁹ Reported in the press, consulted on 20 December 2017: <https://www.standard.co.uk/news/million-to-one-accident-could-leave-50m-claim-6335090.html>

²⁰ Study on the "Compensation of severe third party motor liability bodily injury claims in France", by Caisse Centrale de Réassurance(CCR), published October 2016, available at: <https://www.ccr.fr/documents/23509/29230/Plaquelette+RC+auto+en+France+2016+VA.pdf/9af49b03-d79c-44b7-a1ef-acb2000ad9d2>

severe accidents with low frequency but with high average cost. However even if there are fewer frequent serious accidents, for the purpose of protecting victims of motor accidents, in individual cases it, is important that the total cost of claims of serious motor accidents can be covered by the minimum amounts of cover. Therefore, it remains problematic if some Member States have lower minimum amounts, giving rise to risks of unequal protection of victims.

Differential treatment and freeriding behaviour negatively affecting policyholders

Policy holders of motor insurance are negatively affected by freeriding behaviour and differential treatment which may result in increased premiums of MTPL insurance. The main drivers are uninsured driving and the acceptance of claims history statements when moving across borders.

2.2.1. Uninsured driving

According to EREG²¹, the Association of European Vehicle and Driver Registration Authorities, uninsured driving, in essence, circulating with a motor vehicle without a compulsory MTPL insurance, is an increasing problem within the EU. The cost for the entire EU has been estimated by EREG 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, gurantee funds and motor insurance policyholders. Victims of accidents caused by uninsured drivers do not receive the same treatment to obtain compensation. They have to obtain compensation from the compensation body or relevant national body. To ensure compensation of victims of uninsured driving, article 10 of the Directive therefore requires Member States to create compensation bodies, usually guarantee funds or National Green Card Bureaux. These bodies should have recovery rights against the owners of uninsured vehicles who according to the Council of Bureaux are frequently insolvent or bankrupt and unable to pay back the uninsured claims. Insurers are therefore required to contribute to compensation bodies to cover for claims. Insurers also miss out on rightfully due premiums as the uninsured do not pay premiums and thus freeride on premiums paid by regular policy holders. According to the Council of Bureaux and insurance associations, the costs of uninsured driving are transferred to honest vehicle owners with compulsory motor insurance, increasing the overall level of premiums for motor insurance.

Uninsured driving is a problem shared between Member States and the EU and should be tackled both at national level within a single EU Member State and at the borders.

²¹ 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>

At national level, Article 3 of the MID obliges Member States to "*take all appropriate measures to ensure that civil 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 MPTL insurance of registered policies, establish roadside checks and effective penalties for owners of uninsured vehicle. However, according to EREG, the current verification of uninsured driving at national level often are not sufficient. Sufficient verification would require good data quality for the databases with registered cars and compulsory MTPL insurance, and sufficient exchange of information between the different authorities responsible. As a consequence, there are still significant levels of uninsured driving across the EU as shown in confidential Annex 9. In accordance with the principle of subsidiarity, to address this problem at national level, Member States with high levels of uninsured driving should therefore set up all proportionate actions to reduce levels of uninsured driving at national level by conducting sufficient road checks, prevention campaigns and exchange of information between competent authorities.

At EU level, uninsured driving concerns mainly vehicles that circulate beyond the Member States where they are normally registered. It also concerns vehicles that are not registered in the Member State where they are normally based, but in another Member State, even if the MID requires mandatory registration when residing more than six months in a given Member State. However, article 4 of the MID prohibits border checks of insurance on vehicles entering the national territory, as a hindrance to free movement of vehicles in the internal market (and indirectly, of persons and goods). This affects in particular Member States with neighbouring countries with high levels of uninsured driving (see confidential Annex 9).

Overall, there remains a considerable amount of vehicles circulating without motor insurance across all Member States. To address the issue of uninsured driving, new technological developments (number plate recognition technology) allow for checks without obstructing vehicles. These new tools are allowed at national level but are explicitly prohibited for cross-border traffic under article 4 of the current Directive, which prohibits all checks, including those not requiring the vehicle to be stopped. In addition, such verification of insurance of cross-border vehicles could not be effective without the exchange of data between Member States, which should be done in compliance with EU data protection rules.

2.2.2. Unfair differentiation between claims history statements by insurers in cross-border cases

In order to facilitate switching MPTL insurance and to avoid fraudulent benefits, the MID stipulates that Member States must ensure the policyholder has the right to request a claims history statement (article 16 of the Directive). Such information may help a policyholder to obtain a "no claims bonus" (or a better "bonus-malus" rating) with a new insurer, either in the same Member State or another Member State, thus reducing premiums.

Currently, the Directive obliges an insurer to provide such claims history information covering the last five years, and it does not stipulate what use of that information must be made by a new motor insurer. Not accepting claims history has the potential to unduly increase motor insurance premiums for mobile citizens. This topic was highlighted as a possible area for action in the 2017 Consumer Financial Services Action Plan.

Insurers have underlined during the public consultation that claims history is only one factor among others (e.g. type of vehicles, level of cover) that determine the ultimate level of premiums. However, in the insurance market of some Member States, the claims history remains an important factor in determining the level of premiums. Furthermore, national systems of "bonus/malus" are different; while in some Member States there are regulatory schemes to calculate no claims discounts, others have industry standards, or insurers are fully free to determine the methodology to calculate premiums. Some insurers do not use this type of discount at all. The cross-border portability of claims history across the EU has been investigated already by EIOPA in 2013, in cooperation with Insurance Europe²². EIOPA considered in a letter to the Commission of 13 March 2013 that one of the reasons for reluctance of some insurers may be lack of trust in the authenticity of claims statements originating from an insurer based in another Member State. As an outcome of the analysis then performed, Insurance Europe published '*Guidelines on information for motor insurance claims history declarations for cross-border use*'²³, including common elements for claims history statements, aimed at facilitating the circulation of information on claims history and assessment of bonus/malus by insurers operating in two distinct national markets. The guidelines however are not binding on insurance undertakings, and incorrectly state that such statements are not obligatory.

In its letter on cross-border issues in motor insurance, EIOPA highlighted that the use of claims history by insurers should not lead to cases where two consumers in the same situation are not treated equally by a given insurer. This would be the case if the claims history relating to those consumers affected the amount of premium to be paid by each of them differently, for example dependent on their previous place of residence or their previous insurer. EIOPA also pointed to shortcomings in the format of communication of data in claims history statements. In particular, the use of secured means of exchange of data between insurance undertakings could be beneficial, enabling better management of the storage and sharing of data originating from different sources and a more reliable exchange of data among market participants.

²² EIOPA letter dated 15 March 2013, EIOPA-CCPFI-12/051/GB/AdJ

²³ Insurance Europe, '*Guidelines on information for motor insurance claims history declarations for cross-border use*'
<https://www.insuranceeurope.eu/sites/default/files/attachments/Guidelines%20on%20information%20for%20motor%20insurance%20claims%20history%20declarations%20for%20cross-border%20use.pdf>

Box 4: Evidence of issues with claims history statements

Concerning the treatment of claims history statements when policyholders move to another Member State, there is no quantitative data on complaints or problems experienced. It is therefore difficult to quantify the dimension of the problem. However, there are a number of indications of the existence of problems in this field.

In the public consultation around 70 individuals reported non-acceptance of their no-claim history statements abroad. Two respondents gave more details and reported the non-acceptance of a French and a Dutch statement, both in the UK. Other respondents to the consultation, both institutional and private, acknowledge that there is "some" problem. EIOPA conducted an analysis of this topic in 2012/2013 stating in a letter²⁴ to the European Commission:

"EIOPA Members indicated that some insurers may be reluctant to accept claim statements issued in another Member State due to lack of trust in the authenticity of such certificates." In a more recent letter²⁵ to the European Commission EIOPA states *"For the most part, it is considered to be working well in some domestic markets, although there are particular difficulties in cross-border situations in ensuring a sufficient level of portability of claims history."*

The Free State of Bavaria, one federal state within Germany, stated in the public consultation that in cross-border mobility cases the acceptance of no claims histories is not always effective and could as a consequence create obstacles to cross-border mobility²⁶.

The Cost of Insurance Working Group of the Irish Department of Finance states in its report that only a small number of insurers is willing to accept EU no-claims statements whereby most of them accept such statements from the UK²⁷.

In Germany, an insurance broker contacted many insurers asking them about the acceptance of foreign no-claims histories. At least six insurers of those who had responded stated that they do not take into account no claims histories from abroad. Among those is the insurer AllSecur, the online daughter of Allianz²⁸.

Problems related to the acceptance of foreign no-claim history statements in the UK are reported by an insurance broker²⁹ and an expat forum³⁰.

Problems related to the acceptance of foreign no-claims history statements in Italy are mentioned in an expat forum³¹.

²⁴ EIOPA letter dated 15 March 2013, EIOPA-CCPFI-12/051/GB/AdJ

²⁵ EIOPA letter dated 30 October 2017, EIOPA -17/691

²⁶ Answer to Question 5 of part B of the public consultation.

²⁷ <http://www.finance.gov.ie/wp-content/uploads/2017/07/170110-Report-on-the-Cost-of-Motor-Insurance-2017.pdf>, page 61, third paragraph

²⁸ <http://www.preisagenturstuttgart.de/werden-ihre-auslaendischen-kfz-vorversicherungszeiten-annerkannt/>

²⁹ <https://www.keithmichaels.co.uk/specialist-car-insurance/expat-car-insurance/foreign-ncb/>

³⁰ <http://www.spainmadesimple.com/insurance/car/no-claims/> , section "Is Spanish No Claims Bonus Valid in the United Kingdom?"

The remaining gaps in the use of no-claims history statements in cross-border cases are confirmed by anecdotal evidence through complaints from citizens who move across borders. These complaints indicate that insurers do not always accept or take into account claims history statement from foreign insurers. Individuals with no accidents during the last five year would normally benefit from a "no-claims bonus" and a corresponding lower MTPL premium. However, as they move from another Member State, the no-claims history statement is sometimes not accepted by the potential insurer.

Market forces based on competition between insurers seem not to solve the problem. The main reason is that for insurers, the market segment of mobile citizens who move across borders and at the same time require a new MTPL insurance, is very small when compared with the national markets. For example, in 2014, the total number of working population migrating to another Member State, only represented 0.5% of the total population living in the EU-28 and only a fraction of these citizens own a vehicle and are required to obtain a new MTPL insurance in the country of destination. Insurers therefore do not specifically target this market segment and consequently, market dynamics are insufficient to overcome this hurdle. Consequently, while small compared to the total volume of motor insurance, it is harmful for those mobile citizens concerned.

A different treatment of a claims history statement from a citizen whose initial insurer is based in another Member State, compared to a citizen with the same risk profile at national level, is a case of discrimination and against the fundamental principle of a single market. Such discriminatory treatment based only on the previous country of residence of the policyholder and not in other objective risk factors could make cross-border mobility less attractive, constituting a barrier to the free movement of persons.

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2.3 Other factors outside the scope of this impact assessment

In addition to the issues outlined above, the evaluation of the MID also covered a number of other topics. In particular:

- (i) the scope of the directive in the light of a number of CJEU court rulings;

³¹ <http://www.britishinitaly.com/help-with-car-insurance-in-italy/>

³² <http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=7981&furtherPubs=yes>

(ii) the suitability of the Directive in the light of technological developments (electric bicycles, segways, autonomous or semi-autonomous vehicles) and on whether the liability system it provides will suit future needs;

(iii), the functioning of the system of protection of visiting victims;

(iv) the functioning of insurance of exported vehicles;

v) the consistency of its terminology and definitions.

i) Codification of rulings on scope of the Directive

As outlined in the evaluation report (annex 7), there are certain specific issues concerning the consistent application of the scope of the Directive which arose in connection with a number of CJEU rulings. The question of the scope of the Directive, and the codification of recent CJEU judgements into the Directive, are also considered in detail in Annex 11.

The evaluation showed that certain Member States have interpreted the obligation for MTPL insurance as laid down in article 3 of the Directive as not extending to all motorised vehicles used in all locations and for all purposes. In particular, certain Member States do not impose domestically an obligation for MTPL insurance for certain uses of vehicles outside of road traffic. The uncertainty about the exact scope of the MTPL requirement as laid down in the MID was compounded by the terminology used in different language versions of the Directive. In particular, the English text referred to "the use of vehicles" as falling in the scope of the Directive, whereas the French text referred to "*circulation*" instead of "use".³³

The CJEU has clarified the scope of the Directive on three successive occasions, as described in Box 10 of annex 11. In the Vnuk ruling³⁴ the Court ruled that any use of the vehicle that is consistent with its normal function should be covered. In Rodrigues de Andrade³⁵, the Court ruled that "normal function of the vehicle" is to be understood to be linked with its "transport" function and not any other function that a vehicle could have (e.g. ploughing in case of a motorised plough). In Torreiro³⁶, the Court ruled that the characteristics of the terrain have no bearing to determine whether the vehicle is in "normal use" or not. This means that victims are protected in case of motor accidents, regardless of the characteristics of the property or terrain on which the accident occurred. However, the use of the vehicle in case of a motor accident should be linked to its transport function and not to any other potential function it may have.

³³ Article 3 in French: " Chaque État membre prend toutes les mesures appropriées, sous réserve de l'application de l'article 5, pour que la responsabilité civile relative à la circulation des véhicules ayant leur stationnement habituel sur son territoire soit couverte par une assurance."

³⁴ See Annex 11 box 10 for more details of the Vnuk judgement (C-162/2013).

³⁵ See Annex 11, box 10 for more details of the Rodrigues de Andrade judgement C-514/16

³⁶ See Annex 11, box 10 for more details of the Torreiro judgement (C-334/16)

Given the inherent risks of disorderly implementation in the case of no action, and as the described issues of scope arise essentially as a result of CJEU rulings, the Commission considers it preferable to codify these rulings in order to ensure legal clarity. The codification of the CJEU rulings involves explicitly inserting the key provision of the consecutive rulings on the scope of the directive, (including VNUK, Rodrigues de Andrade and Torreiro) in the Directive. This would involve an additional definition of "use of a vehicle". This would mean, as with no action, that the current material scope of the Directive remains unchanged as clarified in the CJEU's rulings on "Vnuk" and "Rodrigues de Andrade" and Torreiro" and that the implementation of the rulings in national legislation would be verified by normal transposition checks.

This approach would allow Member States to implement the changes implied by the rulings in an orderly and transparent fashion. Furthermore, it would provide more legal certainty for stakeholders on the scope of the MID, 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. In addition, it would provide Member States with sufficient time to implement the Court's interpretation of the scope of the Directive. Infringement procedures would only be initiated after the transposition exercise has been finalised and only against those Member States that failed to transpose correctly. The consequences are otherwise the same as under the 'no action' approach. Enforcing the CJEU rulings directly without codification would however not guarantee the same degree of uniformity across Member States.

ii) New technological developments

The evaluation assessed whether the Motor Insurance Directive is suitable to deal with new technological developments such as new types of electric vehicles and autonomous vehicles.

a) Electric bicycles and other types of new electric-vehicles.

The evaluation (see Annex 7) demonstrated that new types of motor vehicles, such as electric bikes (e-bikes), segways, electric scooters etc, already fall within the scope of the Directive as interpreted by the Court of Justice in its case-law. 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, as part of the public consultation various associations representing the electric bike (e-bikes) industry argued that requiring third party liability insurance could undermine the uptake of e-bikes. But the current Directive already provides³⁷ Member States with the power to exempt them from motor third party liability insurance. If Member States were to exempt them in this way, 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. In particular, victims of accidents with such new electric vehicles exempted at

³⁷ Article 5 of the MID

national level in accordance with article 5 of the Directive would be reimbursed in accordance with the rules set out in the Motor Insurance Directive. At the same time, such new electric vehicles would not be required to have motor insurance but the costs of claims following accidents with these vehicles would be covered by the national compensation body set up for this purpose by the Member State that decided to exempt such new electric vehicles.

b) Autonomous vehicles

The evaluation also showed that according to the GEAR³⁸ report, a considerable uptake of autonomous and semi-autonomous vehicles can be expected. The report projects that by 2025 autonomous vehicles could represent 20 percent of global vehicles sold and estimates that there will be 44 million vehicles at global level by 2030.

The evaluation shows that one positive impact of relevance for third party liability insurance is that autonomous vehicles have the potential to drastically reduce road fatalities, which currently mainly occur due to human error³⁹. Nevertheless, the evaluation also concludes that the obligation of the Directive to obtain mandatory motor third-party liability insurance also applies to autonomous or semi-autonomous vehicles. The main rationale is the continuous need to protect and compensate victims of accidents involving autonomous and semi-autonomous vehicles circulating within the EU. This is can be reasonably expected, as a number of accidents caused by autonomous and semi-autonomous vehicles have occurred, and such vehicles can cause victims of road traffic accidents personal injuries and material damage needing to be compensated.

The evaluation also demonstrated that it does not matter for the purpose of the Directive whether the policyholder is also the "driver" of the vehicle". Already, for non-autonomous traditional vehicles, an accident may be caused by a driver who is neither the owner of the vehicle nor the policyholder of the motor third-party liability insurance linked to the vehicle, but still the victim of the accident may claim compensation under the Motor Insurance Directive. Consequently, for autonomous or semi-autonomous vehicles, for the purpose of the MID the absence of a driver is not relevant. The owner who has registered the vehicle is required to obtain a MTPL insurance and it is the MTPL insurance which will ensure the compensation of the victims in the event of an accident. In a second step, which falls outside the scope of the Directive, in the event of a potential deficient functioning of the self-driving car, the insurer may seek recourse against the manufacturer.

iii) Protection of visitors

³⁸ GEAR 2030, High Level Group on the Competitiveness and Sustainable Growth of the Automotive Industry in the European Union, Final report, October 2017, available at: https://ec.europa.eu/growth/content/high-level-group-gear-2030-report-on-automotive-competitiveness-and-sustainability_en

³⁹ Multiple studies exist on accident causation sources; see GEAR 2030, referred to in footnote 98.

In contrast to the Green Card system, which protects victims of accidents caused by visiting drivers the MID also provides protection for victims of an accident in countries where they are not residents (visitors)⁴⁰. To that end, Member States must require insurers from other Member States to appoint claims representatives. The protection scheme does however not offer the same guarantees as exists within the Green Card system. Consequently, claims representatives wish to be certain of being reimbursed by an insurer before compensating a victim and usually await the advanced payment of the insurer before compensating the injured party. Therefore, in the interest of victims, it might be useful to consider the guaranteeing of compensations paid by claims representatives to injured parties. Nevertheless, this issue should be further monitored to determine the frequency and magnitude of this issue and the impact in terms of delays in reimbursement of injured parties.

iv) Insurance of dispatched vehicles

Article 15 of the MID on dispatched vehicles was introduced in order to help consumers find MTPL insurance for a vehicle that has to be dispatched from one Member State to another. A number of practical issues and gaps in claims handling in the event of an accident caused by a dispatched vehicle were alleged by stakeholders in the evaluation, but the extent and significance of such issues is unclear. Therefore, it should be further monitored what is the magnitude of the issue of insurance of dispatched vehicles in order to determine which would be the most appropriate approach to overcome such gaps.

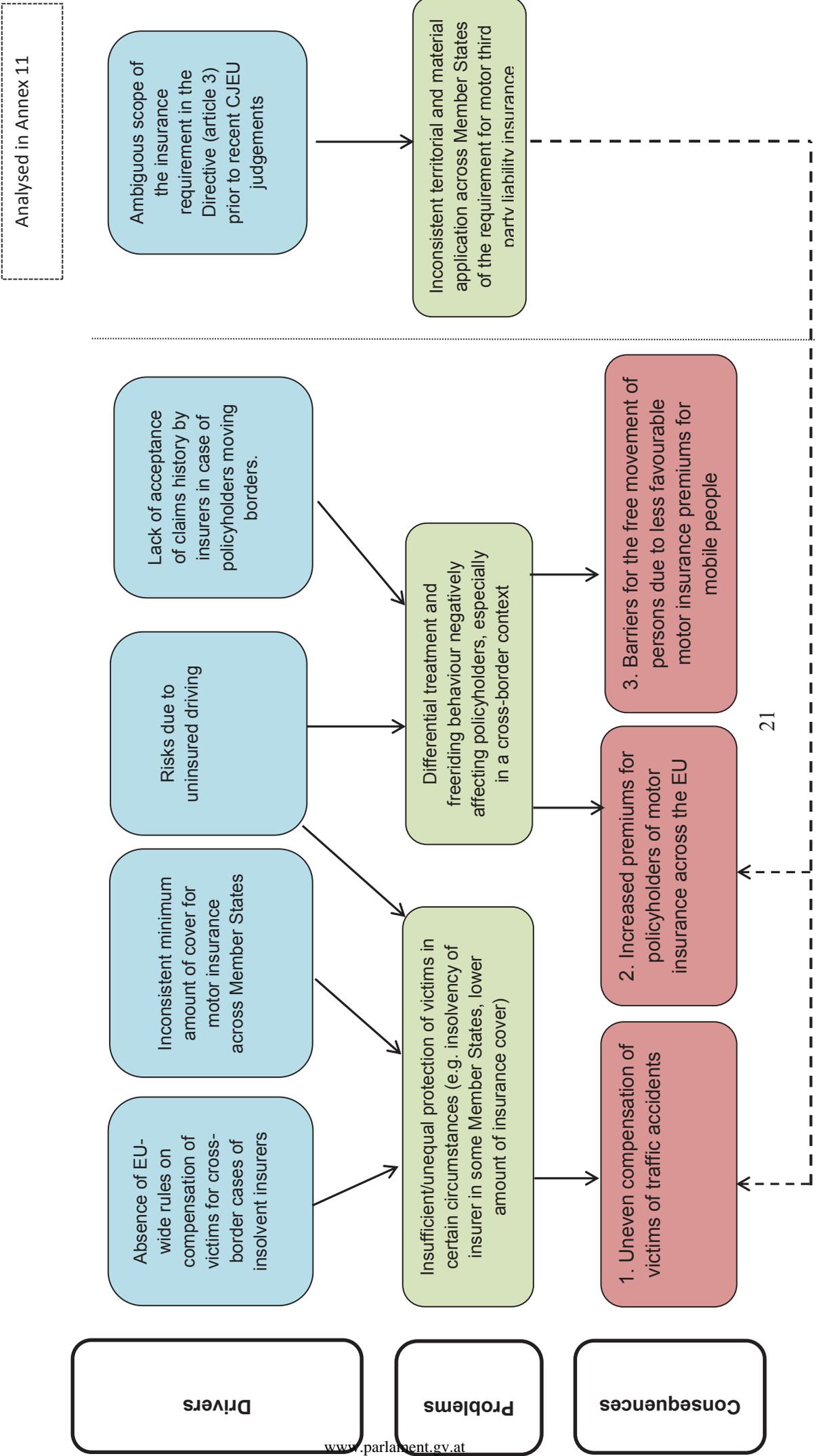
v) Consistency of terminology and definitions

The evaluation in Annex 7 covered an assessment of the terminology and definitions of the Directive. The evaluation concluded that in a few areas it would be beneficial if some of the terminology used in the Directive were harmonised. This would however not entail any material changes to the content of the Directive.

These issues are covered by the evaluation report in Annex 7 and remain out of scope of this impact assessment.

⁴⁰ Under the green card system, citizens of a given Member State which have an accident with a driver of a vehicle registered in another member country part of the Green Card system are protected. Under the Motor Insurance Directive visiting victims are protected. This means that the Motor Insurance Directive also protect EU citizen which are visiting another Member State and have an accident with a driver of a vehicle registered in that Member State or in any other Member State.

Problem Tree



WHY SHOULD THE EU ACT?

Legal Basis

The legal basis of the current Directive is Article 114(1) TFEU. The Directive implements the international Green Card system in the EU, and also, by going beyond the minimum requirements of that system, achieves free movement of motor vehicles between Member States.

Subsidiarity: Necessity of EU Action

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 can only be enacted at EU level, as they concern cross-border active insurers, cross-border mobile motor insurance policyholders and 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 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 uncoordinated action. Addressing uninsured driving in cases of cross-border traffic cannot be achieved by action at national level. Finally, ensuring equal treatment of claims history statements by insurers for prospective policyholders moving across borders cannot be achieved by uncoordinated action.

Subsidiarity: Added value of EU Action

The MID regulates cross-border use and cover of MTPL insurance, seeks to ensure the free movement of persons and vehicles across borders and at the same time seeks to ensure a comparable level of protection of victims of traffic accidents. Only action at EU level can ensure the protection of victims in case of cross-border accidents involving an insolvent insurer. Only EU action can ensure a uniform application of the scope of the Directive and enforce the insurance obligation. Furthermore, only EU action can set harmonised minimum standards of protection of victims when moving across borders. Only EU action can ensure the harmonisation of claims history statements across the EU and ensure non-discriminatory treatment of prospective policyholders moving across borders.

General and specific objectives

Any initiative revising the MID should reinforce the general objectives of the MID which aim to ensure a high level of protection of victims of traffic accidents and ensure the free movement of persons and goods across the EU. These general objectives can be broken down into the following, more **specific objectives**:

Problems	Specific objectives
Unequal protection of injured parties across Member States in certain circumstances (e.g. insolvency of the insurer).	<i>Ensure a high level of protection for victims of motor vehicle accidents (even in case of insolvency of the insurer)</i>
Differential treatment and freeriding behaviour negatively affecting policyholders, especially in a cross-border context	<i>Ensure fair treatment of policyholders across the EU (in particular when changing Member State of residence).</i>

Consistency of the objectives with other EU policies

The Motor Insurance Directive supports the main objectives of the internal market, in particular 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.

The proposed changes to the current Directive are also consistent with the rules on data protection⁴¹ ensuring the appropriate collection and treatment of data for the purpose of law enforcement, permissible within the framework of the Directive. A further assessment of data protection can be found in Section 4.4 (under "option 2").

Consistency of the objectives with fundamental rights

The EU is committed to high standards of protection of fundamental rights and is signatory to a broad set of conventions on human rights. In this context, the proposed amendments are not likely to have a direct impact on these rights, as listed in the main United Nations conventions on human rights, the Charter of Fundamental Rights of the European Union which is an integral part of the EU Treaties, and the European Convention on Human Rights ('ECHR').

⁴¹ 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).

WHAT ARE THE POLICY OPTIONS AND THEIR IMPACTS AND HOW DO THEY COMPARE?

This section describes for each policy area, the available policy options, their impacts and compares the different options.

What is the baseline scenario?

Under the baseline scenario, no action is taken in any of the policy areas.

Under the baseline, in a case of **insolvency of an insurer**, there would be no binding EU measure to guarantee the initial payment of the claim to the victim nor to determine the ultimate responsibility for the claim in case of insolvency of the insurer, both for domestic insolvencies and for cross-border insolvencies or accidents with a cross-border dimension where the liable party has an insolvent insurer. This implies that victims have less protection in case of insolvency of the insurer as compared to accidents involving an uninsured driver or untraceable driver, which are covered by the compensation bodies set up in Article 10 of the Directive. It would remain determined at national level if insolvency of a domestic insurer is covered by a guarantee fund or not. If a body has been set up at national level, this will ensure initial and ultimate compensation of claims affecting victims in case of insolvency of a domestic insurer, possibly with levels of compensation below the minimum amounts of the MID.

For cases with a cross-border element, the situation described in Section 2.1.1. would continue to apply. For such cases, the existing incomplete patchwork of voluntary agreements (described in Annex 10) would apply. As outlined in Section 2.1.1, in cases of insolvencies involving a Member State not signatory to the agreement, victims would continue to face delays in payment due to legal proceedings, or claims might be reimbursed at lower levels (determined at national level) as compared to the minimum levels of covers set out in the MID. Furthermore, as a consequence of the baseline scenario, the body which carries out the initial compensation may find itself in financial difficulties, or contributions to a guarantee fund in the host Member State may need to be increased, triggering increases in premiums for all policyholders in that Member State (this happened in Ireland after the Setanta failure and other cross-border failures).

For those Member States that are not signatories to the agreements, the initial compensation and the ultimate responsibility for compensation may differ depending on the guarantee fund to which a cross-border active insurer contributes. This in turn depends on whether a host Member State makes use of its right under article 189 of Solvency II to require a contribution to the national guarantee scheme.⁴²

Under the baseline scenario of current legislation, **minimum amounts of cover** would continue to be unequal across Member States. In some Member States, minimum

⁴² Article 189 of Solvency II: "Host Member States may require non-life insurance undertakings to join and participate, on the same terms as non-life insurance undertakings authorised in their territories, in any scheme designed to guarantee the payment of insurance claims to insured persons and injured third parties."

amounts of cover for personal injury would be below €1 220 000 per victim or €6 070 000 per claim and below €1 220 000 per claim for material damage (the amounts which apply in most Member States). This divergence would continue to exist due to the transition periods that some Member States benefited from. Though these transition periods have ended they continue to affect the actual level of minimum amounts of cover which are consequently lower for a number of Member States (as the five-yearly revision period only starts from the end of the transitional period, giving different revision dates in different Member States).

In addition to the fact that the adaptation procedure for updating minimum amounts to take into account inflation fails to set the same calendar to update minimum amounts in all Member States, it also lacks legal certainty. There is no legally binding act embodying the revised minimum amounts, making it difficult to enforce the new amounts. As a consequence, victims in different Member States do not have the same degree of minimum protection envisaged by the Directive, as outlined in Section 2.1.2. This means that victims of accidents can have a different minimum level of protection depending on where the vehicle is normally based.

Under the baseline scenario of current legislation, the minimum amounts of cover would continue to apply irrespective of the type of vehicle. Therefore, an accident caused by a vehicle with a capacity of four passenger places would have the same minimum amount as an accident caused by a bus with a capacity of 50 passenger places or an accident with a heavy truck of more than 7.5 tonnes. In some circumstances with accidents involving a high number of victims, or a high amount of material damage, the costs of claims could be higher than the regulatory minimum amounts covered. Some Member States have acknowledged this by setting minimum amounts of cover have higher than those laid down in the Directive, thus providing for a higher level of protection.⁴³

Under the baseline scenario, detecting **uninsured driving** deriving from cross-border traffic will remain difficult. This results from the prohibition within the Directive of all systematic insurance checks on borders. Under the baseline scenario, in accordance with article 4 of the Directive, Member States "*may only carry out non-systematic checks on insurance provided that those checks are not discriminatory and are carried out as part of a control which is not aimed exclusively at insurance verification*". Domestically, away from national borders, systematic insurance checks remain possible but limited to vehicles registered in the Member State where the insurance checks are undertaken.

As a positive consequence, the free movement of people goods and services within the EU without border checks, one of the fundamental freedoms under the Treaty, would continue to be ensured. Border checks or other systematic checks to verify whether the vehicle has MTPL insurance would remain prohibited. However as a negative consequence, uninsured driving of vehicles registered in another Member State, entering the territory of a Member State other than where they are normally based, would remain largely undetected.

⁴³ In particular in BE, FR, UK, IE the obligatory amounts of cover for personal injury have been set to unlimited to the benefit of policy victims. In one Member State (DE) the minimum amount of cover is set higher for vehicles with more than 10 passengers.

The resulting problem of uninsured cross-border traffic is aggravated as significant differences in the levels of uninsured driving at national level exist, ranging from less than 1 percent of circulating vehicles in some Member States to more than 7 percent in others as shown in confidential Annex 9. Therefore, specifically Member States bordering Member States with high levels of uninsured driving might face a larger number of accidents with uninsured drivers. This directly affects the cost of claims to be covered by guarantee funds. As insurers are responsible for the contributions to the guarantee funds, they face higher costs in turn. A certain proportion of these costs are passed on to policyholders, depending on the level of competition between insurers.

Under the baseline scenario, Member States would continue to lack effective tools to detect uninsured drivers resulting from cross-border traffic. Under the baseline scenario, the cost of claims following accidents caused by uninsured vehicles, including in a cross-border context, would continue to place a financial burden on Article 10 compensation bodies, passed on to all MTPL policyholders via a levy on MTPL policies. The current annual claims deriving from uninsured cross-border driving, estimated to lie in the range of EUR 835-870 million⁴⁴, would continue to exist.

Under the baseline scenario, no action is taken on the **acceptance of claims history statements** and the existing obligation of the Directive, requiring insurers to provide a claims history statement for the last 5 years to policyholders, continues to apply. Upon request of a policyholder, an insurer must provide claims history information covering the last five years of the contractual relationship. However under the baseline scenario, there is no harmonisation of such statements and no obligation about how that information must be taken into account by a new motor insurer. Therefore, some citizens moving across borders may continue to face difficulties to have their claims history accepted by a new insurer in another Member State. This reluctance to take into account claims history from a foreign insurer could result from the absence of a common format of claims history statements, which may cause distrust of the authenticity of a statement by a new prospective insurer in another Member State.

Furthermore, the existing and distinct national systems of claims history statements and no claims bonuses would continue to exist. In some Member States there are specific rules on how to taken into account claims history when calculating premiums, while in other Member States this remains unregulated.

Under the baseline, insurers could, on a voluntary basis, continue to make use of the very minimal guidelines (one-page) on claims history statements from Insurance Europe, an industry association of insurers, as shown in Annex 6. As a consequence, under the baseline, there is no common uniform claims history statement that insurers can use as part of the assessment to calculate premiums. This may continue to raise concerns for insurers as regards the authenticity of statements coming from a insurer in another Member State, leading to reluctance of insurers to take into account such statements issued by a foreign insurer.

⁴⁴ EREG, Topic Group XI on tackling uninsured driving, 8 April 2013 & Council of Bureaux estimates from 2011

Under the baseline, competitive market forces between insurers are not expected to solve the problem, as the market segment for mobile citizens moving across borders who require a new motor insurance will remain small as compared to national markets and not specifically targeted by insurers. According to Eurostat⁴⁵, in 2015, a little under 11.3 million EU-28 citizens and 168,000 EFTA citizens of working age (20-64) were residing in a Member State other than their country of citizenship, totalling some 11,434,000 people. In 2014, 1,692,000 working-age nationals immigrated to an EU-28 Member State. This represents approximately 0.55% of the total working-age population living in the EU-28⁴⁶ which is expected to remain relatively stable in the following years. It can be expected that only working age nationals moving across borders would require a new motor insurance in the new Member State in case they own a motor vehicle, which they are required to register and insure in the new Member State within six months. Although there is no data on the exact number of mobile citizens requiring a new motor insurance, it can be reasonably expected that only a fraction of the annual flow of mobile workers has a vehicle and would require a new motor insurance.

Failure to take the claims history statement from a foreign insurer into account, as compared to a domestic client, without a valid reason, is discriminatory. For EU citizens relocating across-borders, this could continue to unduly lead to higher premiums in so far as claims history remains an important factor to determine premiums by insurers in many Member States.

Policy options addressing insolvency of the insurer

1. Baseline scenario	Under the baseline scenario no action is taken and there are no EU rules stipulating who is responsible for the initial payment of the victim or the ultimate responsibility for the claim. Where available national rules apply for domestic insolvencies, and for cross-border insolvencies an incomplete patchwork of voluntary agreements applies.
2. "Front office option": set out rules on initial compensation of victims in case of insolvency of an insurer.	Under this option Member States would be required to designate a body tasked with initial compensation of the victim of an accident resident on their territory where the insurer is insolvent. The ultimate responsibility for the claim remains undetermined in EU legislation. This option is referred to as the "front office option".
3. "Front and back-office option": in addition to option 2, set out rules on ultimate responsibility of claims in case of insolvency of an insurer	This option would not only determine responsibility for the initial compensation of the victim but also the ultimate responsibility for the claim. This option can be referred to as a "front and back office" option.

⁴⁵ 2016 Annual Report on intra-EU Labour Mobility

⁴⁶ The total working-age population in the EU-28 in 2014 was 306,615,464, according to Eurostat population figures

For cases of insolvency or winding-up of an insurer a distinction should be made between:

1) the body which takes care of the initial compensation of the victim (front office) and the body which is ultimately responsible for the payment of the claim (back office). While the scenarios as regards the "front office" vary depending on the residence of the liable driver and the victim, for the "back office" the key issue is to determine whether it is the home or host Member State of the cross-border insurer which bears ultimate responsibility for compensation.

2) accidents with a cross-border element and insolvencies with a cross-border element as outlined in Table 8 and 9 of Annex 7.

Option 2: Front office option: require that Member States designate a body tasked with initial compensation of the victim of an accident, resident on their territory, in cases where the insurer is insolvent.

Description

This option would require Member States to designate a body tasked with initial compensation of the victim of an accident, resident on their territory, where the insurer is insolvent or is in winding-up. Member States could designate the existing motor guarantee fund set up to meet costs arising from accidents caused by uninsured or untraceable vehicles (MID Article 10, compensation bodies) or a different body.

To ensure an even protection of victims throughout the EU, this option would cover accidents involving a cross-border insurer and also cover insolvency of a domestic insurer irrespective of the residence of the driver or the victim.

In case of accidents with a cross-border dimension involving an insolvent insurer, this option would require a body in the Member State of residence of the policyholder to pay the initial compensation. However this option would leave the ultimate financial responsibility for the claim (back-office) unresolved in EU legislation. In case of accidents with a cross-border element, this would mean that existing voluntary agreements⁴⁷ would be used where they are applicable.

Consequences

This option would ensure that throughout the EU, the initial compensation of a victim is guaranteed in case of insolvency of an insurer, both for accidents with a cross-border element and for purely domestic accidents. Therefore, in cases of insolvency of an insurer, both for domestic accidents and accidents with a cross-border element, victims would be protected in accordance with the requirements set out in the MID. This implies that the compensation would be undertaken by the body designated at national level and with the timeframe and minimum amounts of cover set out in the MID. As a

⁴⁷ See Annexes 10 and 12. UK and IE withdrew from the CoB 1995 Agreement in 2016.

consequence, cases of insolvency of an insurer would result in the same protection of victims as compared to uninsured or untraceable vehicles currently laid down by the Directive.

At domestic level, this would ensure that in one Member State where there is currently no body designated to act in case of insolvency, such a body would be designated. For other Member States which already have national legislation on the insolvency of a domestic insurer, this would imply that the minimum amounts of cover laid down in the MID would apply. Compensation of the victim would be ensured in principle by a body in the Member State of residence of the victim of an accident (usually, but not always, the Member State where the accident takes place).

However, in this scenario the ultimate responsibility for compensation would remain unresolved. If the two Member States concerned participate in a voluntary agreement, the rules of the voluntary agreement would apply. In the absence of an applicable voluntary agreement, it would be uncertain who would bear the ultimate cost of the claim, which may lead to court proceedings (as was the case in the failure of Setanta – see Box 3). In that context the host Member State already has the power provided in article 189 of Solvency II to impose contributions on the cross-border insurer.

Assessment

The mandatory creation of a "front office" to reimburse victims in case of an insolvent insurer would contribute to a high level of protection of victims in case of insolvency of an insurer in all EU Member States, both for domestic accidents and for accidents with a cross-border element. Victims would have the same protection as compared with accidents involving uninsured or untraced vehicles, which are already covered by the Directive.

Compared with the current patchwork of voluntary agreements, this would also enhance legal certainty for victims and ensure the same level of protection across the EU.

As the ultimate payment of the claim would remain unsettled, this option would still leave a key role for existing incomplete voluntary agreements in the event of accidents with a cross-border element. Therefore in cases where one or more Member States do not participate in such an agreement it would remain uncertain whether the body which carries out the initial compensation will ultimately obtain reimbursement from a body in the Member State where the insurer is established. If such reimbursement is not obtained, it can be expected that Member States would make use of their option under Article 189 of Solvency II, as regards motor insurers from other Member States, and may start requiring contributions from insurers which provide services on their territory to cover the cost of potential initial compensations due to insolvency of the insurer.

Option 3: Front and back-office option: in addition to option 2, also stipulate the ultimate responsibility for compensation of the victim of a cross-border accident where the insurer is insolvent.

Description

This option would mandate the front- and back-office responsibility in case of insolvency of the insurer. It would include option 2 as regards the initial compensation of the victim (front office) which should be undertaken by a national compensation fund or another body of the Member State of residence of the victim. In addition, this option would also determine which Member State should bear ultimate financial responsibility for the claim (back office).

To determine the ultimate responsibility for the claim (back office), two distinct approaches could be considered:

- Sub-option A: Home Member State Approach

Under this sub-option, the Directive would stipulate that the body that bears the final responsibility is in the Member State of establishment of the insurer providing policies on an freedom of services or freedom of establishment basis (Home Member State). The insurer would be required to contribute to the guarantee fund of the Home Member State in case of its potential insolvency.

- Sub-option B: Host Member State Approach

Under this sub-option, the Directive would oblige designation of a body in the Member State in which the insurer is providing services or has a branch (Host Member State). The insurer would logically be required to contribute to the guarantee fund of the Host Member State in case of its potential insolvency, using the powers in article 189 of Solvency II.

Consequences

Under this option, rules would clearly set out responsibilities for both initial compensation of claims and ultimate responsibility. Like option 2, option 3 would ensure a high level of protection of victims. Victims would have the same protection in cases of insolvency of an insurer as compared to cases of accidents involving uninsured or untraced vehicles, which are already covered by the Directive.

In addition, this option would determine the allocation of the ultimate cost of claims in case of insolvency of an insurer operating on a cross-border basis. This option would effectively replace the existing patchwork of voluntary agreements with limited territorial scope, with mandatory EU rules ensuring an EU-wide coverage. In comparison with the voluntary agreements, it would not allow Member States to unilaterally withdraw from obligations, negotiate opt-outs or set limitations on the timing or coverage of claims at national level below the standards set at EU level. This option would replace the existing voluntary agreements and render them without object.

Option 3 (front and back office) would ensure a high level of protection of victims.

As with option 2, in all EU Member States there would be a body mandated with the initial compensation of victims, both for domestic insolvencies and for insolvencies with a cross-border aspect.

In addition, option 3 would determine the ultimate responsibility of the claim and would provide legal certainty. It would determine which body is ultimately responsible to bear the cost of claims for all possible scenarios outlined in table 8 and table 9 of Annex 7.

Given the existing voluntary agreements, which allocate responsibility to a body in the Home Member State, sub-option A would require fewer changes to current arrangements for many Member State which participate in such agreements. It would require changes mainly for those Member States which are not signatories of the voluntary agreements or have retracted or have opt-outs or derogations.

Sub-option A (Option 3) would be coherent with the system of financial supervision already in place through the Solvency II Directive, based on the Home Member State principle.⁴⁸ It would also incentivise the home Member State authorities to carry out strong prudential supervision, which is not necessarily currently the case if an insurer has little or no activity in its home Member State.

Comparison of the attributes of the options:

	Effectiveness		Efficiency
Option	Compensation of victim	Ultimate Settlement of Claims	Overall cost of the system
Option 1 <i>No Actions</i>	<ul style="list-style-type: none"> Place of accident/residence of the victim Determined by voluntary agreements. No EU wide scope 	<ul style="list-style-type: none"> Determined by voluntary agreements. No EU wide scope 	<ul style="list-style-type: none"> Possible litigation for initial payment Possible litigation for
Option 2 <i>Set out rules on initial compensation of victims.</i>	<ul style="list-style-type: none"> Residence of the victim. EU-wide scope 	<ul style="list-style-type: none"> Determined by voluntary agreements. No EU-wide scope 	<ul style="list-style-type: none"> No litigation for initial payment Possible litigation for ultimate settlement
Option 3 <i>In addition to option 2 set out rules on ultimate compensation of victims.</i>	<ul style="list-style-type: none"> Residence of the victim. EU-wide scope 	<ul style="list-style-type: none"> Home Member States of the insurer or Host Member State EU-wide scope 	<ul style="list-style-type: none"> No litigation for initial payment No litigation for final payment

Under the baseline scenario, there would be no EU rules in case of insolvency of an insurer. Therefore for domestic insolvencies, existing national rules in all but one Member State would continue to apply. For insolvency cases with a cross-border element, the current patchwork of voluntary agreements would continue to apply. The voluntary agreements do not involve all EU Member States and do not require compensating victims in full, and therefore entail a lower level of protection compared to cases of accidents for uninsured or untraceable vehicles under the current Directive. Member States can also withdraw at any time unilaterally from the voluntary agreements.

⁴⁸ This principle is clearly laid down in Article 30 of the Directive: "The financial supervision of insurance and reinsurance undertakings, including that of the business they pursue either through branches or under the freedom to provide services, shall be the sole responsibility of the home Member State."

Furthermore, in case of an accident involving a "visiting victim", it is more complicated and burdensome to obtain compensation of claims. Visiting victims are currently required to claim compensation from the compensation body of the Member State of the accident and not the Member State of their residence.

In the absence of an applicable voluntary agreement, there is also no clarity on who is ultimately responsible for the payment of the claims, which opens scope for litigation/arbitration, causing delay of compensation. Evidence⁴⁹ shows that recent insolvency cases involved also Member States which are not signatories of one of the voluntary agreements. Those cases also show that it can take several years for court cases to finally determine which body should ultimately compensate the victim⁵⁰.

Compared to the baseline scenario, option 2 would provide for a higher level of legal certainty and better protection of victims. In cases of insolvency of an insurer, for both domestic cases and cases with a cross-border element, this option would mandate that the compensation body of the residence of the victim must pay out the victim in the first place (front office). As a consequence the compensation of the victim would be undertaken within a defined timeframe and respect the minimum amounts of cover laid down in the Directive. In some cases, this would mean that victims would be compensated with a higher amount in comparison with the baseline scenario, where the determined level of compensation by guarantee bodies is left to the Member States.

Option 2 is coherent with the objective of the Directive to ensure a swift compensation of victims. The mandatory determination of the front office would however not deal with which authority is ultimately responsible for the settlement of claims and possibly situated in another Member State. Therefore it would remain unclear from which other body the front office compensating body can obtain recourse. Furthermore, in the absence of defined rules on the body ultimately responsible for the final settlement of the claims, there would be room for litigation, generating additional costs and delays in the ultimate settlement of the insolvency case.

Option 3 would create the same level of protection of victims and at the same time achieve a higher overall level of legal certainty for compensation bodies. This option would not only determine the body which initially pays the claim, but also the body that would ultimately pay for the claim (front office and back office). This option would ensure a smooth process to reimburse victims and settle the claim, leaving less scope for litigation as compared to option 2. This option therefore provides for a more coherent process for the compensation of claims in case of insolvency of the insurer as compared to option 2.

Option 3 sub option A (the Home Member State principle) would be coherent with the financial supervision framework in Solvency II and with the current system already in place through the voluntary agreements of the CoB. Consequently, the required changes and impact of the implementation of this approach would be lower as compared to sub-

⁴⁹ See Annexes 8 and 10. UK and IE withdrew from the CoB 1995 Agreement in 2016.

⁵⁰ See section 2.1.1, for the example of the Setanta case.

option B. Sub-option B (Host Member State responsibility) would require changes for a majority of Member States, and would also stimulate host Member States to use their right under article 189 of Solvency II to require contributions from cross-border insurers to their guarantee fund, which could deter cross-border activity and work against the single market. Therefore, Option 3 Sub-option A is the preferred option.

Objectives Policy option	EFFECTIVENESS		EFFICIENCY (cost-effectiveness)	Coherence	Score
	<i>Objective 1</i> Ensure high level of protection for victims of motor vehicle accidents	<i>Objective 2</i> Ensure fair treatment of policyholders across the EU			
Option 1 <i>No Action</i>	0	<i>n.a.</i>	0	0	0
Option 2 <i>Set out rules on initial compensation of victims.</i>	+	<i>n.a.</i>	+	+	3
Option 3 <i>In addition to option 2 set out rules on ultimate compensation of victims.</i>	+	<i>n.a.</i>	++	++	5

Magnitude of impact as compared with the baseline scenario (the baseline is indicated as 0): ++ strongly positive; + positive; -- strongly negative; - negative; ≈ marginal/neutral; ? uncertain; n.a. not applicable

Impact on stakeholders

	Victims	Insurers	National compensation bodies	Policyholders of motor insurance
Option 1 <i>No policy change</i>	0	0	0	0
Option 2 <i>Set out rules on initial compensation of victims.</i>	↑	↑	↑	↑
Option 3 <i>In addition to option 2 set out rules on ultimate compensation of victims.</i>	↑	↑↑	↑↑	↑↑

Magnitude of impact on stakeholder: ↑ positive, ↑↑ strongly positively, ≈ marginal/neutral, ↓ negative, ↓↓ strongly negatively affects stakeholder.

Options 2 and option 3 are equally beneficial for victims as they set rules on initial compensation beneficial for victims, ensuring a swifter compensation of the victim. Furthermore, by determining the place of residence as the location where victims can submit claims, the procedure to obtain compensation is facilitated, removing potential language and other barriers.

For insurers, national compensation bodies and policyholders of motor insurance, option 3 is more beneficial than option 2 as it provides legal certainty on the initial and ultimate settlement of claims, reducing the need for legal proceedings. Given that the system already in place through voluntary agreements follows the Home Member State approach, the impact and required changes to implement the Home Member State approach across all Member States (sub-option A) would be lower as compared to the Host Member State Approach (sub-option B). Therefore, sub-option A is the preferred option.

Policy options to ensure that minimum amounts of cover are equal across the EU

In addition to the baseline scenario, two additional options to determine minimum amounts of cover are considered. A second option (after the baseline) sets the minimum amounts equal at EU level from now on at the highest level currently applying in EU Member States, and the third option allows for extending the minimum amounts for accidents with vehicles with a large number of passengers (e.g. buses). The option of maximum harmonisation of minimum amounts is not considered, as being detrimental to victim protection by requiring reductions of amounts of cover in certain Member States.

1. Baseline scenario	Existing diverging minimum amounts remain as they are and as a result of a former transition period, not all minimum amounts are the same in all Member States. Process and timing of updating minimum amounts remains a complex process.
2. Harmonise minimum amounts, and amend the procedure and timing of the periodic revision of minimum amounts.	Harmonised dates for adaptation of minimum amounts and streamlining of the process of updating minimum amounts ensuring that minimum amounts are the same at all times across all Member States. Member States keep the flexibility to set higher minimum amounts at national level.
3. Introduce distinct minimum amounts for certain types of vehicles	The minimum amount for personal transport vehicles could be left as at present or amended upwards. Certain vehicles, e.g. buses, heavy trucks, could have higher minimum amounts of cover.

Options 2 and 3 can be combined.

Option 2: Ensure that minimum amounts are equal across all Member States.

Description

This option would ensure that minimum amounts of cover are set at all times equal across all Member States, ensuring that victims benefit from the same minimum standard of protection in terms of compensation.

In comparison with the baseline scenario, this option would also introduce a clearer adaptation method and timing for setting the minimum amounts of cover. It would set a uniform calendar and clear deadlines for adaptation of minimum amounts to adjust to inflation. This option would remove any remaining effects of transition periods. It would continue to allow Member States to set higher minimum amounts of cover at national level if they consider it appropriate.

Consequences

As a consequence of this option, the minimum amounts of cover would be in all EU Member States at all time the same or higher than those prescribed in the Directive, with no more transitional periods or derogations for Member States. For personal injury, the minimum amounts of cover would be set, for all Member States, at the levels currently applying in Member States which had no transition period: €1 220 000 per victim or €6 070 000 per claim, whatever the number of victims; and in the case of material damage, €1 220 000 per claim, whatever the number of victims⁵¹. Minimum amounts would be adapted in all Member States at the same time every 5 years⁵² to take inflation into account. This option would remove any remaining effects of transitional periods that some Member States have benefitted from. Those Member States which benefited from transitional periods would have to increase their minimum amounts applicable⁵³.

Assessment

Under this option the minimum protection of victims would be guaranteed at EU level by a common minimum standard set in the Directive, achieving the objective of ensuring a high level of protection across all Member States. Furthermore, this option would allow Member States to determine an even higher level of protection if necessary and appropriate, creating an even higher level of protection for their citizens.

In those Member States where the minimum amounts are currently lower than the amounts set in the MID, this option could potentially raise the premiums of MTPL insurance, as the amount covered by the insurance would need to be increased. However, as explained further in section 6 on macro-impacts, the minimum amounts of cover are only one factor among others that determine insurance premiums. Minimum amounts only have any effect in very severe accidents. Therefore price increases for MTPL premiums should be limited. The benefits of uniform minimum protection of victims consequently outweigh the potential increase in motor premiums in some Member States. Moreover, the intention of the legislator in the current directive was that the transition periods, and consequently the distinct minimum amounts would disappear over time; the fact that this is not the case seems to be due to drafting oversight rather than the will of the legislator.

Option 3: Introduce distinct minimum amounts for certain types of vehicles.

Description

⁵¹ These are the inflation-adjusted amounts currently applicable for those Member States which did not benefit from any transitional period.

⁵² The adaptation period of five years is maintained as in the current Directive.

⁵³ Member States with a transition period are: BG, CZ, EE, EL, IT, LV, LT, MT, PL, PT, RO, SI, SK. None of those Member States currently apply an amount of cover in excess of the minima.

Accidents with certain vehicles, e.g. buses, coaches or heavy trucks may have the potential to injure a large number of persons or create more material damage. Therefore, under this option, a higher minimum amount of cover would be required for certain large vehicles. In particular certain vehicles, for example buses or coaches with more than 10 places or heavy trucks over 10 tonnes, would have higher minimum amounts of cover than the current levels. For other personal transport vehicles minimum amounts would remain as at present.

Consequences

This option would provide for a higher level of protections of victims in case of accidents with certain types of vehicles such as buses, coaches and trucks if the total cost of claims would exceed the current minimum amounts of cover in the directive. This is relevant in all Member States with the exception of those (BE, DE, DK, FI, IE, LU, SE, SK, UK) which impose minimum amounts well above the levels set out in the Directive for all types of vehicles.

However, some stakeholders (insurers, public authorities) in some Member States have highlighted that increasing minimum amounts of cover could entail negative consequences, as the overall level of premiums of MTPL insurance could increase. Nevertheless, evidence from premiums in Member States with unlimited amount of cover for personal damage implies that this risk would not necessarily materialise. Furthermore, data from Insurance Europe on premiums across Member States show that levels of premiums vary not only because of different minimum amounts of cover, but due to a wider range of factors, and consequently minimum amounts of cover have possibly only a limited impact on MTPL premiums.

If this option were chosen, further work would be needed to determine what would be the amount to cover for personal injury and material damage. It should also be determined which types of vehicles would be subject to this provision.

Assessment

This option would contribute to the objective of protecting victims of accidents involving buses and heavy goods vehicles involving personal injury or material damage beyond the minimum amounts of cover currently laid down in the Directive. This could potentially be beneficial in all Member States with the exception of BE, DE, DK, FI, IE, LU, SE, SK, UK, which have already considerably higher minimum amounts of cover for all types of vehicles.

It could be reasonably expected that accidents involving buses or coaches or heavy goods vehicles have a higher level of risk or result in high levels of damage. A recent study⁵⁴ shows that the cost of a motor accident can be divided into casualty-related costs

⁵⁴ The cost of road accidents in the Netherlands, An assessment of scenarios for making new cost estimates, 2016, Study available at: <https://trimis.ec.europa.eu/sites/default/files/project/documents/thecostofroadtrafficaccidentsinthenetherlands.pdf>

(medical costs, production loss, human costs and some other costs) and "crash related" costs (property damage, administrative costs and some other costs). As a consequence, a high cost of claims may depend on a number of factors which are aggravated in case of accidents with buses and coaches or heavy goods vehicles. In particular, accidents caused by buses often entail the risk of higher numbers of victims, as shown by the examples in section 2.1.2. In case of accidents caused by heavy goods vehicles such as lorries, the cost of claims may be higher due to higher levels of material damage, and could include environmental damage.

However, a majority of stakeholders and of Member States were opposed to differentiating the minimum amounts of cover depending on the type of vehicle⁵⁵. Their rationale is that the amount of damage to persons caused in an accident is not necessarily correlated to the type of vehicle which causes the accident. In particular a regular personal motor vehicle could cause an accident resulting in significant numbers of victims. For example an accident of a car colliding with a bus could result in many personal injuries and significant material damage, the compensation of which would go well beyond the minimum amounts of cover; the personal car would be liable for this.

Comparison of policy options

Option 2 would achieve a higher level of protection of victims than the baseline as it would set all minimum amounts of cover equal at all times across the EU, removing the existing difference of minimum amounts of cover, and requiring certain member States to increase their current minimum amounts.

Option 3, which would increase minimum amounts for certain types of vehicles, would provide an even higher level of protection of victims, while the magnitude would depend on the design of the measure.

This measure could also reduce the discrepancies in minimum amounts of cover between Member States, as some have set minimum amounts at a higher level for all types of vehicles.

On the downside, this option could increase insurance premiums for these types of vehicles depending on the actual calibration of the measure; consequently, this could increase costs for transportation firms. For example, the minimum amounts of cover for buses could depend on the capacity of passengers, and for each additional passenger there could be an additional EUR 1 Million of protection for personal injury. This compares to a regular passenger vehicle with a capacity up to 7 passengers covered by the current directive at EUR 6 Million.

Both option 2 and 3 would be coherent with the objectives of the Directive to ensure free circulation of people and provide a high level of protection of victims.

	<i>EFFECTIVENESS</i>	<i>EFFICIENCY</i>	<i>Coherence</i>	<i>Score</i>

⁵⁵ See Annex 2.

<i>Objectives</i>	<i>Objective 1</i>	<i>Objective 2</i>	<i>(cost-effectiveness)</i>		
<i>Policy option</i>	<i>Ensure high level of protection for victims of motor vehicle accidents</i>	<i>Ensure fair treatment of policyholders across the EU</i>			
Option 1 <i>No policy change</i>	0	0	0	0	0
Option 2 <i>Set minimum amounts equal</i>	+	+	+	+	4
Option 3 <i>Set minimum amounts higher for certain vehicles.</i>	++	+	-/?	+	3

Magnitude of impact as compared with the baseline scenario (the baseline is indicated as 0): ++ strongly positive; + positive; -- strongly negative; - negative; ≈ marginal/neutral; ? uncertain; n.a. not applicable

Impact on stakeholders

For victims of motor accidents both option 2 and option 3 are beneficial. The additional level of protection of victims under option 3 would depend on the actual calibration of the minimum amount. In Member States which already have higher minimum amounts of cover for all types of vehicles, there would be little or no change.

For insurers and national compensation bodies, higher minimum amounts of cover would have a neutral effect, since any extra costs could be passed on to policyholders in the form of increased premiums. However, option 2 would lead to limited changes in the level of minimum amounts of cover (an increase of maximum 21%, see annex 3), and only in a limited set of Member States. Option 3 could affect insurance premiums for buses, coaches or heavy goods vehicles as insurers would need to provide for higher cover in case of accidents with these vehicles. However, evidence from Member States with higher minimum amounts show that increases would be low/moderate, as the frequency of occurrence of these types of accidents is low. Furthermore, the price of premiums depends on multiple factors as outlined in section 5.2.

For policyholders of motor insurance, both options 2 and 3 could affect the level of premiums at national level to some extent in some Member States. As option 2 consists of an alignment of Member States to the current higher minimum amount for all types of vehicles, provided for in the directive, the increase in minimum amounts is limited (see section 5.2). Consequently, the expected increases in premiums for policyholders of all types of vehicles would be limited.

Option 3 would most likely affect MTPL premiums for coaches buses and heavy goods vehicles, as the cover would increase. The actual impact of option 3 on premiums would depend on the calibration of the measure for these vehicles. MTPL premiums for regular motor vehicles would remain unchanged.

	Victims	Insurers	National compensation bodies	Policyholders of motor insurance

Option 1 <i>No policy change</i>	0	0	0	0
Option 2 <i>Set minimum amounts equal</i>	↑	↓	↓	↓
Option 3 <i>Set minimum amounts higher for certain vehicles.</i>	↑↑	↓↓	↓↓	↓↓

Magnitude of impact on stakeholder: ↑ positive, ↑↑ strongly positively, ≈ marginal/ neutral, ↓ negative, ↓↓ strongly negatively affects stakeholder.

During the consultation, there was broad support for option 2 from all stakeholder groups including consumer associations, insurers and public authorities, on the grounds that minimum protection of victims of motor accidents should be the same across the EU.

As regards option 3, consumer associations favoured a general increase of minimum amounts (instead of a differentiated approach for certain vehicles), but only if this would not lead to increases in premiums. Insurers in general considered that there was no need to make a distinction between types of vehicles as there is no direct link between the vehicle responsible for the accident and the size of resulting claims. Public authorities have differing positions: most do not seem to favour a differentiation between types of vehicles as proposed in option 3. Some Member States with higher minimum amounts of cover would favour an overall increase of the minimum amount of cover (which would affect other member States only). A few Member States have highlighted concerns about the probability of increases in premiums if minimum amounts were to increase.

Option 2 is the preferred option as it ensures equal minimum protection of victims across the EU and at the same time the impact on premiums would be limited. Furthermore it has the broadest stakeholder support. Furthermore, option 2 provides flexibility to Member States to set higher minimum amounts of cover if they would consider it necessary for accidents with claims above the minimum amounts currently foreseen in the Directive.

The impact of option 3 on MTPL premiums would depend on the actual calibration of the measure. It could well result in increased premiums for policyholders (bus coach and freight transport companies), passed on to their customers. It is uncertain if the increase in premiums would outweigh the benefits in terms of increased protection of victims of accidents caused by such vehicles. Member States are in any case allowed to set higher minimum amounts of cover for certain types of vehicles such as buses and coaches or heavy goods vehicles if they consider it necessary.

Policy options addressing uninsured driving

In general, uninsured driving remains a problem that should be addressed both at national level and at EU level. Only if uninsured driving is tackled at all levels can there be a tangible reduction of uninsured driving across the EU. Therefore, in accordance with the

principle of subsidiarity, Member States should take all necessary steps to combat uninsured driving with the available tools at national level.

To complement actions to combat uninsured driving at national level, this section presents three options to address the problem of uninsured driving deriving from cross-border traffic. The first option is the continuation of the current situation (baseline scenario), in which all border checks of insurance are prohibited (by article 4 of the Directive). The second option would allow unobtrusive checks on insurance (those which can be carried out without stopping the vehicle) and the third option would mandate such unobtrusive checks.

Theoretically a fourth approach would be possible. This would consist of allowing for obstructive checks on insurance for traffic crossing borders, including stopping the vehicle. However, this approach would allow reintroducing time-consuming border checks to verify the validity of motor insurance of all vehicles crossing borders. This would be a violation of the freedom of movement of persons and goods, fundamental freedoms enshrined in the Treaties, and at the same time undermine the functioning of the Schengen system. Consequently, this option is discarded and is not further analysed.

1. Baseline scenario	No change to the Directive: checks of insurance of vehicles normally based in another Member State are not allowed.
2. Allow unobtrusive checks of insurance	Allow Member States to carry out checks of insurance of vehicles normally based in another Member State which do not require stopping of the vehicle (using number plate recognition technology for example).
3. Mandate unobtrusive check of insurance	Mandate Member States to carry out checks of insurance of vehicles entering their territory which do not require stopping of the vehicle (using number plate recognition technology for example).

Option 2: Allow unobtrusive checks of insurance

Description

Under this option, Member States would be allowed (but not obliged) to carry out systematic checks of insurance of vehicles on their territory provided that they do not require stopping of the vehicle.

This would allow for example using number plate recognition technology to scan vehicles entering the territory of a Member State. This data could be compared with national databases of motor insurance policies which Member States have to set up in accordance with article 23(1) of the Directive. For cross-border traffic, in order to achieve effective checks for motor insurance, an exchange of information between Member States would be necessary. Unobtrusive checks would verify if a vehicle normally based in another Member State entering their territory is duly insured. As this option would allow the exchange of personal information between Member States on

number plates and motor insurance held by individuals, the provision must be in compliance with the applicable EU rules on data protection⁵⁶.

Consequences

Member States would be allowed to set up unobtrusive checks, allowing better enforcement of the insurance obligation and potentially resulting in greater detection of uninsured vehicles entering the territory of a Member State. Consequently, there could be fewer victims of motor accidents involving an uninsured vehicle registered in another Member State. Therefore victims could have less need to apply for compensation from the compensation bodies provided for in article 10 of the Directive.

It could also be expected that the annual amount of claims deriving from uninsured cross-border traffic, currently estimated at €870 Million⁵⁷, would be reduced. For insurers, this would imply a reduction in annual contributions to be paid to compensation bodies for accidents involving uninsured vehicles. For compensation bodies, this option could result in a reduction of claims to be handled.

For enforcement authorities this option could entail costs to set up checks and to exchange information on car registration data and insurance data on a bilateral basis. Enforcement authorities would presumably compare the costs of setting up unobtrusive checks and exchange of information on their territory with the benefits in terms of reduction of uninsured driving and claims on compensation funds. Only Member States which face particular problems of uninsured driving involving vehicles registered in another Member State could be expected to put in place such checks, and due to cost of infrastructure, probably on main roads only.

Assessment

This option would provide Member States an extra tool to address uninsured driving for cross-border traffic. This option strikes a balance between citizens' freedom of movement enshrined in the Treaty and the enforcement of the MTPL insurance obligation outlined in article 3 of the Directive. It would require amendment of article 4 of the Directive. Furthermore, this option builds on existing data on registration of vehicles and registration of motor insurance policies which Member States must collect in accordance with article 23(1) of the Directive and which are preserved for a period of seven years after termination of the registration of the vehicle or the termination of the insurance contract.

This option would allow Member States which face a particular problem with uninsured driving due to cross-border traffic to set up checks and exchange information with other Member States. However, as shown in confidential Annex 9, not all Member States face

⁵⁶ This would not need to be specified in the body of the MID, but could be recalled in a recital or in the Explanatory Memorandum.

⁵⁷ 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>

the same levels of uninsured driving due to cross-border traffic. Therefore this option provides flexibility for Member States to set up unobtrusive checks to the extent that they consider it necessary. For example, they could limit costs by limiting the scope of unobtrusive checks to the most important roads or by exchanging information only with bordering Member States or with those Member States where they have identified a particular problem due to uninsured driving.

Finally this option has the potential to reduce claims on compensation funds to reimburse victims of accidents involving an insured driver with a vehicle from another Member State. As a consequence, insurers may benefit from a reduction in contributions to compensation funds. Furthermore the number of policyholders in Member States could increase, helping to reduce premiums. The exact outcome for insurers and compensation funds will depend on the effectiveness of the unobtrusive checks and the impact on levels of uninsured driving.

Assessment of data protection considerations

The processing of personal data provided by this option is necessary for attaining the legitimate aims pursued by the Motor Insurance Directive, which are to ensure a high level of protection of victims of road accidents and at the same time allow for the free movement of people within the Union. The Directive currently imposes an insurance obligation on every motor vehicle and the level of uninsured driving in Member States is an indicator of its effectiveness. Ensuring compliance with the motor insurance obligation for vehicles travelling across borders should go hand-in-hand with respect for fundamental rights, in particular the right to respect for privacy and for the protection of personal data. The data collected under this option is necessary to identify if a vehicle complies with the insurance obligation and is to be considered personal data. Consequently the General Data Protection Regulation⁵⁸ should apply to the processing activities carried out in application of this option.

Option 3: Mandate unobtrusive checks of insurance

Description

Under this option, Member States would be mandated to carry out systematic checks of insurance of vehicles on their territory which do not require stopping of the vehicle. This would require all Member States to conduct such systematic checks and set up a system to exchange information with each other to verify if a vehicle detected entering a Member State is in a database of motor insurance policies of the Member State where it is registered. As in option 2, the exchange of personal information between Member

⁵⁸ 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).

States on number plates and motor insurance held by individuals, must be in compliance with the applicable EU rules on data protection⁵⁹.

Consequences

Independently of the level of uninsured driving due to cross-border traffic, this option would require all Member States to set up unobtrusive insurance checks and exchange information with all other EU Member States. Therefore, as compared to option 2 this option has a high potential to identify uninsured driving.

On the downside, as compared to option 2, this option would create far more costs for Member States as they would be required to set up such a system to conduct checks and exchange information with all other Member States. The obligation to conduct checks could be limited to main border entry points, or be extended to all border crossing points (this would be very expensive, as cameras would need to be installed on every road which crosses a border). A system would need to be set up even if in a given Member State, there is no particular problem with uninsured vehicles from other Member States. In addition, all Member States would need to set up a system to exchange information. A possible solution could be to set up a common European database for all the exchange of information on uninsured driving across all Member States.

For insurers and compensation funds this option could be expected to reduce uninsured driving and lower claims on compensation funds and thus contributions for insurers. The actual savings would depend on the reduction in levels of uninsured driving, which remains uncertain. Nevertheless, it can be expected that the reduction in levels of uninsured driving would be higher than with option 2, as unobtrusive checks would be mandated across the EU.

Assessment

As this option mandates unobtrusive checks in all Member States, it has the highest potential to reduce uninsured driving, benefitting compensation funds and insurers (which would see a reduction in contributions). In a competitive market, a reduction in contributions could eventually lower prices for policyholders, especially in those Member States in which the rate of uninsured driving is currently high. The actual outcome for compensation funds, insurers and policyholders would depend of the level of reduction in uninsured driving.

Victims of motor accidents would also benefit from fewer accidents involving an uninsured vehicle, even if the level of compensation would remain unchanged. Victims would be compensated directly by an insurer and not by a compensation fund, as in the case of an uninsured vehicle.

⁵⁹ This would not need to be specified in the body of the MID, but could be recalled in a recital or in the Explanatory Memorandum.

On the downside, this option would also result in the highest costs for Member States, as they would be required to set up a system to conduct unobtrusive checks and exchange information with all other Member States on vehicle registration and motor insurance.

As there are very uneven levels of uninsured driving across the EU, for some Member States it might not be cost-effective to set up such a system and exchange information with another Member State with very limited cross-border traffic.

Comparison of policy options

Under the baseline scenario, all systematic border MTPL insurance checks would continue to be prohibited, making it difficult to detect uninsured driving involving cross-border traffic. Victims of accidents caused by an uninsured vehicle (normally based in another Member State) would continue to require compensation by national compensation funds. Insurers' contributions to compensation funds to address claims deriving from accidents resulting from cross-border uninsured traffic would remain unchanged, and consequently, so would premiums of MTPL insurance for policyholders.

Compared to the baseline, option 2 would provide tools to Member States to better detect uninsured driving and enforce the insurance obligation for cross-border traffic. Reducing uninsured driving would contribute to a wider coverage of vehicles by MTPL insurance, lowering the risk of an accident involving an uninsured driver. This could lower claims on compensation bodies and lower contributions from insurers to guarantee funds. In a competitive market this could eventually lower premiums for policyholders.

However, setting up unobtrusive checks and exchanging information with other Member States would involve costs. In comparison with option 3, this option provides flexibility for Member States, limiting the potential costs. Member States would be free to set up checks based on their needs to address uninsured driving. They could also control costs by limiting unobtrusive checks to certain roads and/or limiting exchange of information to specific Member States. This is relevant, as the level of uninsured driving is not equal across all Member States.

Therefore, option 2 is more cost-effective compared to option 3, which would mandate insurance checks and require exchange of information between all Member States, creating costs for all Member States.

Option 3, by mandating unobtrusive checks in all Member States, would have higher potential to reduce uninsured driving as compared to option 2, and therefore higher potential to reduce claims on compensation funds, contributions from insurers and premiums for policyholders. Nevertheless, the costs might outweigh benefits in many Member States, as levels of uninsured driving are unequal across the EU.

Therefore option 2 is the preferred option.

	<i>EFFECTIVENESS</i>	<i>EFFICIENCY</i>	<i>COHERENCE</i>	<i>SCORE</i>
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Objectives Policy option	Objective 1 <i>Ensure high level of protection for victims of motor vehicle accidents</i>	Objective 2 <i>Ensure fair treatment of policyholders across the EU</i>	(cost-effectiveness)		
Option 1 <i>No policy change</i>	0	0.	0	0	0
Option 2 <i>Allow non-obstructive motor insurance checks.</i>	+	+	+	+	4
Option 3 <i>Mandate non-obstructive motor insurance checks.</i>	+	+	-	-	2

Magnitude of impact as compared with the baseline scenario (the baseline is indicated as 0): ++ strongly positive; + positive; -- strongly negative; - negative; ≈ marginal/neutral; ? uncertain; n.a. not applicable

Impact on stakeholders

	Victims	Insurers	National Compensation bodies	Public authorities	Policyholders of motor insurance
Option 1 <i>No policy change</i>	0	0	0	0	0
Option 2 <i>Allow non-obstructive motor insurance checks.</i>	↑	↑	↑	≈	↑
Option 3 <i>Mandate non-obstructive motor insurance checks.</i>	↑	↑	↑	↓	↑

Magnitude of impact on stakeholder: ↑ positive, ↑↑ strongly positively, ≈ marginal/neutral, ↓ negative, ↓↓ strongly negatively affects stakeholder.

Option 2 has the potential to be beneficial for all the major stakeholders if unobtrusive insurance checks are effectively conducted only where needed. However the actual impact would depend on the reduction of uninsured driving due to the unobtrusive checks. Victims would face fewer accidents with uninsured drivers, national compensation bodies would have fewer claims due to uninsured driving, and insurers would have lower contributions to compensation funds. Policyholders of motor insurance may benefit indirectly if in a competitive market, lower contributions from insurers would lead to lower levels of premiums.

For Member States the impact of option 2 depends on the actions they consider necessary to undertake unobtrusive insurance checks as such checks are not mandated but carried

out on a voluntary basis. Therefore Member States can determine if the benefits of conducting unobtrusive insurance checks outweigh the costs of setting up checks and exchanging information with other Member States. However costs would be proportionate, as Member States can calibrate the checks and limit the exchange of information to certain other Member States, for example bordering Member States.

Option 3 would create at least the same and possibly higher benefits as option 2 for victims, national compensation bodies and insurers as unobtrusive checks would be conducted throughout the EU. The actual benefit would also depend on the reduction in uninsured driving. However, option 3 would result in much higher costs for Member States as it would mandate setting up systematic unobtrusive checks and exchange of information with all Member States. Nevertheless, there could be some efficiency gains if a common platform were established for the exchange of information on uninsured driving.

Policy options addressing the acceptance of claims history

Policy options regarding the **acceptance of claims history** are the following:

1. Baseline scenario	No action is taken. There is no harmonisation of the content and format of claims history statements and no requirement on how claims history should be treated by insurers.
2. Recommendation on the acceptance of claims history statements	Recommendation to Member States to develop a harmonised template of claims history statements and ensure that claims history statements are treated the same for domestic and cross-border applicants for a MTPL insurance.
3. Harmonising the template and content of a claims statements,	Under this option, format and content of claims history statement would be harmonised making exchange of information easier for insurers in cross-border cases.
4. Impose a non-discrimination requirement for the treatment of claims history statements and a disclosure requirement	In addition to option 3 insurers are obliged to treat claims history the same for domestic and cross-border applicants of a MTPL insurance. Furthermore, insurers would be required to disclose how claims history is taken into account for the purpose of calculating premiums.

During the public consultation the possibility to extend the reference period for claims history statements beyond the 5 years currently laid down in the Directive was also explored. However, this option did not receive stakeholder support and was discarded.

Option 2: Recommendation to Member States on claims history statements.

Description

Under this option, the Commission would adopt a recommendation directed to Member States on the treatment of claims history statements by insurers, recommending them to

harmonise claims history statements to facilitate their authentication and to ensure easier acceptance of claims history statements for citizens moving across borders. Furthermore, it would be recommended to Member States to ensure that claims history statements are treated the same for domestic and cross-border applicants for a MTPL insurance. In addition, it would be recommended to Member States to ensure that insurers are transparent on how claims history statements are taken into account in the calculation of premiums.

Consequences

As a consequence of this recommendation, Member States could adopt most "guidance" to the insurance industry to outline the content and format of claims history statement. Member States could also require that claims history statements are treated the same for domestic and cross-border applicants of a MTPL insurance, and lay down a transparency requirement on how claims history statements are taken into account in the calculation of premiums. However, as there is no legal obligation for Member States to act, there is no guarantee of that all Member States would adopt such measures.

Assessment

This option may result in no action or uncoordinated action by EU Member State as regards the format of claims history statements and disclosure requirements on how claims history statements are taken into account. Given this, it can be expected that there would remain differences in the content and format of claims history statements, making it difficult for insurers to authenticate claims history statements resulting in continuing reluctance of insurers to take into account claims history statements issued by foreign insurers.

Furthermore, there would most likely remain lack of transparency on how claims history statements are taken into account by insurers. This will result from lack of mandatory transparency requirements, which will most likely remain voluntary. This would make it difficult for supervisors to enforce non-discrimination of claims history statements based on previous residence in another Member States. Also consumers will continue to have difficulties to verify how claims history is taken into account by the prospective insurer.

Option 3: Harmonise the template and content of claims history statements

Description

Under this option, the template of the statement including its content would be harmonised. This information could include: the name, registration number and contact details of the insurance company establishing the declaration, date of issue of the declaration, identification of the policyholder, the address of the policyholder, date of birth of the policyholder, date of inception and date of expiry of cover (period of insurance), number of declared claims (liable and non-liable) during the past five years of cover (or at least during the period of insurance), the type of claims and dates of the accidents. The reference period for claims history statements would remain a 5 year

period⁶⁰. However, just as in the baseline scenario, there would be no prescriptive obligation on how the claims history statement should be taken into account by insurers and existing national systems of calculating no-claims bonuses would continue to exist.

Consequences

The format and content of claims history statements would be the same for all insurers within the EU. Therefore it would be easier to compare claims history statements of policyholders issued by insurers of another Member State. This would allow for easier validation of the authenticity of claims history statements by insurers. For policyholders changing residence to a new Member State, the standardised claims history statement should be more easily accepted by a new insurance undertaking. Consequently they would have better chances of benefiting from the same treatment as domestic consumers, reducing the risk of discrimination based on their previous residence in another Member State. However, it would remain very difficult for policyholders to assess how the claims history statement is taken into account by an insurer when determining premiums. Also for supervisors it would remain difficult to ensure equal treatment of policyholders by insurers as there would be no transparency on the use of the claims history statement by the insurer.

This option would create some limited initial compliance costs for insurers in order to adapt their systems to the new format of claims history statement. However, there would be no material change as regards the data itself contained in the claims history statement, which is already obligatory.

Assessment

This option would contribute to the equal treatment of policyholders when moving across borders, as it would facilitate the verification of authenticity of claims history statements originating from insurers based in other Member States. The harmonisation of the template of claims history statement is supported by all consumer organisations in their responses to the public consultation. One consumer organisation, BEUC⁶¹, would favour a more far-reaching intervention. In comparison with the brief voluntary code of conduct which has been published by Insurance Europe⁶², claims history statements from any insurer within the EU would be more easily comparable. Therefore, insurers would be more familiar with claims history statements issued by foreign insurers for policyholders moving across borders.

However, there is no complete guarantee that this option would sufficiently improve the situation of prospective policyholders moving across borders. In the absence of transparency on how claims history statements are taken into account by insurers to

⁶⁰ There is no strong pressure from stakeholders to lengthen this period, and some Member States only require insurers to keep this data for limited periods, as little as 7 years in one Member State.

⁶¹ BEUC contribution to the public consultation on the review of the Motor Insurance Directive.

⁶² See Annex 6.

determine premiums it would remain difficult to verify by prospective policyholders (or by supervisors) whether their information on claims history was effectively taken into account in calculating the proposed premium.

Option 4: Impose a non-discrimination requirement for the treatment of claims history statements and a transparency requirement on the use of such statements

Description

In addition to option 3, this option would also introduce a non-discrimination requirement, explicitly stating that claims history statements should be treated equally for all potential policyholders requesting a policy. However, this option would, just as in the baseline scenario, not in itself prescribe how the claims history statement should be used to calculate premiums. It would only ensure that domestic residents and people moving across borders are treated the same way as regards the information on claims history for the purpose of determining a motor insurance premium. Insurers could continue to take into account other risk factors when calculating premiums. This would also leave insurers free to disregard claims history statements (for all potential customers), for example.

To ensure effective enforcement of this provision, there should be sufficient transparency on how claims history statements are taken into account by insurers. Therefore, this option would entail a requirement for insurers to disclose how such statements are taken into account to determine a premium for an MTPL policy. This would allow policyholders and supervisors to see how claims history information is taken into account when calculating premiums, and determine if there is discrimination based on previous residence.

Consequences

As a consequence of this provision, in addition to the harmonised template on claims history outlined in option 3, there would be equal treatment of policyholders as regards the claims history statement independently of their former place of residence. This would ensure that those moving across borders and applying for a new MTPL insurance would be treated in the same way as domestic residents applying for motor insurance.

For insurers that take into account claims history to determine premiums, it would imply they are required to take into account claims history statements provided by insurers based in another Member State, and to be transparent on the use of claims history statements. For insurers not taking into account claims history, there would be no change (other than the harmonisation of format).

For policyholders and supervisors, the transparency requirement on the use of claims history statements by insurers would facilitate the verification of how claims history statements are taken into account. This would facilitate enforcement of the non-discrimination requirement.

A potential cost of the measure would be treatment of disputes involving policyholders alleging discrimination; this could require internal resources from motor insurers.

Assessment

This option would contribute to the equal treatment of policyholders moving across borders and therefore reduce the risk of discrimination on the basis of (former) residence. As outlined in the baseline scenario, the market segment of mobile citizens requiring a new motor insurance is small and therefore not specifically targeted by insurers, therefore competitive forces have not resolved this issue.

This option would be the most effective as it would combine standardisation of the template, non-discrimination regarding claims history statements and transparency on the use of the claims history statement by the insurer. A more standardised content and template of claims history statements would facilitate the comparison and verification of authenticity by the new insurer. The non-discrimination requirement on the use of the claims history statement would ensure equal treatment of prospective policyholders by insurers. In addition, the transparency requirements would allow for the verification by policyholders on how the claims history statement is taken into account and allow for effective enforcement by supervisors.

Comparison of options

Option 2 would have very limited impact compared to the baseline scenario as it would lead to uncoordinated action by Member States and claims history statements would most likely not be standardised across all EU Member States. Just as in the baseline scenario, it would remain difficult to authenticate a claims history statement issued by an insurer in another Member State, creating reluctance to take it into account when calculating premiums. There would be no uniform requirements on insurers to ensure that claim history statements are treated the same way.

Option 3 would be beneficial compared to the baseline scenario as it would create more standardisation in the claims history statement in comparison with the existing voluntary code of conduct. Standardisation of content and format of claims history statements would facilitate the verification of authenticity of statements originating from insurers based in another Member State. This would mean that claims history statements are more likely to be taken into account by a prospective insurer in case of citizens moving across borders. However, in the absence of an obligation of equal treatment and in the absence of transparency on how claims history statements are taken into account by insurers to determine premiums, it would be very difficult to verify by prospective policyholders whether their information on claims history is effectively taken into account.

Option 4 would, in addition to option 3, explicitly require insurers to grant equal treatment as regards claims history statements between all prospective policyholders within the EU. In case an insurer uses claims history statements to determine premiums, it would be effectively required to take into account claims history statements provided by insurers based in another Member State. This would ensure an equal treatment of claims history statements between domestic policyholders and those moving across

borders, reducing the risk of undue discrimination. Furthermore, this option is supported by a consumer organisation⁶³ in its response to the public consultation.

Therefore, the preferred option is option 4.

<i>Objectives</i>	<i>EFFECTIVENESS</i>		<i>EFFICIENCY</i> (cost-effectiveness)	<i>Coherence</i>	<i>SCORE</i>
	<i>Objective 1</i> Ensure high level of protection for victims of motor vehicle accidents	<i>Objective 2</i> Ensure fair treatment of policyholders across the EU			
1. Baseline scenario	<i>n.a.</i>	0	0	0	0
2. Recommendation to Member States on claims history statements	<i>n.a.</i>	≈	≈	-	1
3. Harmonising the template and content of a claims statements,	<i>n.a.</i>	+	+	+	3
4. Impose a non-discrimination clause for the treatment of claims history statements and a disclosure requirement	<i>n.a.</i>	++	+	+	4

Magnitude of impact as compared with the baseline scenario (the baseline is indicated as 0): ++ strongly positive; + positive; -- strongly negative; - negative; ≈ marginal/neutral; ? uncertain; n.a. not applicable

Impact on stakeholders

Claims history statements only concern insurers and policyholders.

Option 2, a recommendation to Member States, would have limited or marginal impact compared to the baseline scenario on all affected stakeholders. The main reason is that there would be uncoordinated action and therefore the existing problems of acceptance of claims history statements in cross-border situations would not be addressed. In particular there would continue to be differences in claims history statements, making it difficult for insurers to authenticate claims history statements issued by foreign providers and creating reluctance to take them into account. Therefore, no fundamental changes are to be expected for policy holders moving across borders and seeking new MTPL insurance as regards the acceptance of claims history statements.

Option 3, the harmonisation of the template and the claims history statement, would be beneficial for policyholders and insurers in so far as it would facilitate the verification of authenticity of claims history statements and the exchange of information between insurers. Policyholders moving from one Member State to another would benefit from

⁶³ BEUC contribution to the public consultation on the review of the Motor Insurance Directive.

lower premiums given higher no-claims discounts. For insurers it would require modifying the existing templates which would entail an initial though limited compliance cost, as the Directive already requires insurers to provide a claims history statement to policyholders if they move to another insurer. The respective administrative and IT costs are projected at EUR 4.0-8.1 million across the entire industry⁶⁴ these are mainly one-off costs necessary to implement the system.

Option 4 would be more beneficial for policyholders because it would grant new rights to not be discriminated against as regards the treatment of the statement. The total benefit for policyholders across the EU is estimated to lie in the range of €4.2– 12.7 million⁶⁵ on a recurring annual basis.

Additional costs for insurers would be limited to those for developing a statement of their treatment of foreign no-claims statements, adopting the required template, and dealing with any individual complaints of alleged discrimination.

In their contributions to the public consultation, all consumer organisations support the harmonisation of claims history statements (option 3). One consumer organisation, BEUC, favours option 4, ensuring equal treatment of policyholders. Some industry stakeholders see room for harmonisation of claims history statements but most insurers consider the existing voluntary code of conduct sufficient.

	Victims	Insurers	National compensation bodies	Policyholders of motor insurance
1. Baseline scenario	0	0	0	0
2. Recommendation to Member States on claims history statements	n.a.	≈	≈	≈
3. Harmonising the template and content of a claims	n.a.	↑ or ≈	Na	↑ or ≈

⁶⁴ This estimate assumes that the change of template would require, on average, the equivalent of 1-2 weeks FTE per insurer in order to carry out the necessary changes to IT systems (assuming an average annual salary of EUR 75,000), plus and additional EUR 2,500 – 5,000 to cover other administrative and legal costs.

⁶⁵ This estimate is based on the EU average premium paid (EUR 250 – Source: Insurance Europe), the amount of people of working age moving to another Member State per year (1,692,000 in 2014 – Source: ESTAT) while assuming that 20% of people are affected by discriminatory treatment of claims history and that premiums will be 10-30% higher compared to cases where the claims history is effectively taken into account.

statements,				
4. Impose a non-discrimination requirement for the treatment of claims history statements and a disclosure requirement	n.a.	↑ or ≈	Na	↑

Magnitude of impact on stakeholder: ↑ positive, ↑↑ strongly positively, ≈ marginal/ neutral, ↓ negative, ↓↓ strongly negatively affects stakeholder.

PREFERRED OPTION

Overall impact of the preferred option

Under the preferred option, **in case of insolvency or winding up of an insurer**, there would be clear responsibilities for compensation bodies set out at EU level for both initial compensation of victims and ultimate financial responsibility for claims. This would enhance the protection of victims in cases of insolvency of an insurer, giving the same level of protection as that already provided in the Directive for accidents involving uninsured or untraced vehicles. Under the preferred option there is no possibility for Member States to unilaterally withdraw, negotiate opt-outs or set limitations on the timing or coverage of claims at national level below the standards set at EU level, as is today the case under existing voluntary agreements. The preferred option would also provide incentives for supervisors of insurers mainly operating on the basis of freedom to provide services and with limited domestic coverage, in order to avoid insolvencies.

Under the preferred option, the **minimum protection of victims** of motor insurance accidents would be guaranteed at EU level by ensuring equal minimum amounts of cover for personal and material damage at all times in all EU Member States. This would contribute to the objective of ensuring a high level of protection of victims across all Member States. In a number of Member States (BE, DE, DK, FI, IE, LU, SE, SK, UK), minimum amounts of cover would remain considerably higher than those in the Directive, providing higher levels of protection for victims. Such higher levels of coverage would be beneficial in cases of large accidents with very serious personal injury or material damage, above the minimum amounts set in the Directive. As there are only limited increases in the minimum amounts of cover, there would be only very minor impact on premiums for policyholders in certain Member States.

Uninsured driving remains a problem that should be addressed at both national level and at EU level. In line with the principle of subsidiarity, Member States remain responsible to take all necessary actions to combat uninsured driving and enforce the insurance obligation of the Directive at national level. This can be done at national level by conducting sufficient insurance checks, prevention campaigns and exchange of information between competent authorities. If necessary, the Commission could in

principle launch infringement procedures against Member States which fail to take adequate measures against uninsured driving at national level. At EU level, allowing unobtrusive checks would provide an additional tool for Member States to address uninsured driving involving vehicles normally based in another Member State. Member States would be allowed to conduct unobtrusive checks on motor insurance entering their territory from another Member State. Therefore, uninsured driving deriving from cross-border traffic would be easier to detect and Member States could better enforce the insurance obligation. Member States could determine the necessary extent of unobtrusive checks. A reduction in uninsured driving would be beneficial for all stakeholders, as it reduces claims on guarantee funds. For insurers it could lead to greater uptake of MTPL insurance, in particular in Member States with high levels of uninsured driving. In a competitive market this could eventually lower premiums for policyholders. For EU citizens, reducing uninsured driving reduces risks of accidents caused by uninsured or untraceable drivers and contributes to a high level of protection of victims.

As regards **claims history statements**, the preferred option would harmonise the format and content of claims history statements, allowing for citizens moving across borders a more easy authentication and acceptance of such a statement by providers in a new Member State. Furthermore, based on the transparency on how claims history statements are taken into account to calculate premiums, prospective consumers and supervisors of insurers would be better able to verify that insurers do not engage in discriminatory treatment based on previous residence in another Member State.

Summary of impacts of the preferred option:

<i>Objectives</i>	<i>EFFECTIVENESS</i>		<i>EFFICIENCY</i> (cost-effectiveness)	<i>COHERENCE</i>	<i>SCORE</i>
	<i>Objective 2</i> <i>Ensure high level of protection for victims of motor vehicle accidents</i>	<i>Objective 3</i> <i>Ensure equal treatment of policyholders across the EU</i>			
<i>Policy option</i>					
1. Baseline scenario	0	0	0	0	0
Insolvency					
Option 3 <i>Set out rules on initial payment and ultimate compensation of victims of insolvent insurers.</i>	+	n.a.	++	++	5
Minimum amounts of cover					
Option 2 <i>Set minimum amounts equal in all Member States.</i>	+	+	+	+	4
Uninsured driving					

Option 2 <i>Allow unobtrusive border motor insurance checks.</i>	+	+	+	+	4
Claims history					
Option 4 <i>Standardised claims history template and a non-discrimination clause for the treatment of claims history statements with a disclosure requirement.</i>	n.a.	+	+	+	3

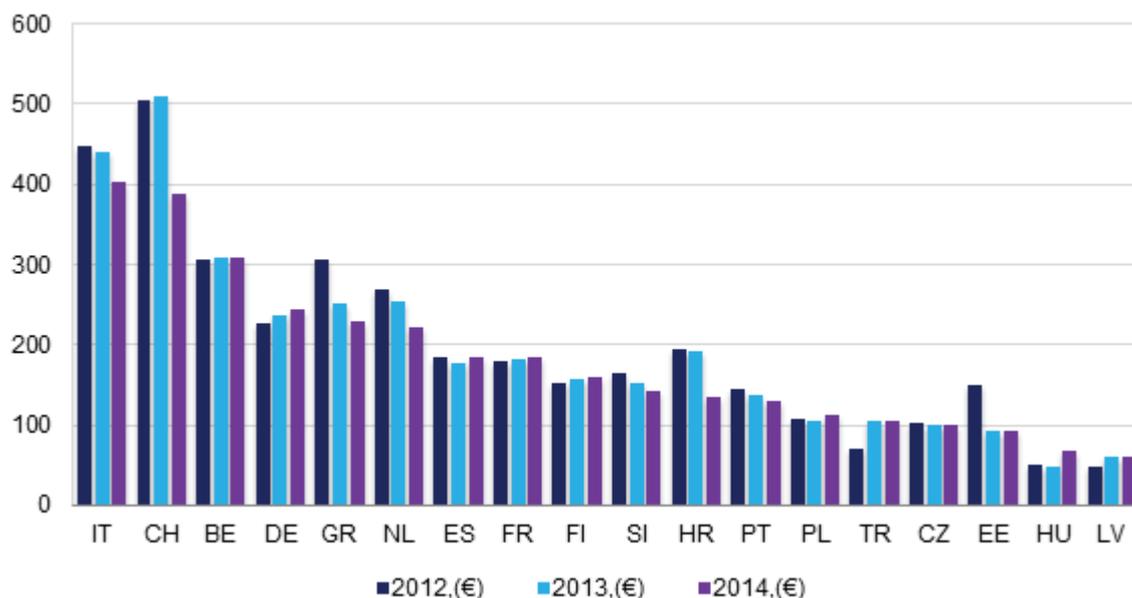
Macro-economic impacts

The overall macro-economic of the preferred package is considered low following a qualitative assessment of the policy options shown in Annex 3.

Rules on the consequences of insolvency will not affect the occurrence of insolvency cases, and potential damages and claims for motor accidents linked to insolvent insurers remain unchanged. Consequently, there will be no material macro-economic impact. Only the biggest insurance insolvencies in the world (for example AIG) have had a macro-economic impact. The main economic benefit remains at micro-economic level, by ensuring an orderly process for the allocation of responsibilities in case of insolvency. This is expected to reduce the cost of litigation linked to the insolvency of an insurer for all stakeholders involved.

As regards minimum amounts of cover, there will be some limited alignment of the level of MTPL premiums in some Member States which previously benefited from a transition period. Alignment of the minimum amounts of cover could create incentives for insurers in a few Member States to increase premiums to cover for higher claims. There is however no evidence on the correlation between minimum amounts of cover and insurance premiums. In particular, the current divergence of insurance premiums across Member States as shown in Chart 1 below results from a wide range of factors and is expected to continue. Some Member States, such as France and Belgium, set significantly higher minimum amounts, (e.g. personal damage is set at an unlimited amount of cover) compared to the MID and the level of MTPL premiums does not differ from other Member States in the same magnitude.

Chart 1: Average MTPL premiums of a selection of Member States



Source: European Motor Insurance Markets Addendum, Insurance Europe, June 2016

Table 2 below shows the expected change in minimum amounts compared to data reported by the Council of Bureaux in 2015. For personal injury and material damage, there would be no change in respectively 12 and 11 Member States. For respectively 4 and 6 Member States the increase in minimum amount would be limited to below 10 percent. For respectively 12 and 11 Member States the increase would be below 23 percent. As explained above, there is no direct correlation between the minimum amount of cover and premiums. However, actual differences with current minimum amounts will be lower as some Member States have increased their levels of minimum amounts due to an update of minimum amounts in 2016 to take into account inflation.

Table 2: Estimated changes in minimum amounts of cover by Member State compared to 2015 data⁶⁶

% change in minimum amount of cover for	Personal Injury	Material Damage
No change	BE, CZ, DK, DE, IE, ES, FR, CY, LU, FI, SE, UK	BE, CZ, DK, ES, FR, CY, LU, HU, FI, SE, UK
< 10%	EE, HR, NL, AT,	DE, EE, IE, HR, NL, AT
>10% and < 23%	BG, IT, LT, LV, HU, EL, PL, PT, RO, SK, SI,	BG, EL, IT, LT, LV, MT, PL, PT, RO, SK, SI,

Source: own calculations based on report from CoB see Annex 4

⁶⁶ Actual differences with current minimum amounts will be lower as some Member States have increased their levels of minimum amounts as some Member States have updated minimum amounts to take into account inflation following a Commission Communication on minimum amounts in June 2016. (COM/2016/0246 final)

As regards claims history statements, the economic impacts are limited as this affects only persons moving abroad applying for a new motor insurance. Furthermore, the current Directive already requires insurers to provide a claims history statement on request of a policyholder, so the impact is limited to changing the template itself. Therefore, for insurance at micro level there are some limited one-off compliance costs to adopt a new template.

Therefore, the overall market trends described in Annex 4 will remain unchanged.

Small and medium-sized enterprises

The proposal does not entail any specific impact for small and medium-sized enterprises except those which are insurers or policyholders of motor insurance. Motor insurers, including those which are SMEs, will incur the costs indicated in the above box on costs. SMEs and micro-enterprises will be affected as operators of vehicles which require insurance. If they are located in Member States where the minimum amounts of cover will be revised slightly upwards, very small increases in insurance premiums are possible (this is also the case for individual policyholders in those Member States).

REFIT (simplification and improved efficiency)

The evaluation of the Motor Insurance Directive (Annex 7) did not identify major flaws, apart from the issues assessed as part of this impact assessment. In general, the evaluation concluded that stakeholders and industry practitioners considered that the current Directive achieves the objective of a high protection of victims and free circulation of vehicles in an efficient and effective way. The evaluation concluded that only targeted amendments of the Directive should be considered in a number of policy areas which are assessed in this Impact Assessment. Consequently the evaluation did not reveal potential for simplification or scope for cost reduction in the application of the Directive. During the public consultation, which was conducted as part of the evaluation, stakeholders did not come forward with specific concerns which would allow simplification or cost reduction in the area of EU Motor Insurance Policy. A number of concerns expressed by stakeholders about the Directive, which were not judged to be serious enough or sufficiently substantiated to warrant amending the Directive, are described in section 2.3.

The preferred package of preferred options does not contain any specific measures regarding simplification and cost reduction but enhances the existing gaps identified during the evaluation. 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 preferred package of option does not entail any new reporting requirements to public authorities.

EU budget

The proposal does not create any obligations for the EU budget.

Social impacts

There is no significant social impact expected. A high level of protection of victims of motor accidents is beneficial to all citizens in the EU.

A possible social impact is the affordability of motor insurance across the EU. If motor insurance premiums were to become unaffordable, this would increase the risk of uninsured driving with negative effects for victims, compensation bodies and insurers (via contributions to finance the cost of claims due to uninsured driving).

However the preferred package makes a trade-off between protection of victims and risks of potential increases of premiums of motor insurance. In particular the preferred options only include an alignment of the minimum amounts of cover to ensure equal minimum protection across Member States.

Impact on third countries

The proposal does not create any new obligations concerning relations with third countries. Consequently, no impact on third countries is expected.

Environmental impacts

No significant environmental impact is expected as there will be no impact on traffic volume.

HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

The proposed rules should include a review after five years of application of the amended Directive. As part of the evaluation, the European Commission shall regularly monitor the application of the Directive based on the following **key performance indicators (KPIs)**⁶⁷:

KPI 1 Number of victims and amount of outstanding claims due to delays in payments following cross-border insolvency cases

The number of victims and amount of outstanding claims due to delays caused by insolvent cross-border insurers will be an indicator of effectiveness of the provisions aimed to enhance the protection of victims affected by insolvency cases. This indicator will however only be meaningful if cross-border insolvencies of insurers actually occur during the reference period. It is anticipated that both number of victims and amounts outstanding would decline. Ideally, these figures should approach near-zero figures over time, even if insolvencies occur. This information will be obtained through surveying

⁶⁷A detailed description of the KPIs can be found in Annex 12.

national compensation bodies which will be responsible to deal with the costs of claims in case of insolvency of an insurer. The Council of Bureaux could have a coordinating role in obtaining this information.

KPI 2: Level of minimum amounts of cover in Member States

The implementation of harmonised level of minimum amounts of cover will be verified during the transposition control of the amended Directive. Deviations from the set minimum level would indicate an infringement which could then be addressed accordingly. This information will be obtained through regular transposition checks.

KPI 3: Amount of claims due to uninsured driving of cross-border traffic

The annual amount of claims due to uninsured cross-border driving will provide a measure of the effectiveness of unobtrusive motor insurance checks by Member States. It will be particularly useful to compare the future development of claims between those Member States that implement such checks and those that do not. This will not only demonstrate the magnitude of the problem of uninsured driving but can also help Member States to improve the effectiveness of their respective cross-border insurance check systems. Member States will be regularly asked whether they have instituted unobtrusive border insurance checks, and if so, at how many locations. Once such checks have been established, it is projected that the number of claims will start to decline. This information will be obtained by surveying national compensation bodies responsible for dealing with claims in case of uninsured driving. The Council of Bureaux could have a coordinating role in obtaining this information.

KPI 4: Number of complaints following claims history statements

The number of complaints regarding alleged discriminatory treatment of claims history statements when moving to another Member State will provide a direct indication of whether the new provisions are effective in practice. Once these provisions stipulating non-discriminatory treatment have started to apply, it is expected that the number of such claims will reduce significantly. Likewise, a concentration of complaints within certain Member States could imply deficiencies in the nationally transposed law or, if related to a single insurer, reveal cases of non-compliance. This information could be obtained through surveying national consumer protection bodies and national consumer organisations.

ANNEX 1: PROCEDURAL STEPS CONCERNING THE PROCESS TO PREPARE THE IMPACT ASSESSMENT REPORT AND THE RELATED INITIATIVE

- Lead Directorate-General: Directorate-General for Financial Stability, Financial Services and Capital Markets Union.
- DECIDE PLANNING Reference: 2016/FISMA/113
- An inception impact assessment was published on 24 July 2017: https://ec.europa.eu/info/law/better-regulation/initiative/39849/attachment/090166e5b3f48c10_en
- Organisation and timing of Inter Service Steering Group's meetings: two meetings of the Inter Service Steering group on 12 December 2017 and 22 January 2018. The Inter Service Steering Group included representatives of the Directorates General, Competition (COMP), Economic and Financial Affairs (ECFIN), Employment (EMPL), Internal Market, Industry, Entrepreneurship and SMEs (GROW), Justice and Consumers (JUST), Taxation and Customs Union (TAXUD), Trade (TRADE), the Legal Service (LS) and the Secretariat General (SG), DG Transport (MOVE).
- Evidence used in the impact assessment:
 - Replies by stakeholders to the following public consultations:
 - From 28 July until 20 October 2017: a public consultation on the review of Directive 2009/103/EC on Motor Insurance to obtain feedback from stakeholders on all elements of the Directive, including some specific elements (e.g. the scope, portability of claims history statements and the role and functioning of motor guarantee funds), possible options for amendments and their impacts: http://ec.europa.eu/finance/consultations/2016/personal-pension-framework/index_en.htm
 - From 30 September 2015 to 31 January 2016: a public consultation 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 legislation: http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm
 - A roundtable on the review of Directive 2009/103/EC on Motor Insurance which took place on 12 July 2017 including stakeholder groups including insurers, consumer organisations, Council of Bureaux and Member States' Authorities.
 - A public hearing on the Call for Evidence, held on 17 May 2016: http://ec.europa.eu/finance/events/2016/0517-call-for-evidence/index_en.htm
 - Discussions with experts from Member States' Authorities in 2015 and 22 September 2017 (Expert Group on Banking, Payments and Insurance (Insurance Formation)). See summary in Annex 2.

- Statistics and reports from the Council of Bureaux

ANNEX 2: STAKEHOLDER CONSULTATION SYNOPSIS REPORT

This section summarizes the outcomes of the consultative work on the evaluation of the Motor Insurance Directive. The consultative work consisted of 1) meetings with Member States Experts, 2) a roundtable with stakeholders and 3) a public consultation.

1. EXPERT GROUP MEETINGS OF MEMBER STATES

Two meetings of the Expert Group on Banking, Payments and Insurance took place in 2015, respectively on [20 May](#) and [14 December](#). The first meeting showed that Member States had differing interpretations of the scope of the Directive before the Vnuk ruling; some were incompliant with the Directive as interpreted in the Vnuk ruling and requested a legislative change of the scope. In the second meeting, the discussions on the scope of the directive continued, and potential legal consequences of framing the Directive's scope around some notion of traffic were analysed. A third meeting of the Expert Group on Banking, Payments and Insurance took place on 22 September 2017 following a questionnaire that was circulated addressing all the topics of the evaluation report (similar to the public consultation questionnaire).

The main findings of the expert group of 22 September 2017 can be summarised as following:

On portability of no-claims statements (bonus-malus), there was some support from some Member States for harmonising the format of statements and increasing the period of reference data. One Member State proposed the harmonisation of the content of a no-claims statement. There was very little support for making statements binding on the receiving insurer.

On protection of victims in cases of cross-border insolvencies of motor insurers, there was consensus among Member States that there is a real problem which requires EU intervention, but no consensus on details, especially the question of whether the motor guarantee fund of the home or host Member State should be ultimately liable in such cases.

On the scope of the MTPL obligation for motor vehicles (in light of the CJEU's Vnuk judgement), 7 Member States were in favour of urgently narrowing the scope (to exclude motor racing and/or private land), one was firmly against (saying that it already is Vnuk-compliant), some others displayed a more nuanced intermediate position.

On minimum amounts of cover, there was wide support for harmonising the amounts in different Member States and cleaning up procedures and reference dates for revision, but little support for differentiating minimum amounts for different categories of vehicle (though some Member States do this domestically).

On autonomous vehicles, all Member States were of the opinion that such vehicles should remain within the scope of the MID.

Member States committed to provide written input by 20 October 2017 (the same date as the end of the public consultation). The following Member States provided written input: Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany (and the German Federal State of Bavaria), Ireland, Italy, Lithuania, Luxembourg, Malta, Poland, Slovakia, Spain, Sweden, UK.

Most written replies confirm positions expressed orally in the meetings and do not contain data. Only the UK provided a calculation of the effect of the application of the scope of the Directive as interpreted by the CJEU in the UK, which can be summarised in the table below ("comprehensive option" refers to the scope as interpreted in Vnuk):

Vehicle Category	Additional premium costs for the UK (£m)	
	Amended Option	Comprehensive Option
Existing - Motorcars - Extension to private land	0	484
Existing - Motorcars - Additional fraud	0	743
Existing - Motorcycles - Extension to private land	0	23
Existing - Motorcycles - Additional fraud	0	41
Existing - Business Vehicles - Extension to private land	0	105
Existing - Business Vehicles - Additional fraud	0	0
Motor Sports	0	229
Other Business	0	198
Miscellaneous	7	8
Total	7	1,831

It should be noted that these cost calculations are based on unlimited cover for personal injury and material damage, as applied in the UK, not the minimum amounts required by the Directive. The high role of expected fraud in the estimated costs is also noteworthy.

Following bilateral contacts, the Finnish authorities confirmed that Finland already requires MTPL insurance in a manner compatible with the Vnuk judgement of the CJEU, also with regard to motor sports, and stated that motor sports thrive in Finland at both professional and amateur level.

2. ROUNDTABLE ON THE REVIEW OF MID, 12 JULY 2017

The participants of the roundtable held on the 12 July 2017 were the following: Council of Bureaux (COB), Association of British Insurers (ABI), Fédération Française de l'Assurance (FFA), UNESPA (Unión Española de Entidades Aseguradoras y Reaseguradoras), Insurance Europe, AMICE, European Cyclists' Federation (ECF), European Consumer Organisation (BEUC), German Insurance Association (GDV), Fédération International de l'Automobile (FIA).

The discussion was dedicated to the evaluation of the Motor Insurance Directive 2009/103/EC. It focused on the most advanced topics of the exercise, which are (1) the scope of the Directive, (2) technological evolution/driverless cars, (3) portability of claims history statements, (4) protection of victims in case of insolvency and (5) adaptation of minimum amounts of cover.

1. Scope

The participants were invited to comment on options published in the Inception Impact Assessment (IIA) of June 2016 on how to possibly adapt the scope of the Directive following the Vnuk-ruling (C-162/13).

Most participants favour option 3, which entails limiting the scope of the Directive to accidents that occur in traffic.

However, FFA believes no adaptation is necessary, as French law covers accidents on private land, e.g. garages, and also victims of motor races are covered. Similar position: GDV. BEUC is yet to consult its members.

FFA, ABI, UNESPA stated there is no MTPL cover for racers in motor sports in their countries. ABI considers this the single biggest issue of the REFIT – it estimates that the inclusion of motor sports in the scope will lead to increase of premiums of 10%.

FIA will try to submit additional data on the likely effects for motor sports. In principle, it is in favour of option 3 in the IIA, but has to discuss internally.

UNESPA was also of the view that if tractors and industrial vehicles would have to be covered under the MID, instead of general liability policies that are used now to cover agricultural and industrial activities, this might have a substantial effect on premiums, as this would increase the minimum amounts of cover. Due to this movement from the general liability to MTPL policies, UNESPA estimated the impact on the premiums as €300 million, as the usual cover for a liability policy is around €300,000, far from de €70 million per accident for personal injuries in MTPL.

COB warned that if vehicles are exempted in one Member State this would qualify as uninsured in other Member States.

ECF is concerned that the Commission is planning to include (low speed) electronic bicycles in the scope. ECF is against "mandatory" third party liability insurance for such bicycles. In general, damage caused to third parties is negligible – and if citizens were obliged to take a MTPL insurance (and thus have to pay premium), this would disincentivise the use of electric bicycles. Moreover, it should not be left to individual Member States to exempt electronic bicycles, as this would create a patchwork of different rules.

FIA: shares the opinion that these bicycles are not vehicles in the sense of the MID, because not "propelled by mechanical power", but only "assisted by mechanical power" until a certain speed limit (approx. 25km/hour).

ABI is not in favour of including electric bicycles, or covering accidents on private property, because this could potentially result in more fraudulent claims. It strongly supports option 3.

2. Technological evolution

All participants agreed that the system of compensation under the MID is suitable even for fully automated vehicles and does not need an adaptation. Shift to product liability is not desirable, because the protection afforded under these rules is much weaker than it is

in the case of the MID. Driverless cars is yet a very topical issue and participants welcomed the issue being addressed in the forthcoming consultation. The biggest issue for consumers and industry, however, is access to data. UNESPA suggested that insurers should have the right to obtain the relevant data when accidents occur. Insurance Europe suggested that both manufacturers and software insurers may be held accountable and referred to the important work underway in the context of the GEAR 2030 project.

GDV informed that Germany has adopted new legislation related to highly automated vehicles that establishes that there must be a recording of the data in the car to allow the investigation of accidents. The data must be shared with the owner of the vehicle.

COB agreed that it is currently not an issue, but pointed out that under the 1968 Vienna Convention a car is required to have a driver, whereas the MID is silent about the driver. It is important to keep fair and good protection of victims of accidents.

BEUC expressed concerns about the sharing of data and the use of black boxes, which does not necessarily result in lower premiums for policyholders who use such boxes. Insurance Europe alluded to the experience in Italy, where approx. 5 million black boxes are employed and which did result in a reduction of the premiums. FIA agreed that insurers need access to data to determine the circumstances of an accident, but consumers must be aware of who has access to the data and have the right to decide if they want to share their data.

3. Portability of claims history statements

Several participants (e.g. Insurance Europe, UNESPA) said that they did not recognise the problem. UNESPA said that at least 90% of the Spanish insurers will issue statements, if necessary in English. For instance, the FFA said that in the French market there is no such problem; there is a bonus-malus system and insurers give a reduction in premium on the basis of a claims history statement without discrimination. In France, this statement must provide details of the accidents suffered last five years, but it may also contain data referring to a previous period. The FFA does not think that any changes are necessary; it does not support a rule requiring detailed information for a longer period of time. Similarly, ABI stated that in the UK insurers are free to set their no-claims discount policies and should freely decide whether or not to accept claims statements from jurisdictions different driving conditions, etc. ABI believes that at the most a soft obligation (option 2) could be introduced.

GDV, AMICE and Insurance Europe support any option, except option 4, which would entail a rigid EU-wide system of coefficients to be used when calculating *bonus malus* discounts. GDV is flexible on the extension of the period of coverage for the claims history statement. FIA and BEUC support option 3, in particular a regulatory non-discrimination clause. ECF and COB refrained from commenting on this topic.

4. Protection of victims

Participants supported the idea of further action, but rejected the idea of creating an EU-wide guarantee scheme.

COB said that most Member States have in place a system of protection in case of insolvency of insurers through national Guarantee Funds. Others (UK, Romania and Ireland) have other compensation bodies and only Sweden has no any protection scheme. There should be a clearer distinction in the paper between claims of visiting victims under the Green Card system or claims under the 4th Motor Insurance Directive, and insolvency in case of FoS or FoE.

ABI supported EU action to establish a minimum harmonisation directive concerning Insurance Guarantees Schemes. Insurance Europe expressed readiness to look into these issues and asked for further evidence to articulate the problems better.

Several participants (e.g. UNESPA, FIA, FFA, and GDV) considered that the home Member State should be held accountable.

5. Minimum amounts of cover.

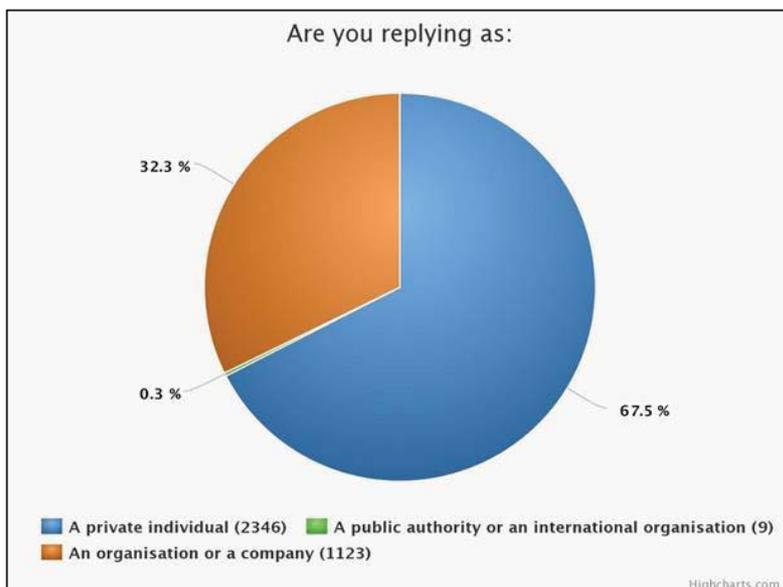
Participants supported streamlining the procedures to adapt and review the minimum amounts of cover. However, the precise minimum amounts are less relevant for certain Member States, which already apply substantially higher minimum amounts (e.g. France, UK, and Spain). Most participants were not convinced of the necessity to introduce a differentiation per type of vehicle and wondered about the possible impact on the level of premiums. The COB observed that the size of the vehicle does not necessarily matter for the possible damage that might be caused, e.g. also low speed bicycles could potentially cause a major accident.

3. PUBLIC CONSULTATION FROM 22 JULY UNTIL 20 OCTOBER 2017

A. Overview of respondents and key data:

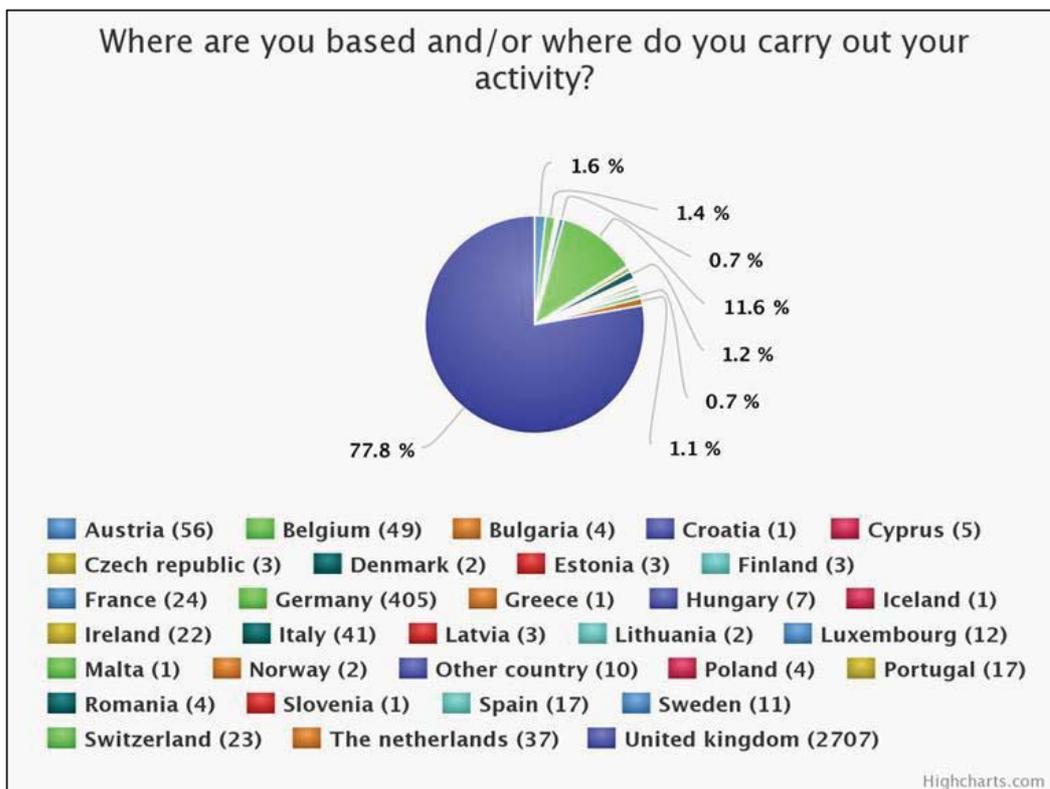
Total responses: 3478

Responses by type of organisation:



- Private individuals: 2346
- Public authorities: 9
- Organisations: 1123

Responses by Member State:



- UK: 2707 (mainly representing the motorsports sector – see below)
- Non-UK: 771
 - Germany: 405 (including many replies which are part of the motorsports campaign)
 - France: 24
 - Belgium 66 (including many replies which are part of the motorsports campaign)
 - Spain 17
 - Netherlands: 37 (including many replies which are part of the motorsports campaign)

Majority of responses call for a particular treatment for the motor sports sector in the Directive, and are presumed (even where this is not explicitly stated) to be inspired by the Motor Industry Association campaign (see part C below). Most (but not all) of these responses are from the UK.

B. Analysis of responses concerning key topics

1. General evaluation of the functioning of the Directive

The majority of respondents considered problematic the number of uninsured vehicles in Europe; this attitude is widely shared by private citizens, industry, consumer representatives and other institutions (national authorities and bureaux). Some respondents perceived a reduction of uninsured driving in recent years, and some of them

gave their reasons to explain the problem of uninsured driving: affordability of premiums in a few Member States and the lack of enforcement. There was however no general support for additional measures in the Directive to reduce the levels of uninsured driving. Certain private citizens suggested several measures, like the increase of the collaboration among national authorities and higher penalties, and consumers associations also supported the access of national police to databases of insured vehicles.

2. Scope of the Directive

An organised campaign from the motor sports industry (Motor Industry Association – see section C below) with coordinated responses calls for an exemption of motor sports from the scope of the Directive, so that vehicles participating in professional or amateur motor sports events would no longer need to have insurance cover in line with the Directive, at least as regards accidents between participating drivers. To achieve this objective, motor sport organisations called on supporters to respond to the public consultation on the basis of a template (see section C of this annex). A majority of responses to the consultation call for the exemption of motor sports. Motor sports stakeholders consider that drivers participating in motor racing are aware of the risks and participate on a voluntary basis and therefore should not be held liable for damage caused to other drivers. They also claim that the requirement of motor insurance for motor racing would make motor racing events prohibitively expensive and risk undermining the whole sector, covering drivers, manufacturers, event organisers etc. As a consequence, in their view it would not be economic to organise or participate in motor racing. However, no concrete evidence was supplied in any of the responses making this point to back up such claims, in light of the fact that certain Member States with an active motor sports sector, such as Finland, already impose such an insurance requirement on motor sports vehicles.

In addition to the comments on scope dedicated specifically to motor sports, two main groups remain. One group of respondents favours limiting the scope to public roads, excluding private property with no public access. The other group of respondents favours linking location and function with the scope, i.e. to traffic and the transport of persons or goods. Both of these positions would also effectively include an exclusion of motor sports activities from the scope, according to the views of the respondents, but also exclude other motor vehicle activities in addition (for instance, accidents caused by agricultural motor vehicles but not directly related to the transport of good of people). Certain issues with excluding private property were pointed out by some respondents: it raises the question of a precise definition and the treatment of publicly accessible private property like car parks. A subgroup proposed to exclude only private property which is not publicly accessible like airports, military bases or closed events.

As for consumer associations, one consumer organisation points out the different interpretations of the scope of the MID in different Member states, and calls for uniformity, order to provide legal certainty to victims. Another consumer association supports a limitation of the scope of the MID to vehicles used in areas to which the general public has access. Almost all consumer associations support an exclusion of motor exports.

Several industry associations (linked with the bicycle sector) also favoured that all forms of bicycle transport, including Electrically Power Assisted Cycles (EPACs), fall outside the scope of the MID.

National Authorities and Bureaux have differing views, a minority supporting a broad scope, covering public and private roads, while a majority prefers a limitation to publicly accessible areas. A small minority of individuals and national insurance associations also support a broad scope also covering private property such as farms and industrial sites.

3. Protection of victims in case of insolvency of a cross-border insurer

The majority of respondents and the insurance industry associations recognise that there is a serious issue with insolvency of cross-border insurers, which can cause delays to compensation of victims of accidents, and that this issue justifies EU-level intervention. Consumer organisations in particular consider it unacceptable that victims might face uncertainty about whom to seek compensation from in the case of an insurer becoming insolvent. One consumer organisation is of the view that the current voluntary agreement does not provide the necessary legal certainty for victims.

Most responses which deal with this subject favour that a fund or compensation scheme in the home Member State of the insurer should have ultimate responsibility for compensation of the victim in such cases. However, in order to ensure speedy compensation, many replies (including most consumer organisations and bureaux) consider that victims should be able to seek compensation from a competent body in the Member State of their residence, which would then have recourse towards the body of the Member State where the insurer has its head office.

The Council of Bureaux takes the view that the body in the Member State where the insurer received its official authorisation should bear the costs of final settlement. It points out however that it is also necessary to ensure proper financing of that body for the cases of insolvency, since in the event of underfunding of the fund, an insolvency could lead to the collapse of the whole system.

4. Transferability of claims history statements

Around 70 individuals reported non-acceptance of their no-claim history statements abroad. Two respondents gave more details and reported the non-acceptance of a French and a Dutch statement, both in the UK. Some other respondents to the consultation, both institutional and private, acknowledge that there is "some" problem but without personal experience.

In general, the insurance industry does not see any need for a change of the Directive on this point⁶⁸. The industry is against any strict obligation on insurers, such as an obligation not to discriminate against policyholders coming from another member State as regards claims history, which is seen as interference in the freedom to calculate premiums. The Council of Bureaux has no position on this issue.

Some stakeholders see a need for standardisation of the format of claims history statements, while others refer to existing non-binding guidelines on this topic published by Insurance Europe, considering them sufficient.

⁶⁸ The Directive currently gives policyholders a right to obtain a statement of their claims history over the last 5 years, but does not impose any particular treatment of such a statement by a new insurer.

No figures were provided by any stakeholders. Only the Czech Insurance Association mentioned that there are only tens of such requests to issue a claims history by policyholders going abroad, and considers that a standardised template would involve excessive administrative costs.

Regarding the period which a claims history statement should cover, the Insurance Association of Luxembourg supports a 15 year period to be taken into account, a standardisation of format and an obligation for insurers to take the claims history statements from other Member States into account. In Luxembourg such an obligation already exists. No other insurance association shares this position.

A few consumer organisations believe that the existing 5-year period is sufficient for assessing a policyholder's driving history. One consumer organisation (BEUC) considers that a longer period would make it harder to verify the accuracy of the claims history statement. Some others consider that 7 or 10 years as applicable in national law is appropriate. All consumer organisations consider that a standardisation of the format of the claims history statement would be welcome. In general consumer organisations consider that claims history should be taken into account for the calculation of premiums in addition to other factors. A few consider this should be mandatory while others consider this should not be compulsory for insurers. A majority of consumer organisations favour more transparency on how claims history is taken into account when calculating premiums. One consumer organisation (BEUC) alleged that many Member States have removed the mandatory use of a bonus-malus system under pressure from the European Commission, arguing that this amounted to unlawful price regulation. However, following a ruling from the European Court of Justice which dismissed the argument above, some Member States (France and Luxembourg) were able to keep the mandatory bonus-malus system, which benefited consumers in those countries. A mandatory and transparent bonus-malus system gives consumers the right incentives to adopt better driving behaviour. BEUC consider that in this perspective, the current review opens a window of opportunity for the Commission to rectify this.

5. Minimum amounts of cover

All respondents are in favour of a minimum amount set at EU level and the same for all Member States. However, a substantial increase in minimum amounts of cover, apart from periodic indexation, was not supported by the majority of stakeholders. Only a few stakeholders would like to see minimum amounts increase significantly, either for all vehicles or some categories of vehicles.

Some industry associations are in favour of higher amounts, which could result in higher premiums, and the differentiation between types of vehicles (electric bikes). The Council of Bureaux supports a differentiation not only based in the type of vehicle that caused the accident but also take into account the type of vehicle that suffered the accident.

Some consumer organisations consider that minimum amounts of cover should be set higher, but another considers that it should remain the same. Some would favour more frequent updating and stressed the importance of Member States being able to set higher amounts. One other consumer organisation considers that differentiation between types of vehicles is not needed if the minimum amounts are sufficiently high and only one consumer association suggested a differentiation of the minimum amounts for trucks transporting dangerous goods. One consumer organisation considered that increase of

minimum amounts would be desirable only if it does not result in an increase of premiums for policyholders.

One Member State expressed concerns that an increase in minimum amounts could potentially lead to increases in MTPL insurance premiums, on the grounds that an increase of minimum amounts would lead to an increase in premiums as insurers would need to guarantee a higher level of coverage in case of accident.

All stakeholder groups supported streamlining of the adaptation procedure providing for inflation.

6. Technological evolution – autonomous vehicles

Currently, autonomous and semi-autonomous vehicles must have motor insurance coverage in line with the MID, as must all traditional vehicles. A great majority of the respondents of all categories who expressed a view on this subject prefer autonomous vehicles to continue to be insured in the same manner as vehicles with drivers, under the MID. However, several questions were raised in this context, the main one being about the ultimate liability of the manufacturer and/or the software insurer (currently, a motor insurer can claim damages if a manufacturer or software insurer is liable for an accident caused by an autonomous vehicle, after having settled the insurance claim itself). Furthermore, the question was raised of who has the final responsibility, the owner or the autonomous vehicle. A few respondents consider that autonomous cars should not be insured for liability in the same manner as vehicles with drivers, while others did not have an opinion on this topic. One concern that was raised was that the transfer of liability to the manufacturer could potentially harm innovation.

7. Other issues covered by the Directive

a) Deemed insurance cover and insurance checks

The majority of respondents support systematic insurance checks on insurance of vehicles by electronic means. Most of them do this subject to compliance with data protection provisions. Some respondents were against this measure. The main reasons cited against such insurance checks were the fear of tracking citizens, compliance with data protection provisions, a dubious added-value concerning the number of uninsured cars and the costs involved. Industry, consumer associations and Bureaux also supported systematic checks on insurance by electronic means without physically stopping the vehicle.

b) Protection of visitors

There was a general support for the current system of protection of visitors, although some respondents disagreed but without giving reasons for their opinions.

The majority of industry associations made a positive assessment of the system, but some of them raised issues regarding the efficiency (delays) and the lower level of protection compared to the Green Card system (which does not cover visitors). A consumer association proposed that it should be possible to sue the liable insurer in front of the courts of the home country of the victims. The Council of Bureaux highlighted that the Directive does not provide for any guarantee system comparable to the one existing in the Green Card System for travelling vehicles. Consequently, claims representatives have

be sure of being reimbursed by an insurer before compensating a victim. Therefore, they usually await the advanced payment of the insurer before compensating the victim. In the interest of victims, it might be useful to consider the guaranteeing of compensations paid by claims representatives to victims.

c) Transfer of vehicles

The question on transfer of vehicles was either not answered or not applicable to most of the respondents. A few mentioned some difficulties without specifying. Some industry associations favoured the current system, but some of them were very critical and proposed to delete Article 15 of MID. This was also the position of the Council of Bureaux. One European insurance association made some proposals to amend and clarify the situation.

Regarding possible simplifications, a few respondents proposed European transfer insurance and EU-wide registration plates for a transfer. One respondent raised the concern that cross-border crime with stolen cars could be encouraged by a too simple transfer procedure.

C. Campaign of responses organised by the Motorsport Industry Association

a) The following message from Chris Aylett, Chief Executive of the Motorsport Industry Association appeared during the consultation at the URL <https://www.the-mia.com/Vnuk-Update>

Vnuk Update - URGENT action needed by October 20th

11 Oct 2017

Your **response** to this real threat to motorsport throughout the EU is required by October 20th. Please take the time to read the information below and continue to the statement from Chris as he explains what the European Commission's Motor Insurance Directive could mean to motorsport.

IMPORTANT LINKS:

[VNUK a danger to the future of motorsport - Your questions answered V4](#)

[MIA Response guidance to Vnuk MID EU Consultation V4](#)

[MIA's complete overview of the Vnuk issue V3](#)

Dear Motorsport friend and colleague,

I do not apologise for the dramatic title as our industry and sport face a serious, immediate problem which you can help resolve.

We have **until October 20th** to respond to this important EC consultation - follow the links above. If we fail to secure the amendment we seek then **the likely outcome is that all motorsport activity, in every EU Member State, will cease.**

All involved in the business and organisation of European motorsport need to act **NOW** to overcome this genuine threat to our own future and that of our employees and sport, from the unintended consequences of action taken by the European Commission (EC).

The Motorsport Industry Association (MIA), along with others including the UK Department for Transport, has been fighting to resolve this issue for more than two years, on behalf of our members and the wider EU motorsport community. Now, with your personal leadership and action, it is possible for us to resolve this, as I fully explain in the documents linked at the top and bottom of the page.

In simple terms, the EC plans to issue a new Motor Insurance Directive, as a result of which all EU Member States must put into their National Law **compulsory and unlimited** third-party liability insurance to cover personal injury between motorsport competitors and car-to-car damage during any competition – from Formula One, Moto GP, World Rally to karting, historic and grass roots, whether regulated by the FIA or FIM or not.

However such widespread unlimited new insurance is not currently, and, we understand, will not in the future be available - so motorsport will be unable to continue anywhere in the EU. [Please read the summary](#) if you wish to fully understand the serious nature of this problem.

Please respond BY OCTOBER 20th to the EC Review Consultation -

https://ec.europa.eu/info/consultations/finance-2017-motor-insurance_en

By using the simple 'MIA Response Guidelines' [which are here](#), this will take LESS THAN TEN MINUTES – a short time commitment to keep motorsport alive, and the jobs it supports, in place.

It is most important that you estimate, if motorsport were to cease, how many jobs will be lost directly from your organisation and indirectly by your suppliers or the sport, as this significant economic impact will influence the European Commission.

I am sharing this with my senior contacts across the European motorsport business community.

May I ask that you help our community by sending a link to this page to your most influential motorsport business and sporting contacts, urgently please? We need all influential individuals, major teams, suppliers and employers in EU and UK motorsport to act - by working together we can change this.

We must make the European Commission fully aware of the economic importance of motorsport and the employment which our sport and industry provides across the European Union.

An unimaginable situation yet true – fighting such battles for the industry was one of the reasons the MIA was originally created and is pro-actively supported by its members.

If you have any questions or comments then please email me and I will respond immediately - **as we must meet the deadline of October 20th.**

Thank you – your immediate help is invaluable and much appreciated

Best regards

Chris

b) The following question and answer document of the Motorsport Industry Association on the ECJ's Vnuk judgement was retrieved at the following URL: <https://www.the-mia.com/assets/vnukadangertothefutureofmotorsport-yourquestionsansweredv4-1.pdf>



Vnuk - an immediate danger to the future of motorsport

Your Questions Answered

How could the 'Vnuk ruling' of the European Court of Justice damage motorsport?

This ruling, made by the Court of Justice of the European Union (CJEU) in September 2014, is in effect now and requires **unlimited** third-party liability insurance to be carried by anyone using any form of motorised transport, in any location, in all EU Member States - this includes **all participants in all forms of regulated or unregulated motorsport** - cars, motorbikes, go-karts, speedway, drag - from grassroots to Formula One.

This **NEW motorsport insurance is compulsory** and must cover **unlimited third-party damage**. This includes personal injury to fellow motorsport competitors during competition, car to car damage to other competitor vehicles, damage to property, as well as injury to marshals, pit crew or spectators wherever the competition takes place within the UK and EU.

Why is this known as the 'Vnuk' ruling?

Mr. Vnuk was the claimant in a case put before the highest Court in the EU in 2014, the ruling from which substantially affects the European Commission's Motor Insurance Directive (MID). The case is Damijan Vnuk v Zavarovalnica Triglav d.d. (case C-162/13) and involved injury from a tractor and trailer in a farmyard.

Surely current motorsport insurance already covers this?

NO - currently, no motorsport insurance, which meets the compulsory requirements of the Directive, is available in the EU, and is not going to be made available. In addition, the new EU Motor Insurance Directive contains many exacting requirements, **all** of which must be met for the insurance to be compliant.

The MIA and the Department for Transport in the UK have had discussions with London-based motorsport insurance specialists which provide most of the current insurance to motorsport organisers and teams across the EU. They are unable to confirm any company who will write motorsport insurance to meet the unlimited levels of liability required by the Directive - the majority believe such risks are, effectively, uninsurable.

Without this new compulsory insurance cover, can motorsport continue?

NO - if the recommended amendment, as explained below, fails to be put in place by the EU Commission then they are likely to start legal proceedings against all Member States who do not fully comply with this Directive.

By far, the most significant impact will arise from the loss of tens of thousands of motorsport jobs across the EU and the UK. The closure of thousands of motorsport-related businesses, who collectively transact more than €25 billion each year, will add to the loss of a sporting activity enjoyed by millions of European people.

What can I do to keep motorsport alive - BEFORE OCTOBER 20th?

This immediate and real threat to motorsport jobs and businesses can be resolved if motorsport organisations and motorsport employers, across all EU States, individually, and collectively, make a clear case to amend the EC Motor Insurance Directive, as part of their current REFIT review - see below... **before October 20th**.

The EU Commission offered Four Options for Amendments in their August consultation. The only Option which will allow motorsport to continue is OPTION 3 - which would restrict the scope of compulsory third party motor insurance to accidents caused by motor vehicles "**in the context of traffic**".

Here is your link to the vital 'REFIT' review of the Directive which closes on October 20th. The MIA has published easy to follow guidance on how to respond to this on www.the-mia.com so please refer to this ASAP.

Links to background information

- The August 2017 EU Commission [REFIT review of the Motor Insurance Directive](#)
 - Response given by the [Motorsport Industry Association](#)
 - Response given by [Department for Transport \(UK\)](#)
- [The October MIA's complete overview of the Vnuk issue](#)

c) The following guidance by the Motorsport Industry Association for responses to the public consultation on the MID was retrieved at the URL: <https://www.the-mia.com/assets/miaresponseguidancetovnukmideuconsultationv4.pdf>



EU Commission Public consultation on REFIT Review of Directive 2009/103/EC on motor insurance (VNUK)

Response guidance from the MIA

Your response before 20th October is VITAL

To enter your answers and respond to this consultation will take **no more than TEN minutes** if you use each step of this MIA guidance as a base for your response. You could even 'cut and paste' some of the words we provide to reduce this time if you wish. Please email carly.latcham@the-mia.com if you have any questions.

Please note - only responses received through this EU Commission online questionnaire will be taken into account and included in the report summarising the responses. They ask that you indicate the expected economic or social impact on your organisation's activities and provide 'evidence' if possible.

Step 1

Go to this EU Commission webpage - https://ec.europa.eu/info/consultations/finance-2017-motor-insurance_en

Step 2

Under 'View the Questionnaire'...Click the link – 'Respond to the Consultation'

Step 3

- a) Read the information which is given then click ... 'next'
- b) Complete Section 1. Information about you as follows...
 - a. Under 'are you replying as:' ... select 'an organisation or company'
 - b. Under 'where are you based' ... chose the country of your HQ or main operations.
 - c. Under 'field of activity or sector:' ... select 'other'... then click 'next'
- c) Under 'Important Notice on the publishing of responses' - select your own choice of response
- d) Then click... 'next'

Step 4

Under Section 2. 'Your opinion'...

Scroll down through Section A to reach 'Section B - Questions to Businesses, Business and Consumer Associations' ...continue scrolling down until you reach '**B.2.7. SCOPE**' – and read the detail associated with the Scope section.

Step 5

You only need to answer Questions 27, 28, 29, 30, 31 and 32. Our suggested responses which cover the essential issues follow. Please change these to suit your business and add additional comments to your answers, as you wish.

Q27: Answer - 'No... it should only apply to public roads, not private property'.

Q28: Answer - 'No – exempting/derogating motorsport vehicles from the requirement of the Directive does not mean the liability goes away. The number of accidents between motorsport vehicles is far more regular than in traffic conditions due to the competition. In the event of a claim where 'derogated/exempted vehicles' are in use, it falls to either the National Guarantee Fund, or a similar organisation, to compensate the victim from a central fund. So if motorsport vehicles were to be exempted, the subsequent cost of claims arising uninsured motorsport activities would dramatically increase the amount of compensation being paid by one of these funding options (e.g. MIB in the UK), so requiring a significant increase in the size of the fund being raised from road-user insurance. Transferring the cost of this solution, arising from accidents in motorsport, onto the road-going motorist would be unfair when considering the increased risk which competitive motorsport use represents when compared to the normal use of a road-going motor vehicle.'



Q29: Answer - 'All vehicles used for motorsport activities'

Q30: Answer – 'No - motorsport activities should not be covered by compulsory Motor Third Party Liability (MTPL) insurance'

Q31: Answer – 'No.... compulsory Motor Third Party Liability (MTPL) insurance should not cover accidents that occur in areas which the public are not allowed to access'

Q32: THIS IS YOUR VERY IMPORTANT OPPORTUNITY to explain the impact on your organisation if motorsport ceased across the EU and the UK due to their being no availability of the required insurance. Please show what job and sales revenue will be lost, directly and indirectly. Some of the words below may help you to answer this question.

- As no Motor Third Party Liability (MTPL) insurance will be available to cover motorsport activities, motorsport would cease to exist. As a direct result, XXX employees would lose their jobs in my organisation and many more jobs would be lost in my XXX suppliers in the EU and the UK. The forced closure of European motorsport will be a direct consequence of this Directive unless the wording is amended as requested.
- It is estimated, by the Motorsport Industry Association (MIA), that more than €25 billion of sales in motorsport would be lost across EU member states and, based on their research in 2000/02/13/14, some 50,000 motorsport-related jobs will be lost in the UK alone and tens of thousands more throughout EU Member States.
- We strongly support your Option 3 as being the correct interpretation and that the place of use should be defined as being 'in traffic only', as defined in the REFIT review of the Motor Insurance Directive Impact Assessment. It is not the 'function of the vehicle' which matters but the 'place of the vehicle' is in use.
- Principle 6 of the IOC's Olympic Charter specifically states "the practice of sport is a human right". The EU's revised European Sports Charter of 2001 confirmed the importance and social value of sport and their European Economic and Social Committee in 2011 stated "sport contributes to the cultural and social life for both the individual and society as a whole"
- In Article 6 and Article 165 of the Lisbon Treaty on the Functioning of the European Union (TFEU), the importance of sport is legally acknowledged, and the promotion of sport as an EU objective is emphasized. Article 165 calls on the EU to "contribute to the promotion of sporting issues, while taking into account the specific nature of sport, its structures based on voluntary activity and its social and educational function".

Step 6

Then Click...'next' ...then click 'Submit' ... your response has now been submitted to the EU Commission.

Please note - your complete response must be sent by 20th October 2017.

Thank you, on behalf of the Motorsport Industry Association (MIA) www.the-mia.com for taking part and helping to keep motorsport alive and our many employees in work too.

Chris Aylett, CEO MIA

Links to useful background information, if needed

- Printable PDF version of This EC Consultation Review - [Consultation Document](#)
- August 2017 - [REFIT review of the Motor Insurance Directive](#) – Impact Assessment Consultation
 - o [Feedback from: Motorsport Industry Association](#) – MIA feedback to the above
 - o [Feedback from: UK Government](#) – Department for Transport feedback on the above
- October 2017 [MIA Summary of the European Commission Vnuk and the future of Motorsport](#)

ANNEX 3: WHO IS AFFECTED AND WHY?

1. PRACTICAL IMPLICATIONS OF THE INITIATIVE

The main stakeholders affected are as follows:

1. Victims of motor accidents within the EU

In general, the proposed package will improve the protection of victims of motor accidents within the EU.

Victims of road accidents where the insurer of the responsible vehicle is insolvent will under the preferred option be protected at the same level as accidents involving an uninsured or untraceable vehicle. This will ensure that the victim obtains the same high level of protection provided in the MID based on the levels of compensation in the Member State of the accident, in any event at least that of the EU-wide minimum amounts laid down under Article 9 of the MID; Furthermore, the victims will be able to claim compensation in the Member State of their residence and obtain compensation by the designated national compensation fund.

There will also be a smaller risk of becoming a victim of an accident involving an uninsured vehicle from another Member State, as the level of cross-border uninsured driving should decrease. Victims will be more often compensated by insurers and be less often required to obtain compensation from national compensation funds.

Victims will also benefit from uniformly applied minimum amounts of cover ensuring better protection, especially if they are victim of an accident in a Member State which currently has a lower level of cover.

2. Policyholders of MPTL policies for motor vehicles

Policyholders will benefit from reducing numbers of uninsured drivers if Member States choose to introduce unobtrusive insurance checks. A reduction of the number of uninsured drivers could reduce the cost of claims paid by Compensation Bodies due to uninsured driving. As the number of insured drivers should increase, this should over time lead to a reduction of premiums due to the fall in levies on insurance policies to fund the Compensation Bodies.

Policyholders residing in Member States which currently have lower minimum amounts of cover might be affected by a slight increase in premiums due to the alignment of minimum amount across Member States. However, the increase should be limited as

minimum amounts of cover are only one factor among many others to determine motor premiums. The insurers in these Member States must have factored in potential high level of compensation when travelling to another Member State, because in these cases, the minimum amounts applicable in visited Member States apply.

Policyholders relocating across borders will also benefit from the harmonisation of claims history statements and the non-discrimination requirement when they apply for motor insurance in another Member State. They are expected to benefit from wider acceptance of claims history statements and to obtain the same treatment as domestic policyholders.

3. Insurers providing MPTL insurance

For insurers, introducing a system that mandates the "front-office" and "back-office" responsibility in case of insolvency of the insurer would be beneficial as it provides legal certainty on the initial and ultimate settlement of the claims, thus reducing the need for legal proceedings. It would also clarify to which compensation body they would need to make contributions to cover claims in case of their insolvency.

This system will provide legal certainty for those insurers which operate across-borders and avoid "double contributions" to both home Member state and host Member State, as the home Member State is identified as the ultimate responsible body for claims following the insolvency of the insurer.

For insurers, higher minimum amounts of cover in certain Member States would have a limited effect, given the small amounts of increases, and the fact that the cost of most accidents does not breach the current minimum amounts. The preferred option would entail limited upward changes in the level of minimum amounts of cover, in a limited set of Member States.

As regards uninsured driving, the actual impact on insurers would depend on the reduction of uninsured driving due to the optional unobtrusive checks. Insurers would benefit from lower contributions to national guarantee funds as there will be fewer claims of uninsured drivers. In addition in a competitive market they might consider lowering levels of premiums.

On claims history statements, the proposed harmonisation of templates will most likely require modifying existing templates. This will most likely entail only limited initial compliance cost as the Directive already today requires insurers to provide a claims history statement to policyholders if they move to another insurer. The harmonised template would allow easier verification of the authenticity of claims history statements issued by a foreign insurer and reduce fraud, thus saving cost for insurers.

4. National Compensation and Guarantee Bodies

For National Compensation/Guarantee Bodies, introducing a system that mandates the front and back-office in case of insolvency of the insurer would be beneficial as it provides legal certainty on the initial and ultimate settlement of the claims, reducing the need for legal proceedings.

For national compensation bodies, higher minimum amounts of covers would have a neutral effect. An increase in minimum amounts could increase costs of claims due to untraceable or uninsured vehicles. This would require increased contributions by insurers and/or policyholders. However, this would only affect national compensation bodies where the current minimum amounts would require modifications and to a limited extent.

As regards uninsured driving, the actual impact on national guarantee bodies depend on the reduction of uninsured driving due to the unobtrusive checks. A smaller number of cases could lead to reductions in administrative costs.

National compensation bodies are unaffected by the proposed measures on claims history statements.

5. Member States

As regards insolvency of an insurer, Member States will have to designate a body responsible for the initial compensation of a victim resident on their territory ("front office") and a body with ultimate financial responsibility for an insolvent insurer established in their territory ("back office").

As the proposed option follows broadly the principles outlined in the COB voluntary agreements, for a majority of Member States this would require limited operational changes to the current system. However, Member States which are not part of the voluntary agreements, have retracted or have derogations or exceptions, would need to adapt their rules to the new system.

Member States should ensure that the body of the Home Member State is sufficiently financed by industry contributions to cover the costs of claims in case of insolvency of the insurers which are under their supervision. This requires giving that body the power to oblige contributions from insurers.

As regards uninsured driving, Member States will be allowed to conduct unobtrusive checks of the insurance obligation for vehicles with a foreign number plate entering their territory. Based on their needs, they can determine the extent of the checks, and determine with which Member States they would set up a system of exchange of information. This allows Member States to address uninsured driving and at the same time limit the costs of setting the system of checks and exchange of information. It can be expected that they would most likely set up exchange of information with bordering countries.

Member States would be unaffected by the changes in minimum amounts.

Member States remain unaffected by changes on claims history.

2. SUMMARY OF COSTS AND BENEFITS

<i>I. Overview of Benefits (total for all provisions) – Preferred Option</i>		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
<i>Direct benefits</i>		
Guaranteed initial compensation of a victim in case of insolvency of an insurer	EUR 500 000 – 2.5 million ⁶⁹ annually	<p>Avoids potential litigation over both initial and final payment.</p> <p>Avoids delays of compensation of victims due to litigation. Compensation in line with the time limitations set out in the MID.</p> <p>Ensures full compensation of victims in line with the requirements set out in the MID. Avoids partial or no compensations.</p> <p>Accounts for public costs of trial as well as costs of litigation to parties.</p>
Equal minimum amounts of cover	Not quantifiable	Setting equal amounts of minimum cover will not gain any direct cost-savings. Policyholders / victims will benefit in the case of accidents where the total amounts would currently not be covered. ⁷⁰
Allow non-obstructive motor insurance checks	Potentially EUR 835 – 870 million annually (upper bound) ⁷¹	The foreseen amendment will merely remove the current ban on insurance checks. As such, it remains unclear how many Member States will implement such checks.

⁶⁹ Based on 5-year average number of insurer insolvencies (approximately one per year), available data on reimbursed sums in past insolvency cases (since 1998) and European Commission estimates on costs of litigation. Costs considered include: court fees, lawyer's fees, bailiffs' fees, expert fees and (potential) translation fees.

⁷⁰ Quantification of this effect is not possible due to lack of micro data on the frequency of cases and amounts concerned in the respective Member States.

⁷¹ Based on EREG and Council of Bureaux estimates in 2011; The benefit will depend heavily on the amount of Member States adopting such checks, the amount of cross-border traffic in these Member States and the effectiveness of the checks imposed.

		The figures are based on estimates of claims in relation to uninsured driving. Given that not all Member States will impose checks and that such checks will not be able to capture all cases of uninsured driving, a figure in the range of EUR 250 – 500 million appears more realistic in practice (possibly to increase over time as more Member States adopt checks).
Non-discrimination requirement for the treatment of claims history	EUR 4.2– 12.7 million ⁷²	Policyholders moving to another Member State will benefit from lower premiums as there will be no discriminatory treatment of claims histories. The figure assumes that 10% of drivers are currently affected by discriminatory treatment.
<i>Indirect benefits</i>		
Allow non-obstructive motor insurance checks	Not quantifiable	Policyholders will ultimately benefit in terms of lower premiums as insurers pass on savings from fewer uninsured claims. The pass-on rate will crucially depend on the competition of insurers in the respective Member State and the extent to which Member States actually impose such checks. There is insufficient data available to estimate this effect with reasonable accuracy.

<i>II. Overview of costs – Preferred option</i>							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
<i>Set out rules on initial compensation of victims</i>	Direct costs				Minimal increase of costs due to annual contributions	The rules will have cost implications for	Minimal additional costs due to compensations in case

⁷² This estimate is based on the EU average premium paid (EUR 250 – Source: Insurance Europe), the amount of people of working age moving to another Member State per year (1,692,000 in 2014 – Source: ESTAT) while assuming that 20% of people are affected by discriminatory treatment of claims history and that premiums will be 10-30% higher compared to cases where the claims history is effectively taken into account.

<i>and ultimate responsibility for the claim</i>					to national guarantee funds.	national guarantee funds that will now have to reimburse victims	of insolvency of insurer
	Indirect costs		Possible increase in premiums due to increase of contributions of insurers to compensation bodies				
<i>Set equal minimum amounts of cover</i>	Direct costs					Affected Member States will be required to increase minimum amounts and related national legislation	
	Indirect costs		Possible small increase in premiums in a minority of Member States	Insurers in Member States affected by an increase in minimum cover will face have to recalculate insurance premiums			In affected Member States, compensation funds have to reimburse victims in accordance with minimum amounts

<i>Allow non-obstructive motor insurance checks.</i>	Direct costs					Member States opting to introduce checks will be required to set up respective systems and face corresponding costs	The operation of insurance check systems will require maintenance, replacements and upgrades on a regular basis
	Indirect costs						
<i>Impose a non-discrimination clause for the treatment of claims history statements and a disclosure requirement</i>	Direct costs			EUR 4.0-8.1 million ⁷³ Adaptation of templates to the harmonised format; information to policyholders about their rights			
	Indirect costs						

⁷³ This estimate assumes that the change of template would require, on average, the equivalent of 1-2 weeks FTE per insurer in order to carry out the necessary changes to IT systems (assuming an average annual salary of EUR 75,000), plus an additional EUR 2,500 – 5,000 to cover other administrative and legal costs.

3. SUMMARY OF QUALITATIVE ASSESSMENT OF MACRO-ECONOMIC IMPACTS

The table below summarizes the macro-economic the different policy options.

Table 3: Summary of qualitative assessment of macro-economic impacts

Topic	Expected macro-impact High/Medium/Low	Impact drivers	Rationale/assessment
Insolvency	Low	Number of insolvency cases of MTPL insurers (domestic and cross-border)	The frequency of cross-border insolvencies of insurers will not be impacted by this initiative, which only deals with consequences of insolvency. Only the largest insurance insolvencies worldwide (e.g. AIG) have macro-economic significance.
Minimum amounts of cover	Low	MS with lower minimum amounts are required to align upward Possible impact on level of premiums in those MS	Impact on premiums is very limited, and unlikely to have any impact on purchasing power or consumption in those Member States concerned.
Claims history	Low	Amount of persons moving across-border requiring new MTPL insurance Compliance cost for insurers	No evidence that problems with MTPL insurance have had any impact on cross-border mobility of individuals.
Uninsured driving	Low	Amount of uninsured drivers: both at national level and cross-border level Cost of claims due to accidents with uninsured driver covered by compensation bodies Contributions from insurers to compensation funds to cover the cost of claims due to uninsured drivers Price of MTPL insurance for	Amount of uninsured driving is very distinct by Member State. Some Member States Costs of claims from cross-border cases estimated at EUR 830-870 Million per year Cost of claims affects contributions of insurers to compensation funds Contributions on claims due to uninsured driving affect the price of

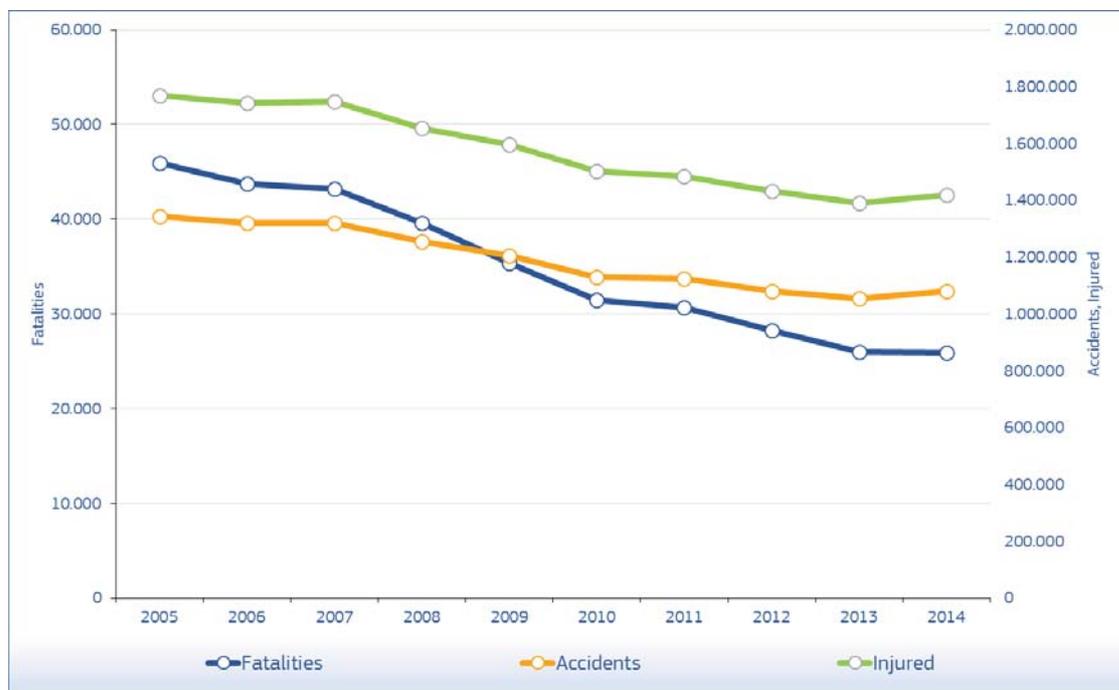
		all drivers to cover the cost of claims	motor insurance.
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**ANNEX 4: MARKET DATA DESCRIPTION AND ANALYTIC MODELS USED
TO PREPARE THIS IMPACT ASSESSMENT.**

1. Overview of road fatalities in the EU

The data from the CARE annual report of 2016 show that there is a downward evolution of accidents and fatalities which stabilised in 2014. It also shows a relationship between road accidents, fatalities and injuries. In 2014 there were more than 1 million road accidents in the EU and more than 25,000 road fatalities and approximately 1.4 million injured.

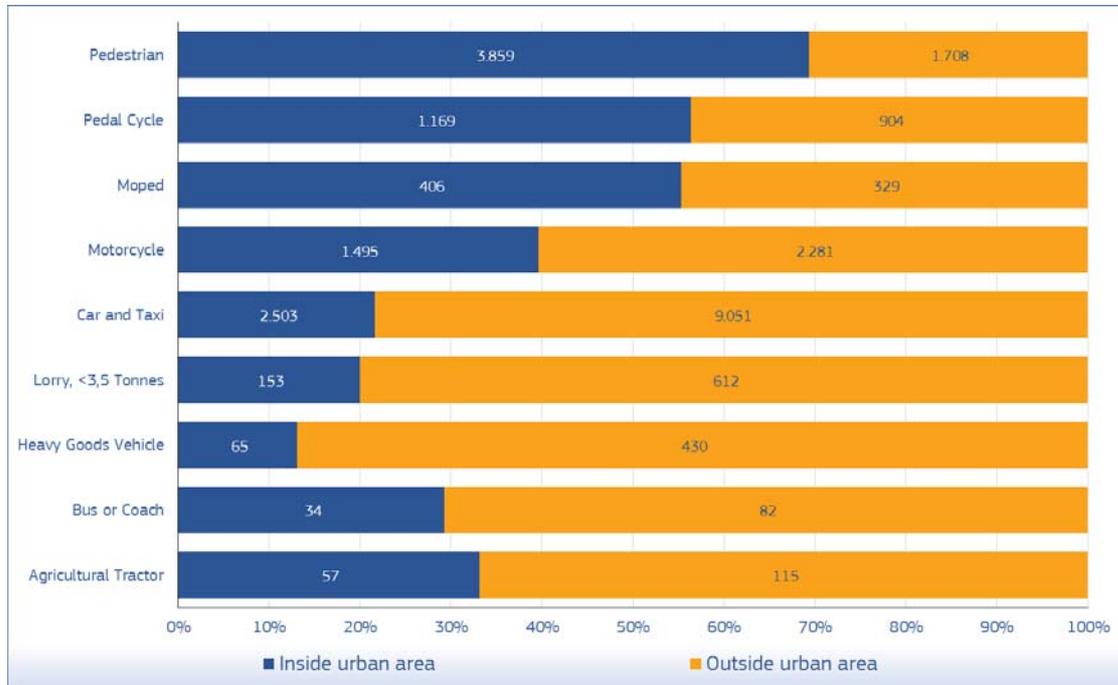
Figure 1.1: Annual number of fatalities, injury accidents and injured people in the EU, 2005-2014



Source: CARE Annual Report 2016, available at: https://ec.europa.eu/transport/road_safety/sites/roadsafety/files/pdf/statistics/dacota/asr2016.pdf

The figure below shows the split in fatalities by mode of transport. It shows that the majority of fatal road accidents involve cars or taxis, pedestrians and motorcycles and pedal cyclists. They are followed in total number of fatalities by accidents with lorries or heavy goods vehicles, buses or coaches as well as agricultural tractors.

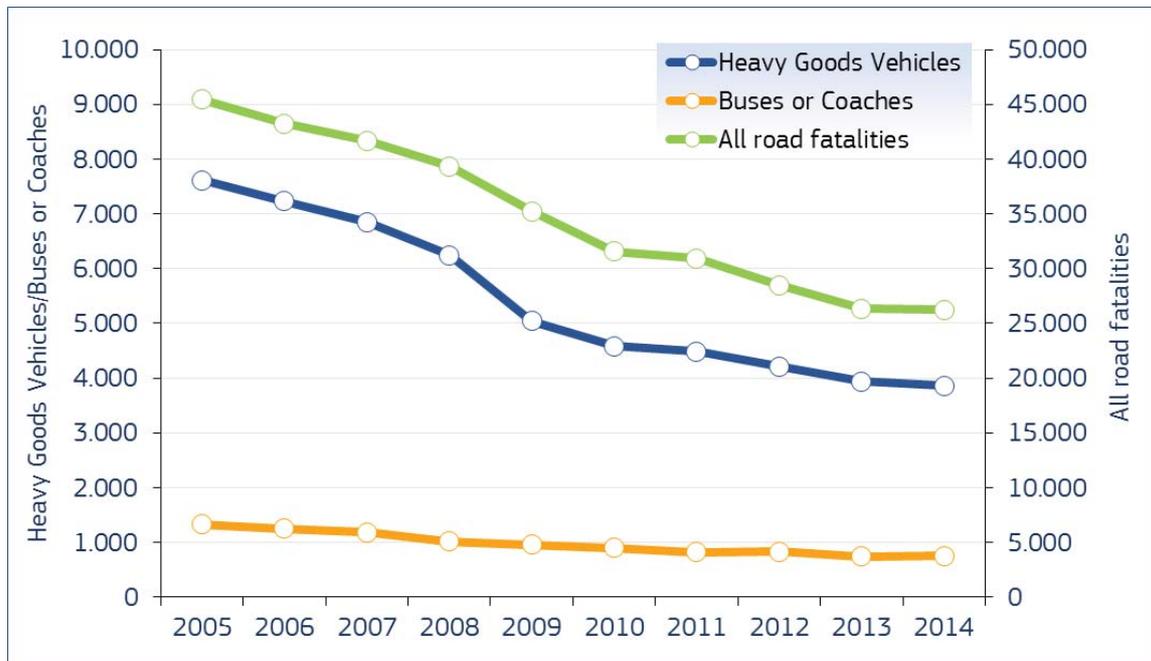
Figure 1.2: Fatalities by type of area and mode of transport in the EU, 2014



Source: CARE Annual Report 2016, available at: https://ec.europa.eu/transport/road_safety/sites/roadsafety/files/pdf/statistics/dacota/asr2016.pdf

Not only are there differences in the fatalities by type of vehicle, there are also changes in fatalities by types of vehicle over time as shown in the figure below.

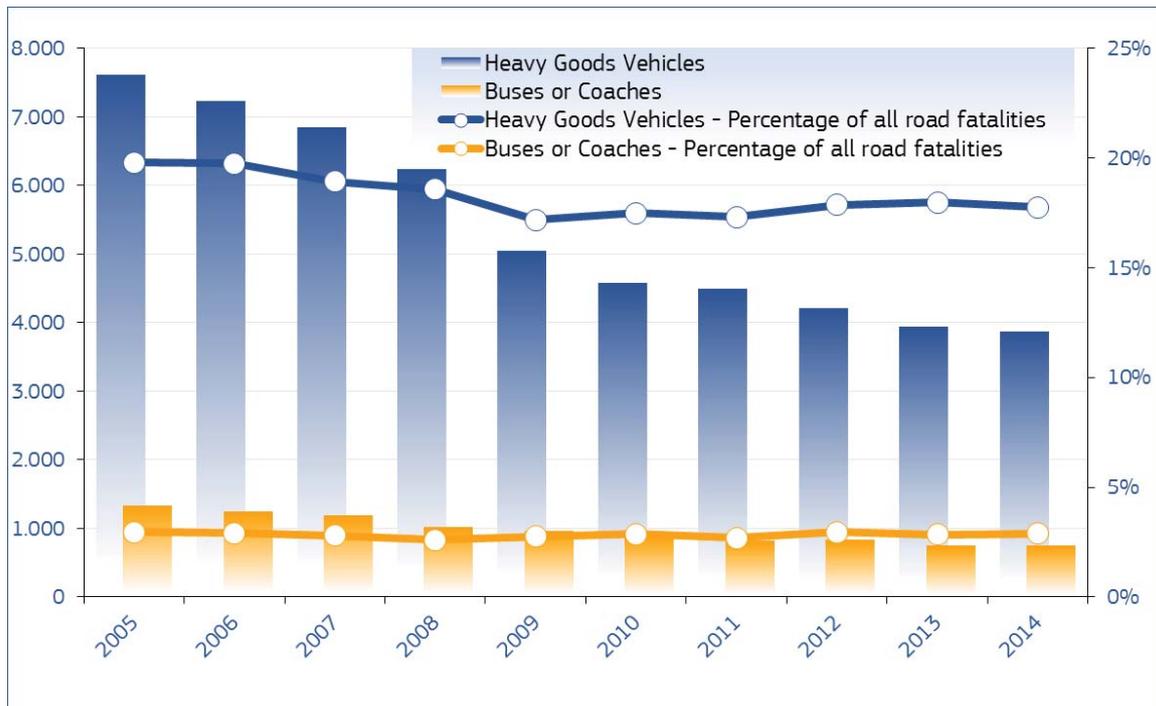
Figure 1.3: Number of fatalities in accidents involving Heavy Goods Vehicles and buses or coaches and all road fatalities, EU, 2005-2014



Source: CARE database, data available in May 2016, available at: https://ec.europa.eu/transport/road_safety/sites/roadsafety/files/pdf/statistics/dacota/bfs2016_hgvs.pdf

The figure 1.3 presents the number of people killed over the last ten years in accidents involving buses and coaches. The number of fatalities in these accidents in the EU fell from over 1,333 in 2005 to 751 in 2014, a fall of almost 50%. Both fatalities of accidents with heavy goods vehicles and buses or coaches have fallen in parallel, with approximately five times as many people fatalities per year in accidents involving Heavy Goods Vehicles as in accidents involving buses or coaches.

Figure 1.4: Percentage of fatalities in accidents involving Heavy Goods Vehicles and buses or coaches of all road fatalities, EU, 2005-2014

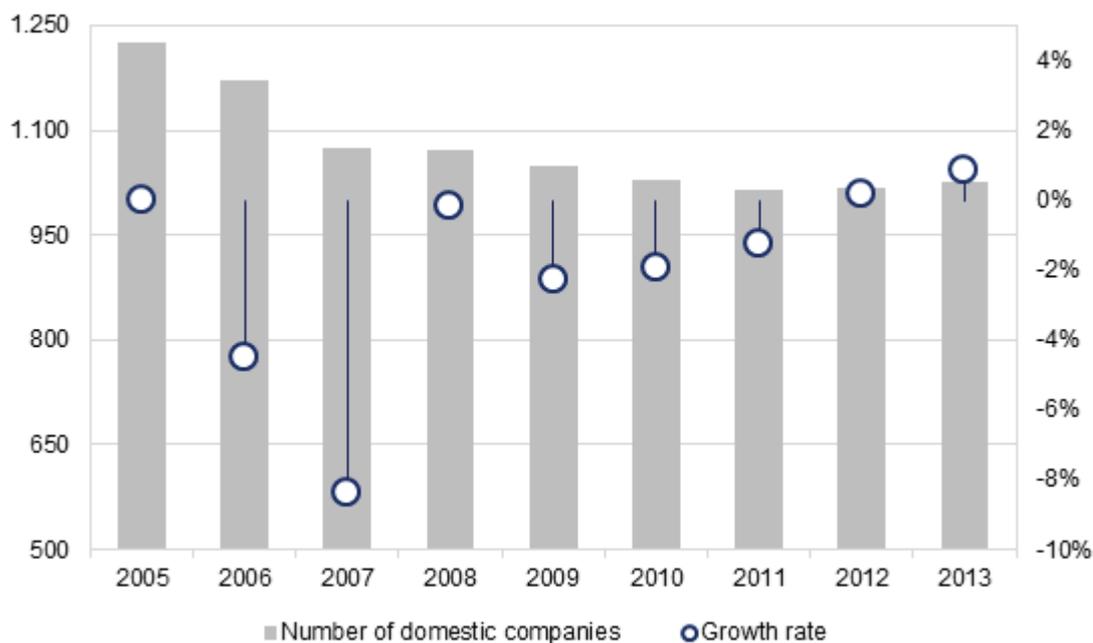


Source: CARE database, data available in May 2016, available at: https://ec.europa.eu/transport/road_safety/sites/roadsafety/files/pdf/statistics/dacota/bfs2016_hgvs.pdf

The figure above present the percentage of fatalities in accidents involving Heavy Goods Vehicles (HGV) and buses or coaches of all road fatalities. Whereas the number of fatalities in accidents involving HGVs and buses or coaches fell by nearly 50% between 2005 and 2014, the percentage of fatalities in accidents involving HGVs and buses or coaches did not decrease considerably.

2. Motor Insurance Market: Key data

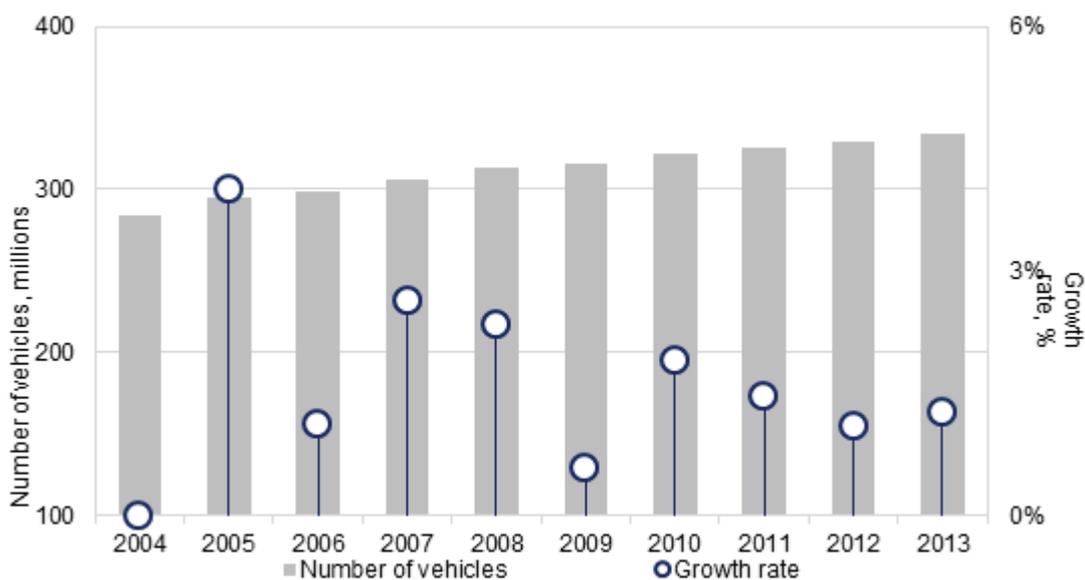
Figure 2.1: Number of domestic insurance companies in the EU



Source: Insurance Europe, European Motor Insurance Markets, November 2015

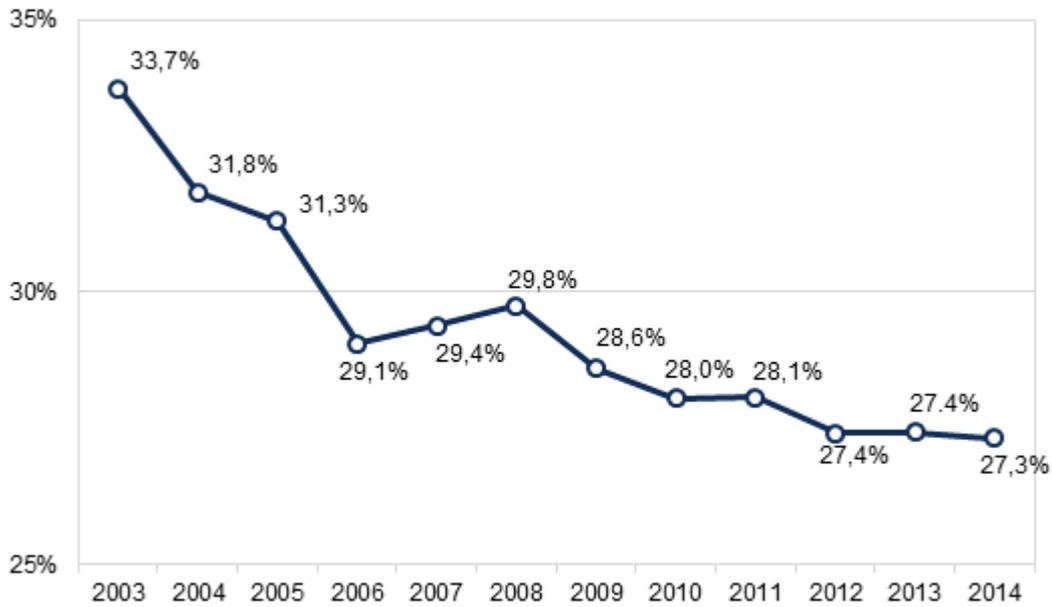
In total there were 1026 insurance companies in the EU.

Figure 2.2: Number of motor vehicles in the EU and growth rate



Source: Insurance Europe, European Motor Insurance Markets, November 2015

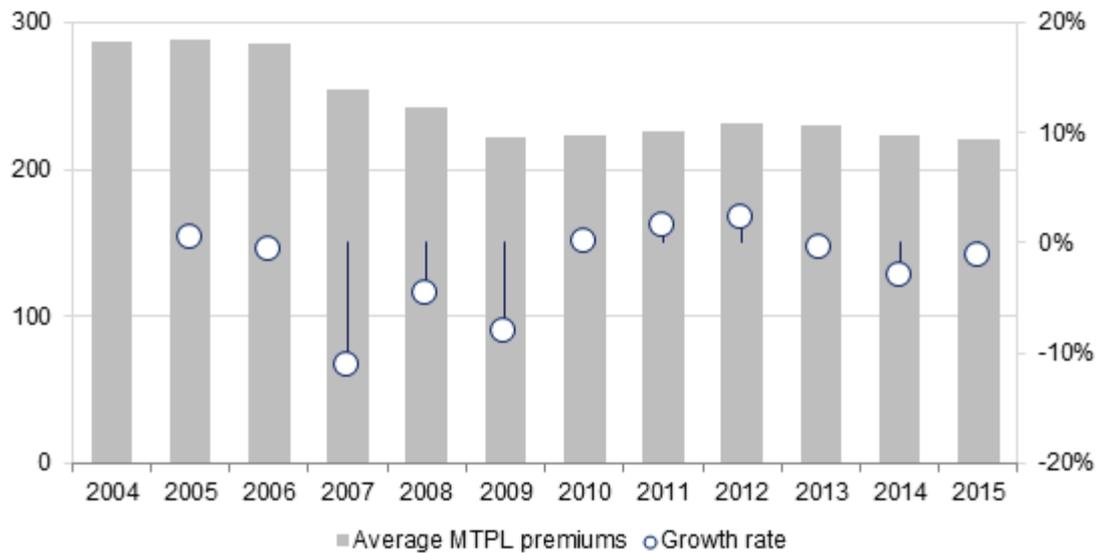
Figure 2.3: MTPL premiums as proportion of non-life market



Source: European Motor Insurance Markets Addendum, Insurance Europe, June 2016

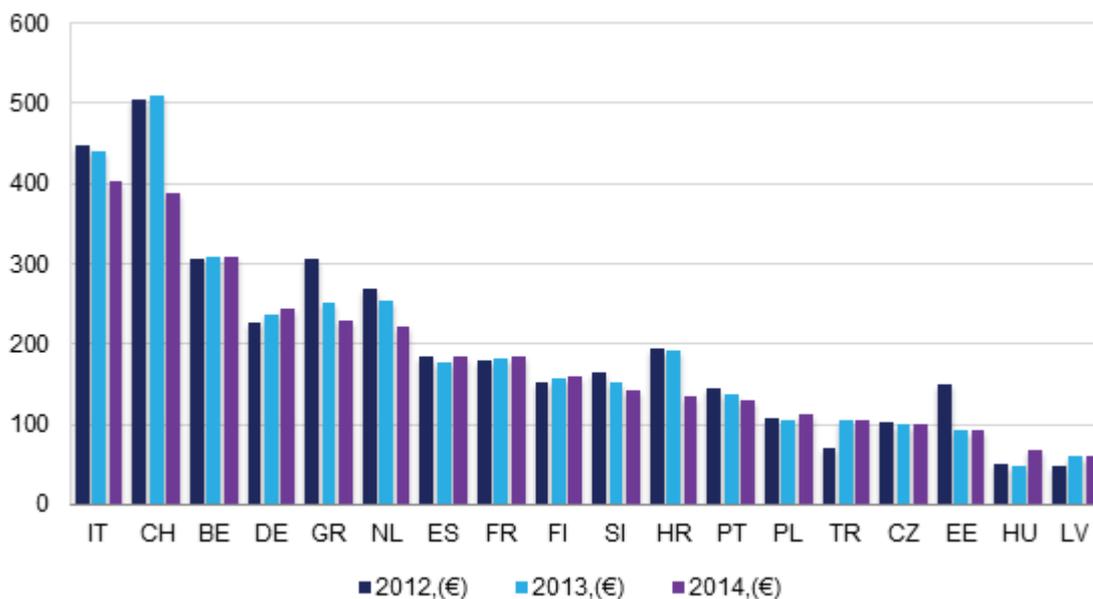
3. MTPL motor insurance: key data

Figure 3.1 : Evolution of average MTPL premiums (in EUR) (2004-2014)



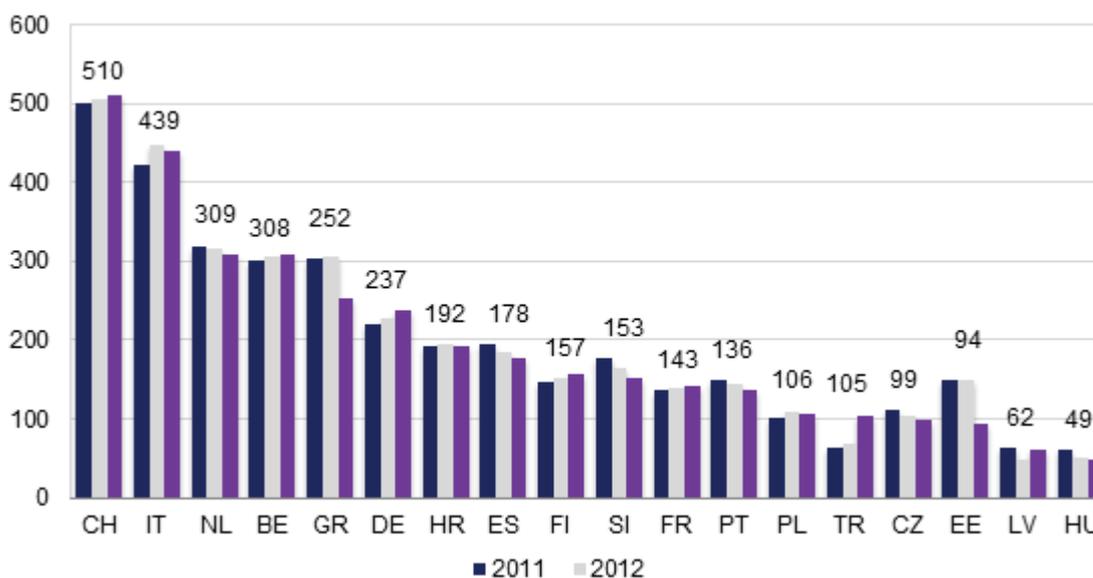
Source: European Motor Insurance Markets Addendum, Insurance Europe, June 2016

Figure 3.2: average MTPL premiums by Member State



Source: European Motor Insurance Markets Addendum, Insurance Europe, June 2016

Figure 3.3: Average MTPL premiums by Member State PPP adjusted.



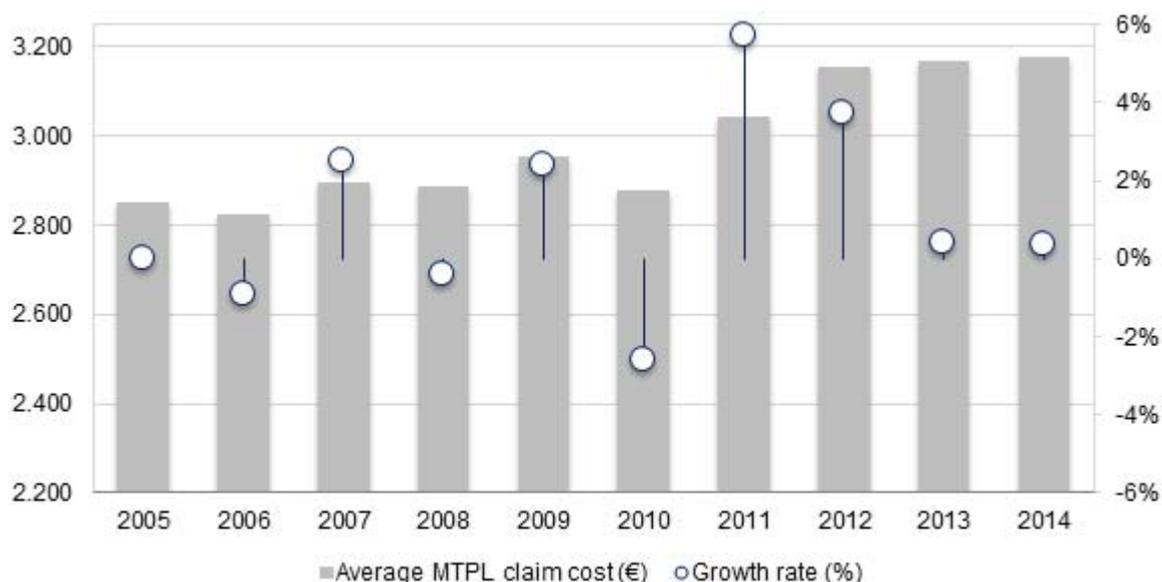
Source: Insurance Europe, European Motor Insurance Markets, November 2015

Figures 3.1, 3.2, and 3.3 above provides an overview of the average MTPL premiums in the EU. While the EU average is around 250 euros, there are considerable difference between Member States. Figure 5 shows that lowest premiums are observed in Hungary, set at EUR 49 in 2013 compared to Italy where MTPL insure amount EUR 439 in purchasing power parity.

Taking into account that in some Member States (BE, DE, DK, FI, IE, LU, SE, SK, UK) the minimum amount of cover considerably higher than those foreseen in the directive, there does not seem to be a direct correlation between the minimum amount of cover and MTPL premiums.

4. Costs of MTPL Claims

Figure 4.1: average MTPL claims costs, 2005-2014

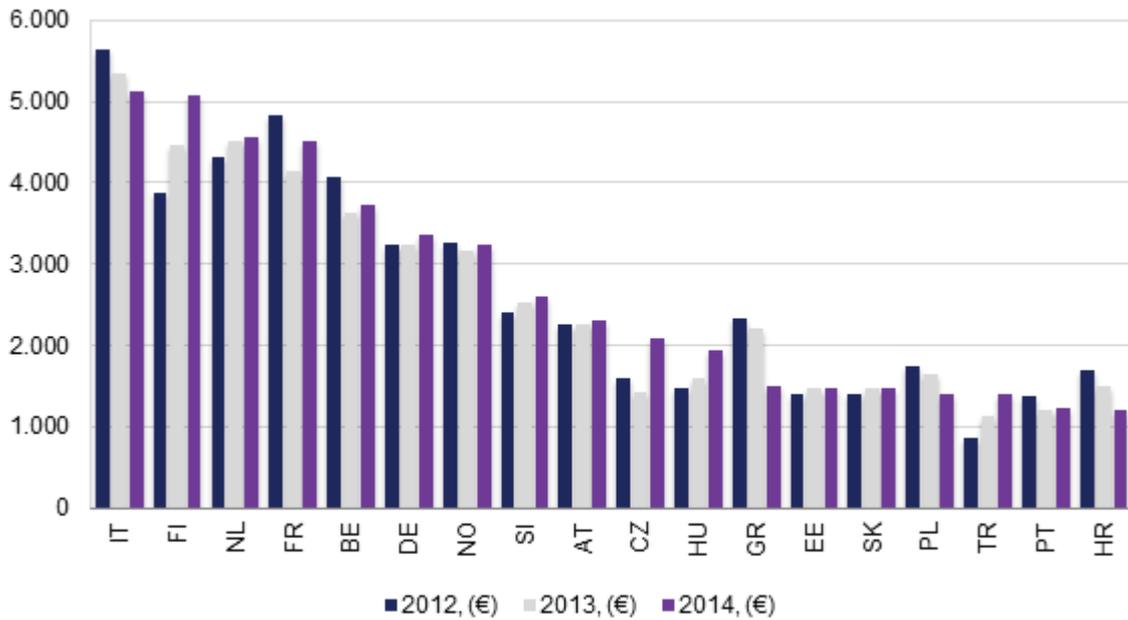


Source: European Motor Insurance Markets Addendum, Insurance Europe, June 2016

As shown in the figure above, the cost of claims has gradually increased in the period 2005-2013 reaching EUR 3.200. Following a steep hike between 2010 and 2012 the overall cost of claims has been stabilised since 2012.

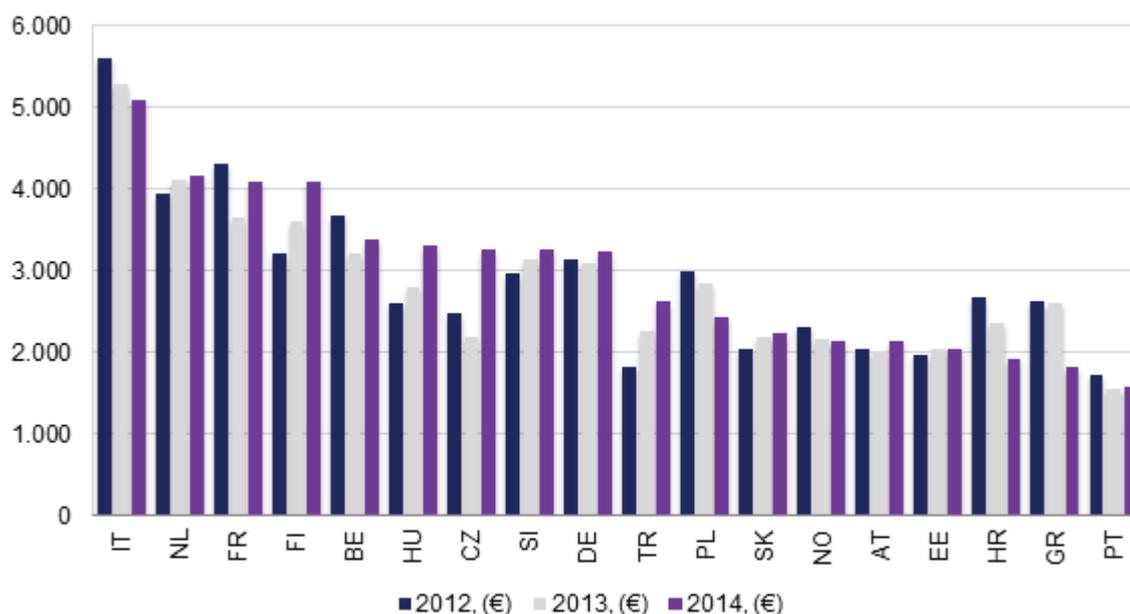
However as is the case with premiums, there are considerable differences between Member States as regards the cost of claims. While in a number of Member States (HU, PT, PL, SK, EE, CZ), the average cost of MTPL claims is around EUR 1000, in some others, (DE, BE, NL, FI, IT) is beyond EUR 3000. In Italy, the average cost of MTPL claims is EUR 5000.

Figure 4.2 average MTPL claims costs, by Member State, 2012-2014



Source: European Motor Insurance Markets Addendum, Insurance Europe, June 2016

Figure 4.3: average MTPL claims costs, by Member State, PPP adjusted



Source: European Motor Insurance Markets Addendum, Insurance Europe, June 2016

Impact of changes of minimum amounts of cover

Table 4: Current levels of minimum amount of cover (2015 data *)

Country	Personal Injuries (in EUR)		Material Damage (in EUR)	
	Per person	Per claim	Per person	Per Claim
BE		Unlimited	111.802.803	111.802.803
BG	1.022.584	5,112, 919		1.022.584
CZ	1.294.762*		1.294.762*	
DK*		15.281.092*		3.083.027*
DE		7.500.000		1.120.000
EE		5.600.000		1.200.000
IE		unlimited		1.120.000
EL	1.000.000			1.000.000
ES		70.000.000		15.000.000
FR		unlimited		1.120.000
HR*		5.603.251*		1.120.650*
IT		5.000.000		1.000.000
CY*		33.540.000*		1.120.000*
LT		5.000.000		1.000.000
LV		5.000.000		1.000.000
LU		unlimited		unlimited
HU		5.123.771*		1.601.178*

MT		5.000.000		1.000.000
NL		5.600.000		1.120.000
AT		5.800.000		1.200.000
PL		5.000.000		1.000.000
PT		5.000.000		1.000.000
RO		5.000.000		1.000.000
SK		5.000.000		1.000.000
SI		5.000.000		1.000.000
FI		unlimited		3.300.000
SE*		32.342.921*		32.342.921*
UK		unlimited		1.442.880

Source: CoB 2015* actual levels of minimum amount could be different due to an update of minimum amounts in 2016 following a Commission Communication (COM/2016/0246 final) and changes in exchange rate not reflected in this table.

Table 5: Estimated changes for personal injuries by Member State (based on 2015 levels*)

Country	Personal Injuries			
	current applicable amount (in EUR)		New amount of cover (in EUR)	
	Per person	Per claim	Per person	Per claim
MID amount	1,220,000	6,070,000	1,220,000	6,070,000
BE		Unlimited		Unlimited
BG	1,022,584	5,112,919	1,220,000	6,070,000
CZ	1,294,762		1,294,762	
DK*		15,281,092		15,281,092
DE		7,500,000		7,500,000
EE		5,600,000		6,070,000
IE		unlimited		unlimited
EL	1,000,000		1,220,000	
ES		70,000,000		70,000,000
FR		unlimited		unlimited
HR*		5,603,251		6,070,000

IT		5,000,000		6,070,000
CY*		33,540,000		33540000
LT		5,000,000		6,070,000
LV		5,000,000		6,070,000
LU		unlimited		unlimited
HU		5,123,771		6,070,000
MT		5,000,000		6,070,000
NL		5,600,000		6,070,000
AT		5,800,000		6,070,000
PL		5,000,000		6,070,000
PT		5,000,000		6,070,000
RO		5,000,000		6,070,000
SK		5,000,000		6,070,000
SI		5,000,000		6,070,000
FI		unlimited		unlimited
SE*		32,342,921		32,342,921
UK		unlimited		unlimited

Source: CoB publication from 2015 and own calculations. (*) actual changes will be smaller as minimum amounts were updated for inflation in the course of 2016

Table 6: Estimated changes for material damage by Member State (Based on 2015 levels *)

Country	Material Damage			
	Current amount of cover (in EUR)		New amount of cover (in EUR)	
	Per person	Per Claim	Per person	Per claim
MID amount	-	1,220,000		1,220,000
BE	111,802,803	111,802,803	111,802,803	111802803
BG		1022584	0	1,220,000
CZ	1,294,762		1,294,762	
DK*		3,083,027		3,083,027
DE		1,120,000		1,220,000
EE		1,200,000		1,220,000
IE		1,120,000		1,220,000
EL		1,000,000	0	1,220,000
ES		15,000,000		15,000,000
FR		1,120,000		1,120,000
HR*		1,120,650		1,220,000
IT		1,000,000		1,220,000
CY*		1,120,000		1,120,000
LT		1,000,000		1,220,000
LV		1,000,000		1,220,000
LU		unlimited		unlimited
HU		1,601,178		1,601,178
MT		1,000,000		1,220,000
NL		1,120,000		1,220,000
AT		1,200,000		1,220,000
PL		1,000,000		1,220,000
PT		1,000,000		1,220,000
RO		1,000,000		1,220,000
SK		1,000,000		1,220,000
SI		1,000,000		1,220,000
FI		3,300,000		3,300,000
SE*		32,342,921		32,342,921
UK		1,442,880		1,442,880

Source: CoB publication from 2015 and own calculations. (*) Actual changes will be lower for some Member States as minimum amounts were updated for inflation in the course of 2016 following a Commission Communication (COM/2016/0246 final).

ANNEX 5: GLOSSARY OF TERMS AND ABBREVIATIONS.

Green Card System	The Green Card System is a protection mechanism for victims of cross-border road traffic accidents. It facilitates the flow of cross-border road traffic in Europe and guarantees the compensation of domestic victims of accidents caused by foreign motorists in guaranteeing sufficient third party liability of the latter.
Green Card	The Green Card is an international certificate of insurance issued under the authority of the National Bureau. It provides a guarantee for the visited country that the insurer of the vehicle's country of origin will reimburse the victim's damage in accordance with the rules applicable in the visited country. If the insurer, for whatever reason, does not reimburse the damage, the National Bureau under which authority the Green Card has been issued will guarantee the compensation. Motorists can obtain a Green Card from the insurer that has issued their motor insurance policy. The format of the Green Card is determined by the United Nations Economic Commission for Europe (UNECE), on the basis of a proposal of the Council of Bureaux.
Guarantee Funds	Guarantee Funds have been established in execution of the 2nd European Motor Insurance Directive and must provide compensation to victims of accidents caused by unidentified or uninsured vehicles. The conditions for intervention can be found in Article 10 of the Codified Motor Insurance Directive. Member States are free to confine other tasks to Guarantee Funds on the national territory (e.g. intervention in case of insolvency of insurers).
Compensation Bodies	Compensation Bodies can be considered as a sort of safety net in certain cases where insurers or claims representatives do not respect the obligations under the Motor Insurance Directive or where an accident is caused by an unidentified or uninsured vehicle in another Member State than the victim's Member State of residence. In case an insurer has not appointed a claims representative or when the insurer or claims representative does not formulate a reasoned offer or reasoned reply within the required time limit, the victim can address a claim to the Compensation Body of their Member State of residence. The same body can be appealed to in case the victim has suffered an accident in another Member State, caused by an unidentified or uninsured vehicle.
Information centres	In order to allow the victim to identify the right body to turn to, the Motor Insurance Directive requires the EEA Member States to establish Information Centres, who must be able to provide the victim with, amongst others, the name of the insurer covering the vehicle which has caused an accident and the claims representative appointed by that insurer in the victim's Member State of residence.
Council of Bureaux (CoB)	The Council of Bureaux offers secretarial services to Compensation Bodies, Guarantee Funds and Information Centres in order to allow the necessary cooperation and to safeguard the proper application of the Motor Insurance Directives. The CoB is merely a technical organisation envisaging a satisfactory level of protection to victims of cross-border road traffic accidents.
Motor Third- Party liability (MTPL)	MTPL Motor third-party liability, refers to a person's legal liability for the bodily injury and/or property damage sustained by another as the result of a motor vehicle-related accident. The EU Motor Insurance Directive mandates that all motor vehicles are covered by insurance for third-party liability.

Comprehensive cover	A motor insurance policy that includes both MTPL and damage cover.
Personal injury	Physical harm to one's person.
Material damage	All property-related damage losses covered by a motor insurance policy. This includes the following: Property Damage, Comprehensive damage, Collision damage, Fire/Theft Combined Additional Coverage, Rental Compensation, or Uninsured Motorist Property Damage.
Green Card Bureau	<p>Green Card Bureaux are bodies operating with the recognition and approval of the government and the activities of the Green Card Bureaux and are established by law or regulation in each of the countries participating in the system. Each Green Card Bureau has two functions:</p> <p>As a "Bureau of the country of the accident", it has responsibility in accordance with national legal provisions for Compulsory Third Party Motor Insurance for the handling and settlement of claims arising from accidents caused by visiting motorists.</p> <p>As a "Guaranteeing Bureau" it guarantees certificates of Motor Insurance - ("Green Cards") which are issued by its member insurance companies to their policyholders.</p>
FoE	Freedom of Establishment. Exercise of the right of freedom of establishment by an insurance undertaking by either setting up a base office or by opening a branch
FoS	Freedom to provide services. Exercise of the right to provide insurance services in other than home Member State by an undertaking on the basis of an EU wide license. The undertaking is not obliged to set up an office in the host Member State, but for motor third party liability insurance, it must appoint a representative and become a member of the local bureau and pay the levies towards the Article 10 compensation body.
CoB	Council of Bureaux. A body coordinating the activities of the different National Motor Insurers' Bureaux that are members of the Green Card System and acting as a Secretariat for the bodies applying the European Motor Insurance Directives: Compensation Bodies, Guarantee Funds and Information Centres.
ABI	Association of British Insurers
UNESPA	Spanish Association of Insurance and Reinsurance Institutions
AMICE	Association of mutual insurers and insurance cooperatives in Europe
ECF	European cyclists federation
BEUC	The European consumer organisation

GDV	German Insurers Association
FIA	Federation Internationale d'automobile

ANNEX 6: VOLUNTARY INDUSTRY CODE OF CONDUCT FOR CLAIMS HISTORY STATEMENTS

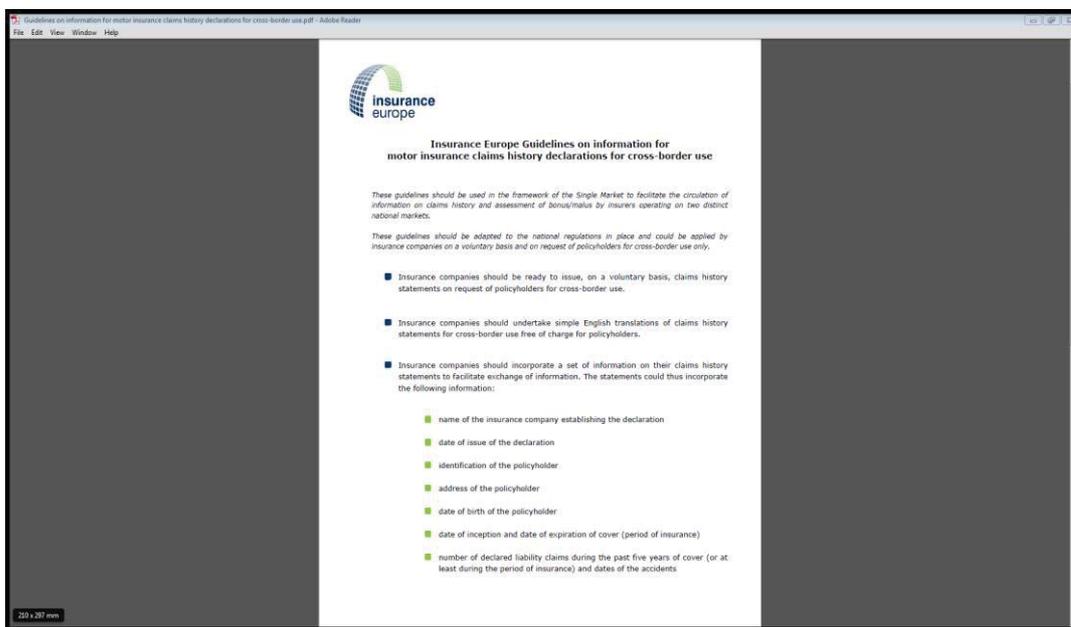
In 2013, Insurance Europe adopted voluntary guidelines on the information on claims history statements which are reproduced below. These guidelines are very brief, (less than one page) on what information should be included. The guidelines do not set out a format for the claims history statement and do not indicate how the claim history statement should. They do not set out how insurers can verify the authenticity of the claims history statement which is a concern for cross-border situations. Furthermore, the guidelines are not fully in compliance with the obligations of the Motor Insurance Directive. In particular, the Directive mandates insurer to provide a claims history statement, while the guidelines suggest this is only a voluntary obligation.

Consequently the current guidelines seem insufficient to deal with the issue of claims history in cross-border cases.

Insurance Europe Guidelines on information for motor insurance claims history declarations for cross-border use

- *These guidelines should be used in the framework of the Single Market to facilitate the circulation of information on claims history and assessment of bonus/malus by insurers operating on two distinct national markets.*
- *These guidelines should be adapted to the national regulations in place and could be applied by insurance companies on a voluntary basis and on request of policyholders for cross-border use only.*
- Insurance companies should be ready to issue, on a voluntary basis, claims history statements on request of policyholders for cross-border use.
- Insurance companies should undertake simple English translations of claims history statements for cross-border use free of charge for policyholders.
- Insurance companies should incorporate a set of information on their claims history statements to facilitate exchange of information. The statements could thus incorporate the following information:
 - name of the insurance company establishing the declaration
 - date of issue of the declaration

- identification of the policyholder
 - address of the policyholder
 - date of birth of the policyholder
 - date of inception and date of expiration of cover (period of insurance)
 - number of declared liability claims during the past five years of cover (or at least during the period of insurance) and dates of the accidents
-



Source: Insurance Europe, available at:
<https://www.insuranceeurope.eu/sites/default/files/attachments/Guidelines%20on%20information%20for%20motor%20insurance%20claims%20history%20declarations%20for%20cross-border%20use.pdf>

ANNEX 7: EVALUATION REPORT

1. INTRODUCTION

This report expresses the findings and conclusions of the evaluation of the EU Motor Insurance Directive (hereafter the Directive, or MID) 2009/103/EC, which was carried out in 2017, including a public consultation from July to October of that year.

The evaluation assesses whether the Directive remains fit for purpose on the basis of five criteria: effectiveness, efficiency, coherence, relevance and EU added value. It also aims to identify excessive regulatory burdens, overlaps, gaps, inconsistencies and/or obsolete elements which may have developed over time. Finally, it determines whether there is a need for further action at EU level to improve the Directive's implementation and application or update its provisions.

It should be read in conjunction with the Impact Assessment report concerning certain proposed amendments to that Directive (of which it forms an annex). The specific aspects of the Directive on which it has been decided to work on proposed amendments are discussed in more detail in the Impact Assessment, but are also covered in this report, so that it is complete and can be read independently (however, at the price of significant duplication).

2. BACKGROUND TO THE INTERVENTION

2.1 Intervention logic

The EU motor insurance policy has a twofold objective: first of all, it seeks to ensure a high level of protection of victims of traffic accidents; second it seeks to ensure the free movement of persons and goods (in motor vehicles) across the EU.

Insurance against civil liability in respect of the use of motor vehicles (motor insurance) is of special importance for European citizens, in particular for victims of an accident but also for policyholders, to reinforce and consolidate the internal market in motor insurance.

The Directive ensures that victims of a motor accident across the EU, who might suffer personal injury or material damage, are quickly compensated, with specific safeguards to ensure that victims seeking compensation are not obliged to have recourse to judicial proceedings. Therefore, to protect victims of traffic accidents, each Member State must take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance. The extent of the liability covered and the terms and conditions of the insurance cover are prescribed by the Directive.

Motor insurance also has an impact on the free movement of persons and vehicles. For policyholders, owners of a car which has the potential to cause an accident, the directive ensures that their civil liability against third parties is covered when they circulate freely and on the basis of a single premium throughout the EU. Previously, under the

international Green Card system, motor vehicles were stopped at borders to verify if they are covered by third party liability insurance, as proven by a Green Card. The MID abolishes these obstructive insurance checks on borders and allows for the free circulation of vehicles within the EU on the base of a single third party liability motor insurance obtained in the Member State where the vehicle is normally based.

2.2 History of the Motor Insurance Directive

The EU Motor Insurance Directive of 2009 is a consolidation of a number of previous versions of the MID, the first of which dates from 1972. The MID, in its current form, protects victims of road accidents in EU Member States other than that of their residence, or domestic victims of accidents caused by a driver from another Member State. It applies the international Green Card system in the EU (see Box 5), but goes beyond it. Under the MID, subscribers of compulsory Motor Third Party Liability (MTPL) insurance policies in the whole EU are covered for motoring throughout the EU on the basis of a single premium.

Specifically, the MID:

- Requires that all motor vehicles in the EU be covered by compulsory MTPL insurance (including all passengers and throughout the EU);
- Abolishes border checks on insurance;
- Prescribes minimum third-party liability insurance cover in EU (more detail on this below);
- Specifies exempt persons and authorities/bodies responsible for compensation;
- Introduces a mechanism to compensate local victims of accidents caused by vehicles from another EU country;
- Obliges the creation of national motor insurance guarantee funds to compensate victims of accidents caused by uninsured or untraceable drivers;
- Requires the quick settlement of claims arising from accidents occurring outside the victim's EU country of residence (so-called "visiting victims");
- Entitles policyholders to request a statement concerning the claims (or absence of claims) involving their vehicle(s) during (at least) the five years preceding the contract. The insurer must provide this statement within 15 days. This is to enable policyholders to switch more easily from one insurer to another, both domestically and cross-border.

The MID does not regulate:

- Issues of civil liability and the calculation of compensation awards – these are decided by individual EU countries.
- So-called "comprehensive cover" (for physical injury of the driver, material damage to vehicles, vehicle theft, etc.).

Box 5: International Green Card system and EU Motor Insurance Legislation

The Green Card is an international certificate of third party liability insurance that makes it possible for travellers to cross borders without having to buy supplementary insurance. The system is run by a Council of Bureaux and was set up in 1949 under the auspices of the United Nations Economic Commission for Europe (UNECE). There are three categories of Green Card

Members: EEA Member States, Members under section III of the Internal Regulations (Andorra, Serbia and Switzerland) and standard Green Card Members. Vehicles from EEA Member States and Section III States can travel freely between the relevant territories even without the Green Card as the number plate of such Member State is presumed proof of insurance.

The evolution of EU motor insurance legislation involved successive adoption of five Directives, continuously improving the legal framework and strengthening the protection of victims of traffic accidents. The first Directive of 1972 set out the obligation for all vehicles to be covered by a MTPL insurance, mandated abolition of border checks on motor insurance and made it possible for Member States to derogate some natural or legal persons' vehicles or certain types of vehicles. The second Directive of 1983 set for the first time minimum amounts of cover, obliged Member States to set up compensation bodies for uninsured or untraced drivers (also known as guarantee funds) and prohibited certain exclusion clauses in insurance contracts. The Third Directive of 1990 established the principle that the insurance cover should include the whole territory of the EC on the basis of a single premium and stipulated that in the cases of disputes over which an insurer or body should pay the compensation, the victim must be compensated without delay irrespective of the dispute. The Fourth Directive of 2000 introduced facilities for the protection of 'visiting victims'; to that end it required Member States to set up information centres and compensation bodies and imposed an obligation for insurers to have claims representatives in other Member States. The Fifth Directive of 2005 established that systematic border checks on insurance were not permissible, and that insurance should cover both damage to property and personal injuries. It also set out guarantees for compensation for victims of accidents involving vehicles that are exempt at Member State level, codified case law on exclusion clauses, provided for specific cover for exported vehicles, prohibited excess against injured party and also required insurers to provide claims history statements for policyholders.

All these Directives were consolidated into Directive 2009/103/EC. All references in this text are made in relation with this Directive.

Following the implementation of the MID, a number of court judgements by the CJEU have been delivered which clarified the scope of application of the Directive. The Vnuk, Rodrigues de Andrade and Torreiro Rulings have in particular specified the scope. Based on the feedback receive from Member States, these rulings and/or pending proceedings have raised some concerns that a majority of Member States' legislations seems not fully in line with these rulings. Given the amount of case law that has emerged since the adoption of the first directive in 1972, obtaining a full overview of applicable case law in all Member States and verifying the national implementations of the Directive is complex. The different rulings and their implications are further assessed in section 3 on implementation of the Directive.

2.3 The Consumer Financial Services Action Plan

On 23 March 2017 the Commission adopted a Consumer Financial Services Action Plan⁷⁴. The section on improving motor insurance reads as follows:

⁷⁴ COM(2017) 139 final of 23 March 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017DC0139>

"Victims of traffic accidents are currently entitled to compensation for personal injuries or material damage even in case the vehicle that caused the accident is uninsured, or in hit-and-run events, regardless of where in the EU an accident takes place. However, there is no harmonised compensation mechanism in a cross-border situation if an insurer becomes insolvent. The Commission will examine, following an evaluation of the Motor Insurance Directive, how to best ensure that accident victims will be compensated in case of insurers' insolvency.

Another issue related to motor insurance concerns the portability of no-claims bonuses. Insurance policyholders are entitled to a statement from their insurance company about their third-party liability claims, or the absence of these, for the preceding five years. Good drivers can present these statements to a new insurer to obtain a discount, which can be as high as 50-60%, on their premiums ('bonus-malus system' or 'no claims bonus/discount'). However, in some instances, such statements are not taken into account by other insurers, in particular when changing to an insurer in another Member State. Recognition of claims history statements will also be reviewed following the evaluation of the Motor Insurance Directive."

Action 5 of the Action Plan states that:

The Commission will complete the review of the Motor Insurance Directive and will decide on any amendments required to enhance the protection of traffic accident victims and to improve the cross-border recognition of claims history statements (which are used to calculate no-claims bonuses)."

2.4 The baseline – EU without the MID, only with the Green Card System

The baseline for the evaluation, which would apply in the absence of any EU-level legislation on this subject, is the international Green Card system, an international protection mechanism for victims of cross-border road traffic accidents which is explained in Box 5⁷⁵. The Green Card system facilitates the crossing of borders as it releases individuals driving a motor vehicle from the obligation of taking out a frontier insurance valid in the country they are visiting if they possess a Green Card. The Green Card certifies that the visiting vehicle has at least the minimum compulsory Motor Third Party Liability Insurance cover required by the laws of the countries visited. The Green Card system also facilitates the settlement of claims as it ensures that victims of road accidents caused by a visiting vehicle are compensated. The system consists of 48 participating countries and functions through the activities of the National Insurers' Bureaux (or Green Card Bureaux) appointed in accordance with national law in the given Member country.

The guarantees provided for in the Green Card system are based on the existence (for the vehicle involved in the accident) of a valid "Green Card" issued by the National Insurers' Bureau of the country of the vehicle or under that Bureau's responsibility. In case of an

⁷⁵ More information on the Green Card system can be found on the website of the Council of Bureaux, available at: <http://www.cobx.org>

accident abroad (i.e. in one of 48 countries other than the one where the vehicle is registered) involving the liability of the driver of the insured vehicle, any victim (either resident of that country or not) has the right to apply to the national bureau of the country where the accident occurred in order to have his claim handled and settled. In a second step, the bureau of the country of accident can recover all compensations paid from the bureau of the country from which the liable vehicle originates. In terms of protection of victims, the Green Card system ensures that in case of an accident involving a visiting vehicle, the victim will be compensated in accordance with the national laws where the accident has occurred.

As a consequence of the Green Card system, participating States are required to conduct border checks to verify if a vehicle entering their territory has a Green Card and can be allowed access. Furthermore, while the Green Card system provides for the settlement of claims, the guarantees and cover of the MTPL insurance are set at national level. This implies that divergences in the levels of protection of victims can be rather significant. In the EU, the Green Card System is significantly upgraded and complemented by the MID. For example, under the basic Green Card system when compared to its combination with the MID, there is no mandatory requirement, across the board, to cover material damage. In addition, there are no minimum amounts of cover for personal injury and material damage. Furthermore, under the Green Card System, there is no specific provision as regards protection of vulnerable road users such as pedestrians and cyclists. The Green Card system also does not protect visiting victims, i.e. victims of an accident in a participating State other than that of their residence. Under the Green Card system, there is no requirement for Member States to have at national level a compensation body to meet claims of victims in case of accident involving untraced or uninsured vehicles. Finally, under the baseline drivers would not benefit automatically from an EU-wide coverage, on the basis of a single premium, across the EU; they might need to purchase the Green Card for an additional premium.

3. IMPLEMENTATION / STATE OF PLAY

3.1 Transposition of the Directive

The current MID of 2009 is a consolidation of five distinct directives which have been substantially amended several times over time as shown in Annex I:

- First Directive: Council Directive [72/166/EEC](#) of 24 April 1972 on the approximation of the laws of 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 ,
- Second Directive: Council Directive [84/5/EEC](#) of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (4),
- Third Directive: Council Directive [90/232/EEC](#) of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles

- Fourth Directive: Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles.
- Fifth Directive: Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles.

As the 2009 Directive was a codification of previous Directives, a transposition exercise was not conducted. As a consequence there is no transposition data available for the purpose of this Directive as regards possible infringement actions. The Directive only required to provide the text of the main provisions of national law which Member States adopted in the field governed by this Directive. This would typically include texts of relevant civil and insurance law provisions that touch upon civil liability of drivers and owners of vehicles. As a result, there are no pending infringement actions.

3.2. The CJEU case law on the MID

The Directives have been interpreted by the Union court on numerous occasions since the adoption of the first Directive in 1972.

Relatively recently, the Court of Justice of the European Union clarified the scope of the MTPL insurance obligation laid down in the Directive⁷⁶ which has emerged since the adoption of the Directive in 2009. Three judgements in particular are important in this respect, the Vnuk judgment of 2014⁷⁷, the Rodrigues de Andrade judgement of 2017⁷⁸ and the Torreiro judgement of 2017⁷⁹.

The Vnuk judgment concerned an accident involving a tractor on a private property in Slovenia, a farm. Specifically, Mr Vnuk, an employee of the farm was knocked off a ladder by a trailer attached to a tractor that was reversing across the farmyard. Mr Vnuk sought compensation from the insurer of the vehicle of €15,944.10. At first and second instance courts the claim was dismissed on the grounds that the tractor was not used as a vehicle but rather as machinery. The case was further appealed and the Slovenian

⁷⁶ Article 4, first paragraph: "Each Member State shall, subject to Article 5, take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance."

⁷⁷ Judgement of 4 September 2014, Case C-162/13 Damjan Vnuk v Zavarovalnica Triglav.

⁷⁸ Judgement of 28 November 2017, Case C-514/16 Isabel Maria Pinheiro Vieira Rodrigues de Andrade and Fausto da Silva Rodrigues de Andrade v José Manuel Proença Salvador, Crédito Agrícola Seguros – Companhia de Seguros de Ramos Reais SA and Jorge Oliveira Pinto.

⁷⁹ Judgement of 20 December 2017. Case C-334/16 Núñez Torreiro

Supreme Court referred the matter to the CJEU to determine whether the circumstances of the accident were within the duty to insure “the use of vehicles” as laid down under Article 3(1) of Directive [72/166/EC](#).

The CJEU ruled that “Article 3(1) of [the] Directive ... must be interpreted as meaning that the concept of ‘use of vehicles’ in that article covers any use of a vehicle that is consistent with the normal function of that vehicle. That concept may therefore cover the manoeuvre of a tractor in the courtyard of a farm in order to bring the trailer attached to that tractor into a barn, as in the case in the main proceedings, which is a matter for the referring court to determine.”

The Court thus clarified the scope of the MID, interpreting it in a wide manner, in two respects: first, motor vehicles must be covered by MTPL insurance as regards their “use” and not only in relation with traffic; second, it is implied that the cover extends to their use irrespective of the classification of property they are on (public or private).

The Rodrigues de Andrade judgement provided further clarifications. The case concerned a fatal accident that occurred in a vineyard involving a stationary tractor, which by its own weight, vibrations and heavy rain slipped and killed a vineyard worker. The tractor was being used to power a herbicide pump at the time of the accident. The Portuguese court referred the case to the CJEU to clarify whether such an accident should be covered by compulsory MTPL insurance as envisaged under the MID.

The Court, first of all, reiterated its finding in Vnuk. It concluded that the characteristics of the terrain on which the accident occurred have no bearing on whether it is within or out of scope of the MTPL insurance obligation. Secondly, the Court clarified that the concept of “use of vehicles” covers “any use of a vehicle as a means of transport”. On that basis, the Court referred to vehicles that are intended, apart from their normal use as a means of transport, to be used in certain circumstances as machines for carrying out work. The Court found that the fact that a vehicle is stationary or that its engine may not be running at the time of the accident does not, in itself, rule out the possibility that the function of the vehicle at that time is use as a means of transport. However, the Court went on to find that the concept of ‘use of vehicles’, within the meaning of the Directive, does not cover a situation in which an agricultural tractor has been involved in an accident when its principal function, at the time of that accident, was not to serve as a means of transport but to generate, as a machine for carrying out work, the motive power necessary to drive the pump of a herbicide sprayer.

The Torreiro Case further specified the Vnuk judgment. The case concerned Mr Núñez Torreiro who had been injured in an all-terrain military vehicle within a restricted military area. The key question was whether Spanish legislation may, under the given particular circumstances that the accident happened with a restricted area, exclude compulsory cover as required by the Motor Insurance Directive. The court found, in its judgement of 20 December, that the military vehicle fell within the definition of motor vehicle in the Directive and its use, as a vehicle (see Rodrigues de Andrade) and consistent with its normal function (see Vnuk) must be subject to compulsory insurance. It further ruled that national legislation could not derogate from the insurance obligation in the Directive other than as permitted by Article 5 (i.e. either by type of vehicle or in respect of certain legal persons, often Government agencies). No relevant derogations

had been put in place. The court therefore held that reliance on the Spanish legal provision that sought to restrict cover to use on “public and private roads or terrain suitable for use by motor vehicles” was precluded by the proper interpretation of the Directive.

The three judgements together permit the conclusion that the Directive lays down an obligation for motor vehicles to be covered by MTPL insurance when they are used for transport, which is consistent with the normal function of that vehicle, and this irrespective of the place where that use for transport occurs.

The different interpretation of the scope of application of the MID by Member States⁸⁰ combined with the recent CJEU rulings provide evidence of a divergent implementation of the Directive as regards its scope of application.

4. METHOD

4.1 Time period of the Evaluation

The evaluation is based on information from consultations with stakeholders, expert group meetings with stakeholders and a roundtable with stakeholders and desk research⁸¹. Research took place in 2016 and consultation of various categories of stakeholders took place during 2017 (see section 4.2 below).

4.2 Work carried out by the Commission

On 24 July 2017 an Inception Impact Assessment was published by the Commission. The roadmap announced that the focus of the evaluation was to assess the extent to which the general objectives of the MID were met⁸². In particular, the roadmap clarified that the evaluation would look at all elements of the Directive, including for example terminology and definitions, insurance checks, visiting victims, driverless vehicles and the transfer of vehicles.

In addition, the roadmap identified a number of issues which were already considered likely to be subject of an impact assessment: these issues were "the scope of the Directive" in the light of recent CJEU case law, the compensation of victims in case of insolvency of an insurer, the portability of claims history statement which are used to calculate no-claims discounts, the minimum amounts of cover and uninsured driving.

The Commission carried out a public consultation on the review of the Directive from 28 July until 20 October 2017 to obtain feedback from stakeholders on all elements of the Directive, including some specific elements (e.g. the scope, portability of claims history

⁸⁰ As revealed in the Expert Group meetings and written submissions of Member States, see annex 2 of the Impact Assessment.

⁸¹ See also annex 2 of the Impact Assessment.

⁸² See the Inception Impact Assessment of 24 July 2017, available at: http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_fisma_030_motor_insurance_en.pdf

statements and the role and functioning of motor guarantee funds) and possible options for amendments including their impacts. The public consultation resulted in 3478 replies from a wide number of stakeholder groups. However, a large majority of respondents (approximately 70 percent of responses) were received following an organised campaign from representatives of the motor racing sector, calling for the exclusion of that sector from the scope of application of the Directive.

The evaluation also built on a public consultation carried out in the framework of the Call for Evidence⁸³ on the EU regulatory framework for financial services. This consultation invited to give feedback and empirical evidence on the benefits, unintended effects, consistency and coherence of the financial legislation, including the MID.

A roundtable on the review of Directive 2009/103/EC on Motor Insurance took place on 12 July 2017 in order to obtain direct feedback from all stakeholder groups including insurers associations, consumer organisations and the Council of Bureaux.

On 22 September 2017, a meeting with experts from Member States' authorities (Expert Group on Banking, Payments and Insurance (Insurance Formation) took place preceded by two other meetings of this expert group in May and in December 2015. These two meetings had the specific purpose to discuss the scope of the Directive in the light of the CJEU Vnuk ruling.

The evaluation builds also on statistics and reports provided by the Council of Bureaux⁸⁴ and reports from the association of industry practitioners⁸⁵. The report also builds on information from the CARE database⁸⁶ for statistics road accidents resulting in death or injury.

4.3 Limitations

There are some limitations as regards to the information feeding into the evaluation report. In particular, there is limited available data to quantify the costs and benefits of some requirements of the Directive. National Guarantee funds are not required to report on the costs of claims for the purpose of uninsured or untraceable drivers or their operating costs.

The Motor Insurance Directive does not require claims representatives to provide information on the costs of claims deriving from visiting victims. There are also no

⁸³ http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm

⁸⁴ The organisation coordinating the activities of the different National Motor Insurers' Bureaux that are members of the Green Card System and acting as a secretariat for the bodies applying the EU MID: Compensation Bodies, Guarantee Funds and Information Centres

⁸⁵ In particular: Insurance Europe, European Motor Insurance Markets, November 2015 and European Motor Insurance Markets Addendum, Insurance Europe, June 2016

⁸⁶ CARE is the European centralised database on road accidents which result in death or injury across the EU. The CARE system allows to identify and quantify road safety problems throughout the EU.

obligations imposed on insurers to report on the costs of the motor third party liability insurance, in particular contributions to national guarantee funds.

Furthermore, while confidential data on uninsured driving is available at national level, detailed data on accidents and claims deriving from accidents with an uninsured vehicle originating from another Member State for each Member State is not publicly available. However, there is some aggregated data on the total cost of claims deriving from cross-border accidents and uninsured driving.

In addition, public information on the costs of claims due to insolvency of an insurer is not available. While there is information on insolvent insurers, the total cost of undetermined claims remains unknown as legal proceedings on these insolvency cases are still pending.

As regards claims history statements, there is no systematic information on citizens moving across borders and requiring a new MTPL insurance, only individual cases. In addition, in absence of specific reporting requirements on insurers on claims history statements, there is no information on the number of claims history statements issued by insurers.

5. ANALYSIS AND ANSWERS TO THE EVALUATION QUESTIONS

The overall aim of the evaluation is to analyse the effectiveness, efficiency, coherence, relevance and EU added value of the Motor Insurance Directive.

The main evaluation questions are summarized in the table below:

Table 7: evaluation questions

Criteria	Main evaluation questions
Effectiveness	<p>To what extent have the objectives of this Directive been achieved? In particular, to what extent is the high level of protection of victims of motor insurance accidents and the free circulation of vehicles within the EU been achieved?</p> <p>Which issues have emerged since the implementation of the Directive?</p>
Efficiency	<p>What are the costs and benefits (monetary and non-monetary) associated with the Motor Insurance Directive in the Member States?</p> <p>What good practices for cost-effective implementation can be identified?</p> <p>Are there any specific provisions in the MID that hinder cost-effective implementation?</p> <p>Are there specific challenges for SMEs, and micro enterprises in particular, face when implementing the MID?</p>

Coherence	Are there any specific inconsistencies and unjustified overlaps, obsolete provisions and/or gaps can be identified in relation to the entire EU regulatory framework in this policy area and the UN-based Green Card System?
Relevance	To what extent are the objectives of MID still relevant and valid? Beyond these objectives, are there any new technological developments which would require further policy intervention?
EU added value	What has been the EU added value of the rules on third party liability motor insurance in the EU?

5.1. Effectiveness

The evaluation assessed the functioning of the Directive in order to understand to which extent its objectives have been achieved.

In comparison with the baseline, the MID provides a number of benefits compared to the Green Card system to achieve the objectives of ensuring a high level of protection of road accidents and, at the same time, to ensure free circulation of persons and vehicles within the EU.

To ensure a high level of protection of victims beyond the baseline requirements set out in the Green Card system, the MID sets out uniform minimum amounts of cover for personal injury and material damage ensuring that across the EU victims are protected at least to these minimum levels. Furthermore, in addition the MID sets out a mandatory requirement to cover material damage in all EU Member States. Furthermore, the MID also ensures protection of vulnerable road users such as pedestrians and cyclists. In addition, the MID sets out rules to protect visiting motorists based on the minimum amounts of cover, not included in the Green Card System. Member States are also required to have at national level a compensation fund to compensate victims in case of accident caused by an untraced or uninsured vehicle.

To facilitate the free circulation of persons and vehicles, the MID abolishes border checks on motor insurance, which are normally required under the Green Card System. Furthermore, the MID introduced the requirement for a single premium for MTPL, allowing EU-wide circulation of vehicles without the need to obtain additional MTPL cover when moving across-borders.

The public consultation provided evidence that also stakeholders consider the Directive provides an efficient system to protect victims of motor accidents. Only less than 1% of responses from a total of 3478 indicated that there are some remaining problems with the swift compensation of victims. Nevertheless, as part of the evaluation, a number of issues have emerged which may affect effective functioning of the Directive and require a more in-depth assessment. In particular, terminology and definitions, the scope of the Directive, the compensation of victims when the insurer is insolvent, the minimum amounts of cover, and the transferability of information on claims history and uninsured driving.

These topics are further described in the following sections.

5.1.1. Consistency of terminology and definitions and translation of certain concepts

The codification of the five directives into Directive 2009/103/EC has resulted in some inconsistencies in terminology and definitions. In this area the following issues were identified:

a) Victims and injured parties.

The MID entails uses both the terms "victims" and "injured parties" through the text, creating legal uncertainty on the obligations enshrined in the Directive and the level of protection.

The term "victim" is used in Article 9, 10 and 12 and "injured party" is used in Article 1, 5, and 20 alternatively.

However, the term "injured party" is a broader concept as it could cover also persons who are not directly linked with the accident (e.g. family members). This distinction creates potentially an unequal playing field with those provisions that use the term "victim". In case of an accident, depending on the provision, only the direct "victim" of the accident would be reimbursed while "injured parties" include e.g. also family members suffering from damages related with the accident.

In order to provide more clarity, this situation could be remedied through the introduction of definitions in the Directive (defining not only the term 'injured party' but also the notion 'victim') or the omission of one of the two terms.

b) Definition of vehicle.

The motor insurance Directive definition of "vehicle" includes "trailers". Therefore, compulsory MTPL insurance covers in case of an accident both a vehicle and its trailer. The Council of Bureaux explained in their contribution to the public consultation that in practice, some Member States require separate registration for a truck and the attached trailer, which have therefore a distinct registration number. In those Member States, where only the registration plate of the trailer is known, the vehicle is considered unidentified. In other Member States, victims may present a claim for compensation to both the insurer of the truck and the insurer of the trailer.

In some instances, the registration numbers of the truck/trailer set might be registered in different Member States. In these cases, it is difficult to determine whether the truck or the trailer was liable for the accident. In cases where when the two vehicles come from different Member States and the accident is a hit and run or involves an uninsured vehicle, the settlement of claims falls under Article 10 of MID which means that the body responsible in each Member State must compensate the victims. According to the CoB, problems originate at the level of the registration of the vehicle, which falls under national competence. For this reason, the conflict rules of Private International Law are more relevant than the provisions of the MID. As a consequence, a change in the MID might not be effective to address this issue.

Based on the above, the definition of a "vehicle" poses in some circumstances problems for motor vehicles consisting of set of two vehicles which can be separated from each other and registered in distinct Member States. As a consequence, it may be sometimes difficult to determine the liable party in cases an accident is involving a trailer.

c) Definition of Guarantee fund. The Directive uses the term "body responsible for compensation" under Article 10 and the term "compensation body" in Articles 24 and 25 of the Directive. This term encompasses what is in practitioners' vocabulary understood to be the "guarantee fund" the task of which is to compensate victims of accidents that involve uninsured and untraced vehicles. Some stakeholders consider the use of the two terms confusing because the term "compensation body" was also introduced by the 4th Directive for the purpose of protecting visiting victims. According to these stakeholders, the sole role of this body should be to serve as a financial safety net in the case the responsible insurer does not duly respond to the claim.

d) Inconsistent language versions: "Use of the vehicle" versus "circulation"

Prior to the Vnuk ruling in 2014, and in some cases still now, certain Member States interpreted the obligation for MTPL insurance as laid down in the Directive as not extending to all motorised vehicles in all places and contexts. In particular, certain Member States do not impose domestically an obligation for MTPL insurance for certain uses of vehicles outside road traffic.

The uncertainty about the exact scope of the MTPL requirement as laid down in the MID was compounded by the terminology used in different language versions of the Directive: the English text of article 3 reads " Each Member State shall, subject to Article 5, take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance", whereas the French text contains the word "circulation" where the English text has "use".⁸⁷ The CJEU later clarified the scope of the Directive on three occasions in particular as explained in section 3.2.

e) Inconsistent translation: minimum amounts of cover

The Directive sets out minimum amounts of cover⁸⁸, to ensure the minimum protection of victims of motor accidents across the EU. However, there is a difference in the exact articulation of the provision between the French and the English language versions. This provision sets the minimum amount for personal injuries at 1 million EUR per victim and 5 million EUR per claim in its English version. In the French version, the provision refers either to a "victim" or an "accident" ('sinistre'). It could be argued that the English version refers in both cases to the same thing, because the terms "victim" and "claim" could be interpreted as being related to a single person, rather than to the whole of the

⁸⁷ " Chaque État membre prend toutes les mesures appropriées, sous réserve de l'application de l'article 5, pour que la responsabilité civile relative à la circulation des véhicules ayant leur stationnement habituel sur son territoire soit couverte par une assurance."

⁸⁸ Article 9 of Directive [2009/103/EC](#) on Motor Insurance

accident. As a consequence, there might be different levels of protection for victims of motor accidents depending on where they occur.

5.1.2. Compensation of victims of accidents in cases where the insurer is insolvent

The MID currently does not contain any provisions regarding compensation of victims of accidents in cases of insolvency of motor insurers, either domestically or cross-border. As a consequence, there is no legal obligation to reimburse the victim of a motor accident in case of insolvency of the insurer. While the Directive requires Member States to set up guarantee funds to meet costs arising from accidents caused by uninsured or untraceable vehicles (Article 10, compensation bodies), such funds are not currently obliged by EU legislation 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 MTPL insurer may be left without compensation.

In light of a number of recent cases of insolvency of motor insurers with cross-border activities, which led to significant delays in the payment of compensation to victims, this has been identified by a large number of stakeholders as a lacuna in the Directive, and an area where EU-level action would have added value.

A distinction can be made between scenarios of insolvency without cross-border provision of service and scenarios with cross-border provision of services. Both are further explained below.

a) Scenarios without cross-border provision of services.

For insolvencies which involve insurers that are based in the same Member State as the insured party three scenarios are outlined in table 8 below.

Table 8: For insolvency without cross-border provision of services

Type of situation	Type of CoB regulation/agreement	Reference to the agreement	National bodies signatory of the agreement
1. Accident involving insolvent insurer, policyholder and victim, all based in the same MS	None, in the absence of a cross-border dimension.	NA	NA
2. Accident involving insolvent insurer, policyholder based in Member State (MS) A, but accident happens in MS B and involves a victim resident in MS B.	Yes, CoB agreement on a compulsory basis	CoB Internal Regulations applicable to the Green Cards system.	EEA
3. Accident involving insolvent insurer, policyholder both based in the same MS (A) and a visiting victim	Yes, CoB agreement on a voluntary basis	CoB Agreement 2008	EEA with the exception of EE, HR, IE, RO, SE UK, IS, NO

from a MS B.			
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Source: CoB

According to the Council of Bureaux (CoB), all but one Member State (Sweden) have put in place mechanisms to deal with scenario 1 events domestically, ensuring that the victim is at least to a certain extent compensated. However, in its response to the public consultation the CoB outlined some deficiencies in the current system in case of domestic insolvencies to the detriment of the protection of victims. According to the CoB not all Member States provide compensation of victims in full; some Member States have introduced limits different from the amounts laid down in the MID or limitations for specific items. In a number of Member States compensation is provided by a different entity than the Compensation Body required by article 10 of the Directive and subject to different procedures and requirements prescribed in the MID.

Scenario 2 events are covered by CoB internal regulations which are binding for members.

Scenario 3 events are covered by a voluntary agreement between the CoB members, but not all Member States' bodies are signatories.⁸⁹ As a consequence, in case of the insolvency of an insurer, visiting victims are not always protected in all EU Member States and might therefore not be compensated or only partly compensated. Furthermore, victims might be compensated in accordance with national requirements but not in full, unlike for accidents caused by uninsured or untraced vehicles.

b. Scenarios of insolvencies with cross-border provision of services.

For cross-border activities, where the insurer is selling MTPL policies cross-border either using freedom of services or a branch, there is currently no binding scheme that would cover the distinct situations outlined in table 9 below. The CoB currently administers three voluntary agreements, one for domestic (non-visiting) victims of accidents (1995 agreement) and one for visiting victims in other Member States (2008 Agreement) and one for insolvency in case of insurers operating on a freedom of services basis (2006 Agreement)⁹⁰. All three scenarios outlined below are thus covered by voluntary agreements of which some EU Member States' compensation bodies are not signatory and/or have negotiated specific opt-out clauses or limitations.

Table 9. For insolvent insurer providing cross-border services

Type cross-border situation	Regulated by CoB agreement?	Reference to the agreement	MS signatory of the agreement
1. Insolvent cross-border insurer from Member State (MS) A, local	Yes, on a voluntary basis	CoB agreement 1995	EEA with the exception of: HR, LV, LT, LU,

⁸⁹ 2008 Agreement covering protection of visitors cases established under the Fourth Directive. Non-signatories are EE, HR, IE, RO, SE UK, IS, NO .

⁹⁰ Agreements from 1995, 2006 and 2008 respectively. See Annex 12 for a full analysis of the current system of voluntary agreements administered by the CoB.

policyholder, local victim in MS B.			MT, RO, IS, NO Reservations by BG, IT, IE, PT, SE, UK,
2. Insolvent cross-border insurer from MS A, local policyholder in MS B, visiting victim from MS C.	Yes, on a voluntary basis	CoB Agreement 2008 and/or CoB agreement 1995	See above signatories 1995 and table 1 for signatories 2008 agreement.
3. Insolvent cross-border insurer from MS A, policyholder from MS B travelling to MS C and victim from MS C (Green Card).	Yes, on a voluntary basis	CoB 2006 Agreement	EEA with the exception of BG HR, LV, LT, LU, Derogations made by UK, IE, MT, LI.

Source: CoB

The agreement of 2008 aims to ensure that each national insurers' bureau guarantees settlement of claims occurring in its territory and caused by the use of vehicles normally based in the territory of another Member State, whether or not such vehicles are insured, in accordance with the requirements of its national law on compulsory insurance. The agreement lays down two steps. In case of insolvency of an insurer with a cross-border element, the national bureau of the territory where the accident happened will in a first step reimburse the victims. In a second step, the initial bureau can obtain recourse from the bureau where the insurer has its head office. A detailed explanation of the procedure can be found in the box below.

Box 6: Procedure laid down in the CoB multilateral agreement of 2008 in case of insolvency

As a general principle the Bureau of the country of accident shall commence investigation to enable a quick resolution of the case once an victim presents a claim. It has the obligation to provide information to the insurer at risk or the Guarantor Bureau, that is to say the Bureau of which said insurer is a member.

The Guaranteeing Bureau is bound by the confirmation of cover given by the Intermediary acting on behalf of the insurance company, and in particular when the insurance company is wound up, and the Guaranteeing Bureau has to substitute for it in obligations arising out of the claim.

Procedure to be followed when the insurer at risk is in a state of insolvency:

All Guaranteeing Bureaux are bound by the debts of one of its members in a state of insolvency including any late interest due in carrying out the demands for compensation (see Article 5.2).

All Guaranteeing Bureaux, who are aware that a member is in a state of insolvency (winding-up or other) shall inform the Council of Bureaux Secretariat immediately as well as all other Bureaux.

After having received this information, these Bureaux shall inform the Guaranteeing Bureau in question of all the pending demands for compensation addressed to the member in a state of insolvency as well as informing them of all the cases which are being handled.

Demands for compensation concerning claims settled after the liquidation of a Company shall be sent to the Bureau of which the Company is a Member. If the Bureau of the country of accident or

its Member does not send the compensation demand directly to the Guaranteeing Bureau after the date of notification to the Council of Bureaux, the Guaranteeing Bureau is not obliged to pay penalty interest.

The deadline for compensation of 60 days is calculated as of the date of receipt by the Guaranteeing Bureau.

The payment of compensation is sometimes delayed by court proceedings. In those cases, the Bureau of the country of accident may be obliged to block the amounts under dispute or to deposit them. Where the amount is considerable (exceeds 10.000 EUR or its value in the currency of the country of the accident at the rate of exchange on the date of the demand for compensation) and the proceedings are pending for a long period of time, the liquidity of the handling Bureau might be jeopardised for an uncertain period. It is appropriate therefore to allow this Bureau to ask for the "compensation" of the amounts in question. In this way the financial burden (and risks) of such claims is placed on the final paying entity. In this case, however, the handling Bureau must provide proof of the amount being blocked or deposited and give appropriate reasoning for what had happened. The compensation is not a recognition that the amount is due. Depending on the final outcome of the proceedings, the amount must be off-set against the final amount due between the parties involved. The Bureaux involved should agree on appropriate procedures for this process (e.g. introduce time limits, issue additional demands for compensation).

Source: CoB explanatory Memorandum

For cross-border activities, according to the CoB⁹¹, the voluntary agreements that tackle this issue have shown in practice a number of significant flaws. In particular, some national bodies have not signed, some others have withdrawn from agreements previously signed and some have signed with reservation clauses and limits. As a consequence, in recent cases (See Confidential Annex 9 for a list of recent cross-border failures of motor insurers) where an insolvent insurer was providing services across borders it was often not clear which party was ultimately responsible for refunding claims of victims, and delays in compensation of victims occurred.

In particular, evidence from the latest insolvency cases (see Box 7 below) has shown that victims are likely to experience negative consequences. These include considerable delay in payment of claims due to ongoing court proceedings or claims which are reimbursed only partially and below the minimum amounts of cover laid down in the Directive. This implies that victims are reimbursed considerably less and with a longer delay than if they were victim of an accident in case of a solvent insurer.

In the period 1998-2017, eight cases of insolvency of such insurers have been reported (See confidential Annex 9), concerning five "Home" Member States of registration and supervision of the insurer (UK, NL, MT, RO, UK, LI) and nine "Host" Member States where MTPL policies were sold (DE, DK, EL, ES, FR, HU, IT,SK,UK). Based on a preliminary estimation due to ongoing cases, there were approximately 11,500 claims against policyholders of those insurers after their insolvency. Based on the available

⁹¹ In their contribution to the public consultation, a summary of the public consultation can be found in Annex 2. An assessment of the voluntary agreements can be found in Annex 12.

information the value of reported claims is approximately EUR 180 million⁹². This is certainly an underestimation of the total problem, as for 3 out of 8 insolvencies information on claims is not available. A rough extrapolation of the total value leads to an approximate value of EUR 288 million.

One specific case is described in the box below.

Box 7: case study on insolvency: Setanta Ltd

Evidence from delays in claims were reported for the insolvency of Setanta Insurance (“Setanta”) a Maltese incorporated insurance company which sold motor insurance cross-border to policyholders in Ireland. Setanta was placed into voluntary liquidation in Malta in April 2014. More than two years later, in November 2016 there were still 1400 claims unpaid for an estimated value of EUR 90 Million⁹³ to the detriment of victims. If Setana were a solvent insurer, the claims would have been treated without delay.

Moreover there was a court case in Ireland to determine whether the compensation of victims would be undertaken by the general Irish Insurance compensation fund (which would cover only 65 percent of the value of claims) or the motor insurance bureau (which would reimburse 100 percent of the value of claims); no attempt was made to bring about compensation of victims by any body in Malta, as there was no legal possibility to do so. On 8 of June 2017, there was an Irish court ruling that attributed the settlement to the Irish Insurance compensation fund (ICF), resulting in a payment of claims of up to 65 percent or €825,000, whichever is the lesser, to the detriment of victims of motor insurance accidents.⁹⁴

If Setana had been a solvent insurer, (or even in case of an accident with an uninsured driver or untraceable driver) the claims would have been treated without delay and with 100% of compensation (up to the minimum amounts laid down by the MID, currently just over €6 million for personal damage and €1 million for material damage).

Therefore, as demonstrated above, in the event of an insurer becoming insolvent, victims of traffic accidents have difficulties to obtain compensation in some Member States, in a timely way and in full. This is in particular in the case where the liable party is insured by a cross-border insurer. Furthermore, fair and effective risk-sharing in case of insolvency and cross-border provision of services is not guaranteed. In the absence of clear rules on the ultimate liability of a claim in cross-border situations, a compensation fund which has compensated a victim in case of an insolvent insurer cannot get recourse to the fund of the home Member State of the insolvent insurer.

⁹² Information from the Council of Bureaux. As some insolvency case are still ongoing, there could be a further increase in claims both in number of claims and total value.

⁹³ Information was reported in the press, available at: <https://www.irishtimes.com/business/financial-services/still-1-666-outstanding-claims-against-setanta-insurance-1.2926779>, consulted on 7 December 2017

⁹⁴ See <http://www.kennedyslaw.com/casereview/setanta-liquidation-irish-supreme-court-finds-in-favour-of-mibi/>

5.1.3 Scope of the Directive (in the light of the CJEU case-law)

As outlined in section 5, a number of Member States have interpreted the obligation for MTPL insurance as laid down in the directive as not extending to all motorised vehicles in all places and contexts. However, the recent CJEU rulings have clarified that the Directive lays down an obligation for motor vehicles to be covered by MTPL insurance when they are used for transport, which is consistent with the normal function of that vehicle, and this irrespective of the place where that use for transport occurs.

As outlined in section 5, the CJEU rulings have raised concerns that not all Member States are currently fully in compliance with the MID as clarified by the CJEU rulings. Given the amount of case law that has emerged since the adoption of the first directive in 1972, obtaining a full overview of applicable case law in all Member States and verifying the national implementations of the Directive is complex. Therefore, it is difficult to verify the compliance of Member States with the CJEU rulings.

In those Member States which do not extend the insurance obligation for motor vehicles to private property without public access, there is normally a domestic obligation for some other kind of liability insurance policy to be taken. But this is not the case for all Member States, and where it is the case, the amounts of cover may be inferior to those laid down in the Directive. This exposes citizens to a risk of non-compensation for accidents caused by certain motor vehicle activities in certain Member States.

No evidence has come to light during the evaluation that any particular types of motor vehicles or motor activities should be excluded from the scope of the Directive at EU level. To do so would remove protection from victims of accidents caused by such vehicles, in the absence of national legislation, which may require lower levels of protection than required by the Directive.

According to a recent ruling of the Court, there is "no provision in Directive 2009/103 that limits the scope of the insurance obligation and of the protection which that obligation is intended to give to the victims of accidents caused by motor vehicles, to the use of such vehicles on certain terrain or on certain roads"⁹⁵.

This is without prejudice to the right of Member States under article 5 of the Directive to exempt certain legal or natural persons from MTPL insurance obligation, types of vehicles or vehicles bearing special number plates at national level (accidents caused by such nationally exempt vehicles must be compensated by the national guarantee fund).

The different national application of the MID is identified as an issue, because it is creating legal uncertainty on the scope of application of the MID to the detriment of victims of motor accidents. The Court judgements referred to in section 5.2 above have provided welcome further clarity regarding the scope, and a codification of the judgements into the text of the Directive is considered as the appropriate way forward⁹⁶.

⁹⁵ *Rodrigues de Andrade*, C-514/16, EU:C:2017:908, paragraph 36

⁹⁶ For the detailed reasoning on this approach, see annex 11 to the impact assessment which this evaluation report accompanies.

5.1.4 Transferability of information about claims history

In order to facilitate switching MPTL insurance and to avoid fraudulent benefits, insurers are obliged by article 16 of the Directive to provide policyholders with a claims history statement. Such information may help a policyholder to obtain a "no claims bonus" (or a better "bonus-malus" rating) with a new insurer, either in the same Member State or another Member State, thus reducing premiums. The Directive is silent as to how the receiving insurer should treat the claims statements, nor there is a prescribed form.

In the years preceding the evaluation, some correspondence received from citizens' alleged problems in obtaining such recognition. The insurance sector denied that problems exist in this area, and pointed to the high cost of imposing any new requirement on motor insurers regarding recognition of claims history statements from other Member States. There was some acknowledgement from insurers that the existence of a standardised form for such claims statements may help to mitigate fraud (allegedly some citizens moving to another Member State may forge such claims history statements in the aim of obtaining unjustified reduction in their insurance premium from a new insurer).

All Member States opposed any new obligation being placed on insurers regarding the treatment of a claims history statement, though a number of Member States acknowledged possible advantages from a standardised form, and few Member States opposed an extension of the reference period for claims history statements from the current five years (though one Member State pointed out that it only obliges insurers to keep such information for seven years). One Member State claimed that the right to a claims history statement would be very rarely used by policyholders. It was pointed out that even within a Member State, a no-claims record of a policyholder may be fully or partly disregarded depending on the place of the old and the new residence (small village vs. big city, flat land vs. mountain area etc.). Some Member States use a formalised system for the calculation of no-claims bonuses for policyholders while others leave the consideration of bonuses to individual insurers.

5.1.5 Minimum amounts of cover, and their periodic revision

The Directive lays down minimum obligatory amounts of cover up to which compensation is provided under a motor insurance 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 damage to property, irrespective of the category of vehicle. These amounts are reviewed every five years to take into account inflation

Two different minimum amounts of cover for an MTPL policy are laid down in the Directive, for most Member States, in the case of personal injury, the minimum amount of cover is €1 220 000 per victim or €6 070 000 per claim, whatever the number of victims; and in the case of material damage, the minimum amount is to €1 220 000 per claim, whatever the number of victims. These amounts are reviewed for inflation every five years.

A first issue regarding the minimum amounts are whether they are appropriate in absolute or should be higher or lower. Given the widely differing average cost of compensation to victims of motor vehicle accidents across Member States, depending

inter alia on the level of court awards for damages, a minimum amount set at EU level will inevitably be inadequate to cover the cost of the most expensive accidents in any Member State, but setting the minimum amount at that level would cause unintended increases in motor insurance for policyholders in a number of Most Member States. There is therefore a delicate trade-off to be exercised.

A second issue is whether the minimum amounts should be differentiated according to category of motor vehicle (private car, motorbike, truck, bus and so on). In the largely consensual view of stakeholders the amounts should not be differentiated, because a small vehicle could potentially cause an accident with bigger damage as a large vehicle (e.g. private car or motorbike causes a bus to go off road).

Another issue concerns the procedures and periodicity of the current five-yearly review of the minimum amounts. MID allowed different transition periods for a number of Member States to introduce the minimum amounts (which had all expired), for which reason the timing of the review of the minimum amounts, and thus the minimum amounts themselves, are different in these Member States. The reason for this is that the review period of five years only started at the end of the Member States' individual transitional period. Stakeholders were largely of the view that the periods should be reset and harmonised for all Member States, in order to ensure that minimum amounts of cover are the same across the EU. Table 10 below shows how the actual level of minimum amount of cover differ across Member States, resulting in unequal protection of victims.

Table 10: Actual amounts of cover required in different Member States for personal injuries and personal damage in EUR⁹⁷.

Country	Personal Injuries (in EUR)		Material Damage (in EUR)	
	Per person	Per claim	Per person	Per Claim
BE		Unlimited	111.802.803	111.802.803
BG	1.022.584	5,112, 919		1.022.584
CZ	1.294.762*		1.294.762*	
DK*		15.281.092*		3.083.027*
DE		7.500.000		1.120.000
EE		5.600.000		1.200.000
IE		unlimited		1.120.000
EL	1.000.000			1.000.000
ES		70.000.000		15.000.000
FR		unlimited		1.120.000
HR*		5.603.251*		1.120.650*

⁹⁷ The minimum amounts of cover for the Member States without a transition period is currently set at

- in the case of personal injury, €1 220 000 per victim or €6 070 000 per claim, whatever the number of victims;
- in the case of material damage, the minimum amount is increased to €1 220 000 per claim, whatever the number of victims.

In some Member States, the minimum amounts are expressed in local currency and not in EUR and consequently the minimum amount can vary over time due to changes in the exchange rate.

IT		5.000.000		1.000.000
CY*		33.540.000*		1.120.000*
LT		5.000.000		1.000.000
LV		5.000.000		1.000.000
LU		unlimited		unlimited
HU		5.123.771*		1.601.178*
MT		2.500.000		500.000
NL		5.600.000		1.120.000
AT		5.800.000		1.200.000
PL		5.000.000		1.000.000
PT		5.000.000		1.000.000
RO		5.000.000		1.000.000
SK		5.000.000		1.000.000
SI		5.000.000		1.000.000
FI		unlimited		3.300.000
SE*		32.342.921*		32.342.921*
UK		unlimited		1.442.880

Source: Council of Bureaux, last update 26/11/2015

In addition, the Insurance and Occupational Pensions Authority (EIOPA) pointed out in a letter to the Commission⁹⁸ that higher levels of minimum amount of cover set at national level in a few Member States would have the potential to create market distortions for the insurance of trucks, buses and coaches circulating across-borders. In particular, the differences would provide incentives for commercial vehicles to register and obtain MTPL insurance in Member States with lower minimum cover requirements to avail themselves of cheaper motor insurance premiums. These vehicles could then be circulating across the European Union, and potentially generate claims in Member States where the domestic minimum cover requirement is much higher.

Member States with lower minimum amounts of cover are expected to have lower levels of MTPL premiums, but as demonstrated in Figure 5.1, there is not a direct relationship between the average premiums and the minimum amounts of Member States. However, article 14 (b) of the Directive foresees that in case of an accident, the insurer should provide for amount of cover which is obligatory in the legislation where the vehicle is based or the accident took place, whichever is the highest. As an effect of competition and market forces, a tendency for an upward alignment of MTPL premiums exists. Insurers might adjust premiums taking into account the higher level of claims due to cross border accidents. Consequently, market forces could ensure alignment of premiums and mitigate risks of regulatory arbitrage.

Figure 5.1: average MTPL premiums by MS

⁹⁸ EIOPA-17-691 Letter on cross-border motor insurance issues under Directive 2009/103/EC, 30 October 2017



Source: European Motor Insurance Markets Addendum, Insurance Europe, June 2016

5.1.6 Checks on insurance of vehicles

The current MID contains a paradox for cross-border traffic. The MID requires drivers to obtain third party liability motor insurance and requires Member States to enforce this obligation. Therefore, the Directive stipulates that the Member States shall take effective action to ensure that civil liability is covered by insurance. At the same time, the Directive also prohibits checking of the MTPL cover of vehicles moving across-borders. This aims to facilitate unhindered cross-border traffic and ensure free movement of persons and goods, a key cornerstone of the internal market. In particular manual checks of MTPL cover at the borders would be very time- consuming and hinder the free movement of persons and goods. As a consequence, vehicles circulating for a longer period in a different Member State than the one where they are registered may remain unchecked for compulsory motor insurance, which makes uninsured driving easier in a cross-border context.

According to, the Association of European Vehicle and Driver Registration Authorities (EREG)⁹⁹, uninsured driving is an important problem within the EU. The cost has been estimated by EREG at € 870 million in claims in 2011 for the EU as a whole. As third-party motor liability insurance is compulsory for all vehicles within the EU, uninsured driving negatively affects a wide range of stakeholders including victims of accidents, insurers, guarantee funds and motor insurance policyholders.

As outlined in the EREG report, uninsured driving is a problem both at national level and at the European level. At national level, article 3 of Directive 2009/103/EC obliges Member States to *"take all appropriate measures to ensure that civil liability in respect*

⁹⁹ EREG, FINAL REPORT, Topic Group XI on tackling uninsured driving, 8 April 2013. www.ereg-association.eu

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. Uninsured driving is also problem at EU level as uninsured vehicles are driving not only in Member States where they are registered but also in other Member States.

For the reasons mentioned above, the current MID, which prohibited insurance checks at EU-borders to ensure the free circulation of vehicles, negatively affects an effective implementation of the insurance obligation. Furthermore, new technological developments are available which could increase possibilities for insurance checks without stopping a vehicle at the border.

5.1.7 Other areas of the evaluation

- insurance of dispatched vehicles

Article 15 of the MID on dispatched vehicles was introduced in order to facilitate consumers to find MTPL insurance for a vehicle that has to be dispatched from one Member State to another. To that end article 15 set out that the Member State of destination is the Member State where the risk is based, even though the vehicle will not yet be formally registered there. When a person buys a vehicle in another Member State, that person has the maximum of 30 days to register his/her car in his/her home Member State and to arrange suitable MTPL insurance.

However, according to the responses to the public consultation, a number of stakeholders have indicated that this problem would still exist. In particular, a number of practical issues and gaps in claims handling in the event of an accident with a dispatched vehicle had been identified.

A gap that occurred in practice is the lack of a clearly identifiable insurer who would see himself responsible for receiving a claim for compensation in the event of an accident involving a dispatched vehicle in the Member State of origin. In such a case, the vehicle is insured with an insurer in the Member State of destination, which means that a victim in the Member State of origin would have to address a claim to the insurer in the Member State of destination. The victim may however not address a claim to the Bureau of the Member State of origin since the vehicle is registered in the Member State of origin and the Bureau of the Member State is only competent for foreign vehicles. Finally, the victim (when resident in the Member State of origin) is not entitled to address a claim to the Compensation Body of the Member State of origin either since the accident has not taken place in another Member State than the victim's Member State of residence. It should be further monitored what is the extent of the issue of insurance of dispatched vehicles to determine the most appropriate approach to overcome any gap.

- A requirement Member States to set up Information Centres.

The MID requires Member States to set up information centres to ensure that information concerning any accident involving a motor vehicle is made available promptly. In particular, they should inform victims on claims representatives of insurers and provide information on the insurance cover of a vehicle.

However, under the Motor Insurance Directive Information Centres are not required to give any information on the insurance situation of vehicles dispatched from one Member State to another in accordance with Article 15. According to some stakeholders, it would be beneficial for victims of motor accidents, if information centres would provide this information. Furthermore, a register on the insurance data of dispatched vehicles maintained by Information Centres would be helpful for the purpose of prevention of insurance fraud. Therefore, it should be further monitored what is the magnitude of this issue and the impact on injured parties and if benefits would outweigh the costs of setting up such a register.

- Protection of visitors

Compared to the Green Card system, which protects victims against accidents caused by visiting drivers, MID also provides protection for victims of an accident in countries where they are not residents (visitors). To that end, Member States must require insurers from other Member States to appoint claims representatives. Furthermore, they are required to set up information centres that facilitate tracking of drivers and compensation bodies that provide assistance in cases where the victim cannot co-operate effectively with the insurer.

The introduction of the Fourth Motor Insurance Directive was an important improvement for the situation of visiting victims. The protection scheme does however not offer the same guarantees as they exist within the Green Card system.

The Motor Insurance Directive provides for an enhanced protection scheme for injured parties sustaining loss or injury from an accident as referred to in Article 20 of the Directive, but the Directive does not provide for any guarantee system comparable to the one of the Green Card System. Consequently, claims representatives pay much attention to the certainty of being reimbursed by an insurer before to start compensating a victim. Therefore, they usually await the advanced payment of the insurer before compensating the injured party.

In the interest of victims, it might be useful to consider the guaranteeing of compensations paid by claims representatives to injured parties. Nevertheless, this issue should be further monitored to determine the frequency and magnitude of this issue and the impact in terms of delay of reimbursement for injured parties.

- Direct right of action against guarantee funds

Article 18 established the right of injured parties for direct action against the insurance undertaking that should cover the aftermath of an accident. However, such a right does not exist against guarantee funds. This means that there is more difficult access to justice for those injured parties that incurred damages in accidents that concerned uninsured or untraced vehicles. This issue should be further monitored to determine the magnitude of this problem and the impact on injured parties.

- Autonomous and semi-autonomous vehicles and electric bikes

An analysis to what extent new technological developments such as autonomous and semi-autonomous vehicles and electric bikes are effectively covered by the MID is provided in section 6.4 on relevance.

5.2. Efficiency

The costs and benefits of the MID were only assessed on a qualitative basis due to a lack of quantitative data revealed in the evaluation (research and stakeholder input), as explained under limitations of methodology.

5.2.1. Benefits for victims of motor insurance accidents, insurers policyholders

The evaluation showed a broad consensus of stakeholders that the MID contains a number of benefits in particular for victims of motor accidents. MID ensures a high level of protection across the EU, based on common elements.

The main benefits of the MID for the different stakeholders are outlined in the table below:

Table 11: assessment of benefits of the MID for distinct stakeholder groups

Type of stakeholder	Benefits of the MID
For victims of motor accidents:	<ul style="list-style-type: none"> • the MID provides for the protection of victims across the EU based on common minimum amounts of cover for personal injury and material damage, efficient procedures for handling of claims and with appropriate guarantees for a swift payment of damages. • It ensures that both personal injuries and material damage are covered by insurance. • It provides for specific protection for vulnerable road users, such as pedestrians and cyclists • It ensures swift reimbursement of victims, even in cases where the driver was not insured or in cases of untraced drivers through national compensation bodies, in the Member State of residence of the victim. • It provides a network of claims representatives in all EU Member States to ensure that victims have a point of contact in their member state of residence even if the accident occurred in another Member State. • It protects victims against abusive exclusion clauses in insurance contracts • It provides the direct right of action against an insurance undertaking covering the person responsible for the accident • It ensures protection for "visiting victims" who travel across-borders.
For policyholders:	<ul style="list-style-type: none"> • The MID ensures the free circulation of vehicles without border checks on MTPL insurance. • It ensures that third party liability of the policyholder is covered in case of accident within the whole EU territory without the need for specific MTPL insurance in each different Member State on the basis of a single premium. • It ensures that the minimum level of cover and procedure is the same across the EU facilitating cross border circulation. • It ensures that policyholders do not need to carry the Green Card on them when crossing the border

For insurers:	<ul style="list-style-type: none"> • It sets out clear procedures and obligations in case of accidents with an insurer of another Member State; • It set up principles of compensation for situations that involve uninsured or untraced vehicles • It creates overall legal certainty ensuring an efficient handling of claims across the EU.
For Member States:	<ul style="list-style-type: none"> • It provides guarantees to allow free circulation of the vehicles across the EU without the need for imposing border checks on motor insurance. • It sets clear procedures and obligations on risk sharing in case cross border accidents including cross-border accidents involving an uninsured driving or an untraced vehicles • It ensures an efficient handling of claims through the setting up of national compensation bodies for accidents involving visiting victims. • It sets minimum standards for the protection of citizens when visiting another Member State

5.2.2. Costs for the setting up of the different bodies: (qualitative assessment)

The setting-up of the different institutions required by MID created costs for stakeholders. These institutions include compensation bodies, Guarantee Funds, Claims representatives and Information centres as described in the box below. The main elements are assessed qualitatively and considered to be proportionate to the objectives of the MID. The public consultation showed no reports from stakeholders that these requirements were excessively costly or burdensome.

Box 8: the institutional set-up of the MID

The Directive requires to set up a number of bodies:

- **Compensation Bodies (CB):** For accidents caused in another Member State than the one of the victim' residence, the CB will intervene:
 - In the event an insurance company has not nominated a Claims Representative (CR) in the victim's Member State
 - In the event the insurance company or its CR has not provided a timely and sufficient reply to a claim;
 - In the event a vehicle having caused an accident cannot be identified or it is impossible to identify the insurer of the vehicle.
- **Guarantee Fund (GF):** compensates the consequences of an accident caused by an unidentified or an uninsured vehicle.
- **Claims Representatives (CR):** Every insurer offering MTPL insurance in an EEA Member State has to nominate in each other Member State a CR. The CR is entitled to receive, handle and settle claims addressed by a victim having his residence in the

Member State where the CR is established and related to a road traffic accident that has occurred in another Member State than the State of the victim's residence.

- **Information Centres (IC):** In order to enable a victim of a road traffic accident to seek compensation, each Member State has an IC, responsible for keeping registers and providing information about - amongst others - registration numbers (license plates) of vehicles, insurance cover of these vehicles and the CR nominated by different insurance companies.

At present data on the costs associated with the set-up and operation of the individual bodies is not available. However there are some data on the total financial volume of Guarantee funds:

Table 12: Cashflows from claims covered by Guarantee Funds in 2011

Total amount of claims paid by Guarantee Funds on uninsured driving in 2011	EUR 843,905,416
Total amount of claims paid by Guarantee Funds for untraceable drivers in 2011	EUR 318,280,550
Total amount of claims handled by Guarantee Funds in 2011	EUR 1, 153,185,966

Source: CoB position paper on uninsured driving, position paper, 12/09/2012

5.3. Coherence

As part of the fitness check, the overall coherence of the MID within the EU Framework and the interlinkage of the MID with the international Green Card system were assessed.

5.3.1 Consistency of the MID within the overall EU framework.

There is no direct links with other legislation apart from the Solvency II¹⁰⁰ which establishes conditions for the conduct of business on a cross-border basis. In this context, Solvency II provides two more instruments that seek to achieve a high level of protection of victims, namely:

1) The obligation for the insurer to become member of the bureau of insurers of the receiving Member States and contribute towards the guarantee fund¹⁰¹. This ensures the compensation of victims in the event of accidents with untraceable or uninsured drivers even in case the MTPL insurance has been provided to a policyholder on a cross-border basis.

¹⁰⁰ 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)

¹⁰¹ Article 150 of Directive 2009/138/EC (Solvency II)

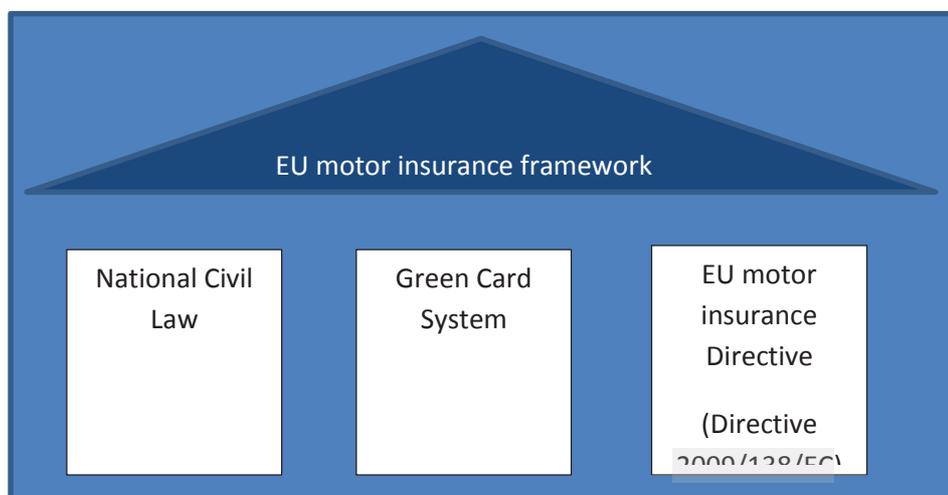
2) The obligation to ensure non-discriminatory treatment of claims¹⁰² and the requirement to appoint a representative¹⁰³. The representative is required to "collect all necessary information in relation to claims, and shall possess sufficient powers to represent the undertaking in relation to persons suffering damage who could pursue claims, including the payment of such claims, and to represent it or, where necessary, to have it represented before the courts and authorities of that Member State in relation to those claims. That representative may also be required to represent the non-life insurance undertaking before the supervisory authorities of the host Member State with regard to checking the existence and validity of motor vehicle liability insurance policies." ¹⁰⁴ These provisions ensure the appropriate handling of claims for insurers operating on a cross border basis.

These provisions are deemed necessary in view of the increasing mobility of citizens of the Union and the fact that motor liability insurance is increasingly being offered on a cross-border basis. Consequently these provisions are considered coherent with the objectives of the MID.

6.3.2 Interlinkage between the MID and the Green Card System.

The international motor insurance framework applicable in the EU is not fully regulated by EU institutions. There are three core elements that inseparably underpin its functioning: national civil law, the Green Card system and the EU motor insurance directive:

Figure 5.2: The EU third party liability motor insurance framework



¹⁰² Article 151 of Directive 2009/138/EC (Solvency II)

¹⁰³ Article 152 of Directive 2009/138/EC (Solvency II)

¹⁰⁴ Article 152 of Directive 2009/138/EC (Solvency II)

a) National civil law

First, it is national civil law that determines the very scope of civil liability, levels of compensation and the types of injured parties covered.

b) The Green Card system

The Green Card is an international certificate of third party liability insurance that makes it possible for travellers to cross borders without having to buy supplementary insurance. The system is run by a Council of Bureaux and was set up in 1949 under the auspices of the United Nations Economic Commission for Europe (UNECE). There are three categories of Green Card Members: EEA Member States, Members under section III of the Internal Regulations (Andorra, Croatia, Serbia and Switzerland) and standard Green Card Members. Vehicles from EEA Member States and Section III States can travel freely between the relevant territories even without the Green Card as the number plate of such Member State is presumed proof of insurance.

The Green Card system (explained in Box 1), sets out of system of cross-border guarantees and compensation; this system is governed by a series of multilateral agreements between the bureaux, guarantee funds, compensation bodies and information centres.

c) The Motor Insurance Directive

Third, Directive 2009/103/EC compared to the Green Card system provides the necessary upgrades at EU level (in terms of e.g. putting in place minimum amounts of cover, stating that both personal injuries and material damage is covered, banning unfair exclusion clauses vis a vis victims and putting in place facilities to protect visiting victims) thereby achieving a high degree of convergence between the Member States in terms of protection of victims of traffic accidents.

Although the overall system seems to be complex, it does not much differ from other areas of law in the EU. Relevant legal relations are usually governed by a mixture of rules originated from different actors. Furthermore, the different layers are complementary to each other.

5.4. Relevance

5.4.1. Economic context and importance of MTPL insurance

The data from the CARE annual report of 2016 shows a downward evolution of accidents and fatalities which stabilised in 2014. It also shows a relationship between road accidents,

fatalities and injured. In 2014 more than 1 million road accidents occurred in the EU with more than 25.000 road fatalities and approximately 1.4 million injured. Even if there is a decreasing trend in road fatalities, this figure shows that third party liability motor insurance will continue to be relevant for the protection of victims of motor accidents in the following years.

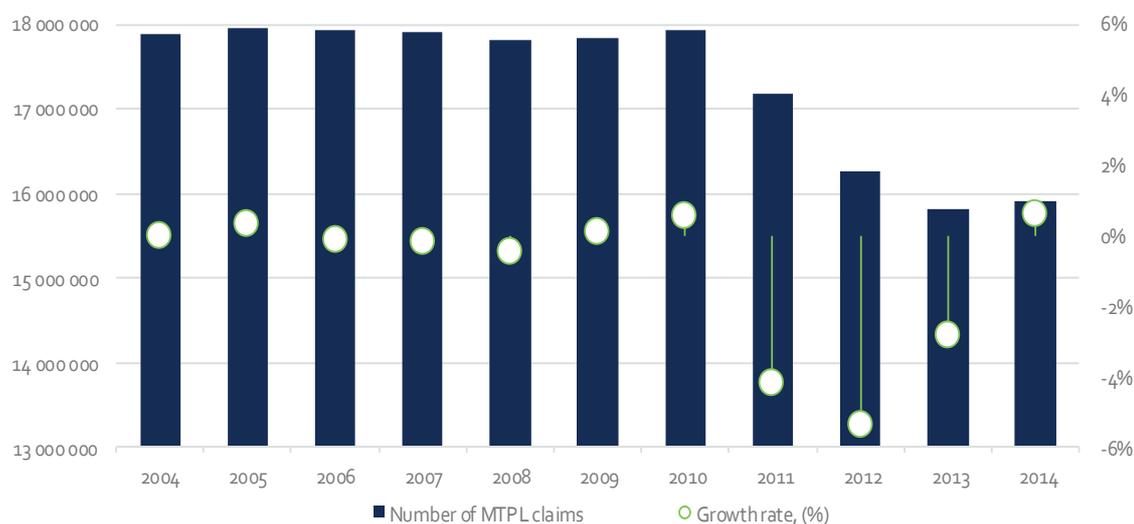
a) Road fatalities.

The data from the CARE annual report of 2016 shows that there is a downward evolution of accidents and fatalities which stabilised in 2014. It also shows a relationship between road accidents, fatalities and injured. In 2014 there were more than 1 million road accidents in the EU and more than 25.000 road fatalities and approximately 1.4 million injured. Even if there is a decreasing trend in road fatalities, this figure that third party liability motor insurance will continue to be relevant for the protection of victims of motor accidents in the following years (see Section 1 of Annex 4, figures 1.1, 1.2, 1.3 and 1.4).

b) Key economic data of the Motor Insurance Market:

According to Insurance Europe, an industry association of insurers, the total amount of premiums in 2014 amounted to EUR 62,5 Billion and represented approximately 57 percent of total motor insurance premiums in the EU¹⁰⁵. As shown in figure 2.2 of Annex 4 there are an increasing number of vehicles circulating within the EU. However, the number of claims has decreased in 2014 to 15.9 million as shown in figure 5.3. Furthermore, the cost of claims has gradually increased and now reaches approximately EUR 3200 per claim as shown in figure 4.1.in Annex 4. In addition, figure 3.1 of Annex 4 shows the evolution of the average MTPL premiums within the EU which has been stabilize since 2009 and remains below EUR 250 per year in 2014.

Figure 5.3 : Evolution of number of MTPL claims (2004-2014)



Source: European Motor Insurance Markets Addendum, Insurance Europe, June 2016

¹⁰⁵ European Motor Insurance Markets Addendum, Insurance Europe, June 2016

5.4.2. Need for the protection of victims of motor accidents

As long as there is free circulation of vehicles, accidents of motor insurance will occur and victims requiring compensation of personal injury and material damage. Even if there will be technological developments reducing the number of motor accidents, there will remain a residual number of damage requiring compensation. Consequently the MID will remain relevant for the protection of victims of motor accidents in terms of convergence of protection between the Member States.

5.4.3. Need for MID for the free circulation of persons and vehicles

The free circulation of persons and vehicles within the EU is one of the key cornerstones enshrined in the EU treaty. To ensure that free circulation is possible, the MID abolished obtrusive border checks for motor insurance. This allows for the easy crossing of borders for EU citizens. Consequently the MID remains relevant for the free circulation of persons and vehicles.

5.4.4. Impact of new technological developments on the MID, autonomous vehicles

a) Electric bicycles

In principle new types of motor vehicles, such as electric-bicycles (e-bikes), segways, electric scooters, fall within the scope of the Directive. The use of these new types of electric motor vehicles in traffic has the potential to cause victims in accidents which need to be protected and reimbursed swiftly.

However, as part of the public multiple association representing the electric bike (e-bikes) industry argued that requiring third party liability insurance could undermine the uptake of e-bikes. To avoid that these new types of vehicles are subject to MTPL, the current directive already provides Member States with the power to exempt them from MTPL. The national guarantee funds would bear the costs to reimburse victims of accidents with these new types of "vehicles".

Following the principle of subsidiarity, the most proportionate approach, which provides for the highest level of protection of victims is that Member States would make use of their powers to exempt these vehicles from MTPL insurance in accordance with article 5 of the Motor Insurance Directive. Therefore, there is no EU action required to address this topic. This allows for protecting victims of motor accidents in accordance with the rules set out in the Motor Insurance Directive, and at the same time provide flexibility at national level to exempt such new electric vehicles in accordance with article 5 of the Directive from compulsory motor insurance on the condition that national compensation bodies would ensure compensation of claims due to accidents with such new motor vehicles.

Autonomous vehicles

As outlined by the GEAR¹⁰⁶ report, it can be expected that technological developments in the following years will lead to an uptake of autonomous and semi-autonomous vehicles. The reports projects that by 2025 autonomous vehicles could represent 20 percent of global vehicles sold. The report also estimates that there will be at global level and 44 million vehicles by 2030. In addition, the report projects considerable impacts in terms of business models. One particular impact of relevance for third party liability insurance is that autonomous vehicles have the potential to drastically reduce road fatalities which currently mainly occur due to human error¹⁰⁷.

Box 9: Different levels of developments of autonomous vehicles

The GEAR report outlined that automated vehicles are vehicles that can replace the driver for some or all of the driving tasks. The society of autonomous engineers (SAE)¹⁰⁸, identifies six different stages in the development of driving automation, from no assistance (SAE level 0 until full automation (SAE level 5):

- SAE Level 0: No assistance: the full-time performance by the human driver of all aspects of the dynamic driving tasks regardless of any technological warning systems.
- SAE Level 1: Driver assistance: specific execution by a driver assistance system of either steering or acceleration/deceleration while the human driver performs all remaining aspects of the dynamic driving tasks.
- SAE level 2: Partial Automation: Vehicles acting automatically on the brakes, the accelerator or/and the steering control under the constant supervision of the driver
- SAE Level 3: Conditional Automation: specific performance by an automated driving system of all aspects of the dynamic driving task with the expectation that the human driver will respond appropriately to a request to intervene
- SAE Level 4: High automation: automated vehicles allowing the driver to perform secondary tasks.
- SAE level 5: High automation. Vehicles able to drive autonomously.
- (SAE level 5). Such in any traffic conditions are not expected to be available before 2030 except for testing.

¹⁰⁶ GEAR 2030, High Level Group on the Competitiveness and Sustainable Growth of the Automotive Industry in the European Union, Final report, October 2017, available at: https://ec.europa.eu/growth/content/high-level-group-gear-2030-report-on-automotive-competitiveness-and-sustainability_en

¹⁰⁷ Multiple studies exist on accident causation sources, see GEAR 2030, referred to in footnote 98.

¹⁰⁸ https://www.sae.org/misc/pdfs/automated_driving.pdf.

For the purpose of this report SAE level 2 until 4 can be considered semi-autonomous vehicles and only SAE level 5 is considered fully autonomous vehicles.

According to the GEAR report, SAE "Level 2" Vehicles, acting automatically on the brakes, the accelerator or/and the steering control under the constant supervision of the driver are already available on the EU market.

According to the European Road Transport Research Advisory Council (ERTRAC)¹⁰⁹, a platform regrouping stakeholders within the road transport sector, automated vehicles allowing the driver to perform secondary tasks (SAE levels 3-4) should be available by 2020 on the EU market for a limited number of driving situations. Such driving situations could include e.g. automated cruising on the motorway or urban shuttles for dedicated trips.

The use of SAE level 5 vehicles under traffic conditions are not expected to be available on the market before 2030, except for testing¹¹⁰.

The question on the future impact on third party civil liability insurance arises and, consequently, whether the Motor Insurance Directive is fit to deal with these technological developments. In particular, the Directive requires all vehicles to obtain mandatory third party liability motor insurance with a view to ensure a high level protection of victims of traffic accidents. This obligation also applies to autonomous or semi-autonomous vehicles. A possible rationale would be the continuous need to protect and compensate victims of accidents involving autonomous and semi-autonomous vehicles circulating within the EU. Even if there is considerable uptake of autonomous vehicle and semi-autonomous and the potential positive effect on reducing road fatalities and motor accidents materialises, there will remain a residual amount of traffic accidents and injured parties. This is can be reasonably expect as current accidents with autonomous and semi-autonomous vehicles have shown that despite technological developments accidents can occur. As a consequence there will remain victims of road traffic accidents with personal injuries and material damage to be compensated.

It is important to notice that it currently does not matter whether the policyholder is also the "driver" of the vehicle". An accident may be caused by a driver who is neither the owner of the vehicle and nor the policyholder of the MTPL insurance linked to the vehicle, but still the victim of the accident may claim compensation under the MID.. Consequently, for an autonomous or semi-autonomous vehicles, for the purpose of the MID the absence or semi absence of a driver is not relevant. The owner who has registered the vehicle is required to obtain a MTPL insurance and it is the MTPL insurance which will ensure the compensation of the victims in the event of an accident. In a second step, and in the event of a potential deficient functioning of the self-driving car, the insurer may obtain recourse against the manufacturer.

¹⁰⁹ ERTRAC Automated Driving Roadmap:
http://www.ertrac.org/uploads/images/ERTRAC_Automated_Driving_2017.pdf

¹¹⁰ GEAR 2030, High Level group on the on the Competitiveness and Sustainable Growth of the Automotive Industry in the European Union, Final report, October 2017

The public consultation supported the view that cars using self-driving technologies should continue to be covered by the MID. In particular victims should continue to obtain the same level of protection as victims of regular vehicles.

It is not contested by any stakeholder group that autonomous or semi-autonomous vehicles (often referred to as "driverless vehicles") currently fall within the scope of the Directive. A question raised in the consultation was however, whether changes to the current system should be envisaged. All groups of stakeholders believed that such a change would at this stage not be justified. It was widely felt that MTPL insurance under the Directive ensures a rapid compensation of victims of accidents, and any other system, such as placing liability with the manufacturer of the vehicle, would risk slower compensation or lower cover or both. It was pointed out that in the event of an accident caused by a self-driving vehicle and due to a manufacturing fault, the MTPL insurer of the vehicle (after compensating the victim) may claim recourse from the manufacturer.

Finally, stakeholders held that the uptake of autonomous vehicles would take a considerable amount of time and it would be still uncertainty about the market penetration. However, the technological developments and their possible implications for the MID should be continuously monitored.

Another development affecting car insurance in the following years is the proliferation of data generated by autonomous cars. Some insurers are developing pay-as-you-drive (PAYD) car insurance whereby the costs are dependent upon type of vehicle used, measured against time, distance and place. Thanks to more advanced sensors and intelligence systems within autonomous cars for usage monitoring, drivers could have flexible premium fees, and have optional value-added services such as tracking of stolen vehicles.

5.5 EU Added value

The objective of the MID is to ensure a high level of protection of victims of traffic accident and at the same time ensure the free movement of persons and vehicles across-borders. This can only be achieved by EU Action. At the same time, only action at EU level can ensure a level playing field in terms of protection of victims of traffic accidents across the EU. Furthermore, only the EU can set minimum standards of protection of victims and enhancing protection of policyholders when moving across-borders.

The evaluation shows that solely MID can ensure the free circulation of motor vehicles within the EU, based on a single MTPL insurance for policyholders. Only EU action can create the instruments and institutions necessary to ensure more convergence of protection of victims. In particular, only common minimum amounts of cover for injury and material damage can ensure an equal protection of victims across the EU.

EU action is also required to introduce an efficient and uniform process for the handling of claims. Regardless in which Member State an accident happens, MID provides victims to benefit from an established process in the Member State of residence based on a claims representative network across the EU. EU action is also necessary to guarantee the EU-wide compensation of victims from uninsured and untraceable drivers. For

insurers, EU action facilitates the cross-border provision of MTPL insurance based on common principles and procedures.

Building on the international Green Card system, the MID provides for a higher level of legal certainty for all stakeholders including victims, insurers, policyholders, bureaux and compensation funds.

6. CONCLUSIONS

6.1. Conclusions of the evaluation

A. Effectiveness of the Directive:

Regarding most of the aspects of the Directive examined in this evaluation, it can be concluded that the Directive is overall fit for purpose and broadly achieves its objectives of ensuring a high level of protection of victims of motor accidents and allowing the free circulation of vehicles without border checks.

Nevertheless, the evaluation identified a number of challenges and obstacles as regards the effectiveness of the Directive which merit further reflection and could result in policy actions. This conclusion applies to the following elements of the Directive included in this evaluation:

- The compensation of victims in case of insolvency of the insurer is not addressed by the Directive. As a consequence victims are insufficiently protected in comparison to similar situations such as accidents involving uninsured or untraceable drivers;
- Differing national implementation of the scope of application of the Directive following three CJEU rulings had been identified as a source for legal uncertainty affecting adequate protection of victims;
- The levels of minimum coverage in cases of personal injury are not implemented in a harmonised way, creating uneven protection of victims across Member States.
- The prohibition of all border insurance checks, including unobtrusive ones, has created difficulties to detect uninsured driving in cross-border situations.
- Information on claims history is not available in standardised form, nor it is assured that such information is used in cross-border situations in a non-discriminatory manner.
- Inconsistencies in some terminology and definitions are creating legal uncertainty in specific cases.

Other aspects of the Directive were indicated by some stakeholders as possible issues, but they did not provide sufficient evidence for a need for policy intervention. These issues are:

- An allegedly insufficient mechanism for the protection of victims of motor vehicle accidents in a Member State other than their Member State of residence (visiting victims);
- The power of Member States to exempt categories of vehicles or activities from the requirement for MTPL insurance, subject to the coverage of accidents caused by such exempted vehicles by the national guarantee fund;
- Insurance of dispatched vehicles.

As regards all other aspects of the Directive are concerned, no issues were identified in respect to their effectiveness.

B. Efficiency: In light of feedback received from stakeholders during the public consultation, the evaluation concludes that the Directive is efficient in achieving its objectives. It set up a architecture of national bureaux, compensation bodies, and national information centres and it requires insurers to have a network of claims representatives throughout the EU. On the other hand, there is no evidence of any excessive costs or administrative burden imposed by the Directive. A simplification of the implementation architecture of the Directive would prejudice its objectives.

C. Coherence: The evaluation demonstrated that the Directive is coherent with other legislation, in particular Solvency II (which contains specific provisions on motor insurance). Furthermore, it is consistent with the overall legislative framework on MTPL insurance applicable in the EU consisting also of national civil law and the Green Card System at international level, providing an additional layer at EU level ensuring a uniform protection for victims and the free circulation of vehicles within the EU.

D. Relevance: Given the importance of free circulation of vehicles in the EU and the continuous increase in numbers of vehicles an EU framework for MTPL motor insurance will continue to be needed. The evaluation also looked at new technological developments such as autonomous vehicles and e-bikes. It concluded that the existing framework is at this stage appropriate to address these developments, and such vehicles should not be excluded from the scope of the legislation at EU level.

E. EU Added Value: only EU action can ensure the free circulation of vehicles based on a single third party liability insurance and at the same time allow for the equal and high protection of victims of motor accidents across the EU.

6.2 Possible follow-up actions

As a follow-up to the conclusions of this report, an impact assessment is prepared examining the policy options for intervention on the aspects of the Directive where the need for action has been identified. These four aspects, which form the subject of a distinct impact assessment, are the following:

- Unobtrusive checks on insurance of vehicles to address uninsured driving;
- Fully harmonised minimum amounts of cover;

- Transferability of information about claims history for citizens moving across borders;

The impact assessment also provides analysis for the possible inclusion of an area which is currently not part of the Directive, namely the compensation of victims of motor vehicle accidents where the insurer is insolvent and incapable of paying compensation. Cases where the insolvent insurer provided cross border insurance will be of particular relevance.

An annex to the impact assessment explains the Commission's reasons for wishing to codify CJEU rulings on the scope of the Directive, thus ensuring consistent application of the Directive while allowing Member States the orderliness of a transposition process to achieve this.

ANNEX TO THE EVALUATION REPORT

Overview of Repealed Directives with list of its successive amendments

Council Directive 72/166/EEC (OJ L 103, 2.5.1972, p. 1)	
Council Directive 72/430/EEC (OJ L 291, 28.12.1972, p. 162)	
Council Directive 84/5/EEC (OJ L 8, 11.1.1984, p. 17)	Only Article 4
Directive 2005/14/EC of the European Parliament and Council (OJ L 149, 11.6.2005, p. 14)	Only Article 1
Council Directive 84/5/EEC (OJ L 8, 11.1.1984, p. 17)	
Annex I, point IX.F of the 1985 Act of Accession (OJ L 302, 15.11.1985, p. 218)	
Council Directive 90/232/EEC (OJ L 129, 19.5.1990, p. 33)	Only Article 4
Directive 2005/14/EC of the European Parliament and Council (OJ L 149, 11.6.2005, p. 14)	Only Article 2
Council Directive 90/232/EEC (OJ L 129, 19.5.1990, p. 33)	
Directive 2005/14/EC of the European Parliament and Council (OJ L 149, 11.6.2005, p. 14)	Only Article 4
Directive 2000/26/EC of the European Parliament and Council (OJ L 181, 20.7.2000, p. 65)	
Directive 2005/14/EC of the European Parliament and Council (OJ L 149, 11.6.2005, p. 14)	Only Article 5
Directive 2005/14/EC of the European Parliament and Council	

**ANNEX 8: (CONFIDENTIAL*): FINANCIAL VOLUME OF INSOLVENCY CASES FALLING
UNDER THE SUBJECT MATTER REGULATED BY THE 1995 AGREEMENT**

*This annex is confidential and not for publication in the final Impact Assessment report as it includes the names and confidential data of insolvent insurers and some insolvency cases are still ongoing.

ANNEX 9: (CONFIDENTIAL*) UNINSURED DRIVING IN THE EU

*This annex is confidential and not for publication in the final Impact Assessment report as it concerns confidential responses from Member States.

ANNEX 10: INSOLVENCY: VOLUNTARY AGREEMENTS BETWEEN MEMBER STATES

(Source: Council of Bureaux, COB text)

1. The current European system of protection of victims of road traffic accidents where the insurer of the liable party becomes insolvent

The compensation of a victim where the MTPL insurer becomes insolvent may get an international dimension (exceeding the national borders) in two ways:

- either the road traffic accident has a cross-border element (the tortfeasor or the victim travels abroad);
- or the insurance undertaking bound to indemnify the victim operates across the borders under the Freedom to provide Services (FoS) or the Freedom of Establishment (FoE).

The first dimension calls for rules on victims' protection. The second dimension – beyond the protection of victims – raises the issue of financial supervision and allocation of the financial burden of the insolvency since there are more countries concerned by the insurer's activities. Rules governing these situations exist

- a) on the national level
- b) on EU level and
- c) on the international level, in the form of non-compulsory agreements created or administered by the Council of Bureaux.

a) National rules

On the **national level** (and concerning victims' protection), almost all countries in the European Economic Area provide for the intervention of the Guarantee Funds (or analogous bodies) in case the MTPL insurance undertaking of the vehicle causing the accident is in a state of insolvency. In at least one Member State (Sweden), no intervention in case of insolvency is provided for at all.

The level and nature of intervention differs, however, from country to country (the identity of the competent body, the scope of intervention depending on the type of damage or injury) as well as the financing of these bodies. There are countries where the intervention of the competent bodies in case of insolvency depends on whether the defaulting entity is a local company or a foreign company operating there under FoS or FoE.

b) EU rules

In the **European Union**, the regulatory regime intended to prevent and tackle insolvency in the field of insurance primarily consists of the Solvency II Directive (2009/138/EC). The Directive introduces the principle of “home country control” (financial supervision from the country of origin of the undertaking). However, the Directive does not offer solutions for the compensation of victims once an insolvency has occurred. In the field of MTPL insurance, under the EU Motor Insurance Directives, road traffic victims are protected against accidents caused by uninsured and unidentified vehicles and receive assistance if they suffer an accident when visiting another country. However, the protection of victims against the insolvency of the liable party’s insurer is not explicitly provided for under European law.

c) International rules.

The Council of Bureaux (CoB) is the managing organisation of the Green Card system, the system of compulsory MTPL insurance created under the aegis of the United Nations. The CoB counts 47 Member Bureaux from 48 different countries. The CoB also provides secretarial services for the bodies created by the EU Motor Insurance Directives (Compensation Bodies, Guarantee Funds and Information Centres).

As regards the protection of victims of cross-border accidents, the CoB has created rules for the compensation of victims in cases where the insurer of the liable party becomes insolvent. This is the case for Green Card accidents as well as for accidents falling under the application of the codified Motor Insurance Directive (MID - 2009/103/EC).

A Green Card accident scenario is as follows: a victim in country “A” is hit by a vehicle originating from country “B”. Under the rules of the Green Card system (Internal Regulations), the Bureau of country “A” compensates the victim even if the insurer of the liable party is insolvent, while Bureau “B” guarantees the compensation of Bureau “A”.

An MID accident scenario is the mirror image of a Green Card accident: the victim travels abroad and is hit by a foreign vehicle in the visited country. If the insurer (or its claims representative) is dilatory in settling the claim (or the vehicle of the liable party is uninsured or unidentified), the victim is compensated by the Compensation Body of their country of residence which is later reimbursed by the Compensation Body/Guarantee Fund of the country of establishment of the insurer. The intervention of this system of protection is not foreseen in the case of insolvency of the insurer. The CoB has created a (non-compulsory) agreement to remedy this situation (see below).

Regarding the **other international dimension** (insurance companies operating cross-border and the financial implications of their activities or default), the CoB has made several attempts to find solutions in the form of (non-compulsory) multilateral agreements.

2. Description of voluntary agreements on insolvency

The Council of Bureaux (CoB) has created and or administers three agreements in the field of insolvency, victims’ protection and cross-border operation of insurers that are described below:

PROTECTION OF VICTIMS

A) The 2008 AGREEMENT (Agreement between Compensation Bodies and Guarantee Funds in the event of insolvency of an insurance undertaking providing civil liability motor insurance in the Single Market) – European Economic Area

The Agreement provides for the intervention of Compensation Bodies and compensation by Guarantee Funds in cases where the insurer of the liable party becomes insolvent. This is a system built on and in analogy to the one foreseen under Article 25 of the codified Motor Insurance Directive (2009/103/EC). The victim who suffered an accident in another country than their country of residence and caused by a vehicle insured with an MTPL insurer which becomes insolvent, can file a claim with the Compensation Body of their country of residence. This Compensation Body compensates victim and will be reimbursed by the Guarantee Fund of the state where the vehicle which caused the accident is normally based. However, the accident must have occurred in the same country as the one where the vehicle is normally based.

According to the CoB, the shortcomings of the 2008 Agreement are that:

- it cannot be applied in a country where the laws of which do not provide for the intervention of the Guarantee Fund where an MTPL insurer is insolvent
- it is a voluntary agreement, based on reciprocity and not all countries of the European Economic Area are signatories to it;
- it cannot be applied in cases where the accident occurred in an EEA country other than where the vehicle is normally based.

FREEDOM of SERVICE (FoS)/ FREEDOM of ESTABLISHMENT (FoE) AND INSOLVENCY

B) The 2006 AGREEMENT (Agreement between Bureaux within the framework of compulsory motor insurance) – European Economic Area only

The aim of the Agreement is that if an insurance company operating under FoS in the compulsory motor insurance sector

- does not comply with the obligations emanating from the Internal Regulations or a successor agreement, or
- becomes insolvent and, as a result, the Bureau of the country where the services are rendered is obliged to make payments as debtor Bureau,
- the latter will be reimbursed totally by the Bureau of the country where this compulsory motor insurance company is established.

According to the CoB, the shortcomings of the 2006 Agreement are that:

- it is a voluntary agreement, based on reciprocity and not all Bureaux in the European Economic Area are signatories to it;

- there were derogations announced by some signatories;
- it is only applicable to situations of FoS and not FoE.

C) The 1995 AGREEMENT (Convention on recourse between Guarantee Funds in case of insolvency of a motor liability insurer operating in the Single Market) – European Economic Area

This Agreement was concluded with a view to allocate the financial burden of the insolvency of an MTPL insurance undertaking operating also in various countries under Freedom to Provide Services or Freedom of Establishment. The idea is that the financial consequences should be borne by the market where the financial supervision of the undertaking takes place (home country control principle). Thus, the agreement provides for a compensation mechanism by which the sums paid as compensation by the Guarantee Fund of the host country have to be paid back by the Guarantee Fund of the home country of the insurance undertaking.

According to the CoB, the shortcomings of the 1995 Agreement are that:

- the difference in national laws regarding protection mechanism for the insolvency of insurance companies offering MTPL policies render the application of the Agreement difficult (a number of reservations were made to it);
- it is a voluntary Agreement, and thus was not signed by all the Guarantee Funds of the European Economic Area;
- the Agreement was modified on two occasions and not every signatory is bound by the modified versions. (The modifications introduced amongst others a reciprocity clause and a compensation cap).

3. Overall assessment of the current system of voluntary agreements:

According to the CoB the current system voluntary agreements of protection against the insolvency of MTPL insurers is not entirely satisfactory for the following reasons:

- Not every EEA state has a protection regime against insolvency.
- Even if there is protection in place, its nature and level differs from country to country, as well as the way of contribution to the fund.
- In the case of insurance undertakings operating under FoS and FoE, there is no uniformly introduced guiding principle in the EEA to determine where the responsibility for the insolvency of such undertakings lies and consequently, who

would bear the financial burden. This results in double protection in some countries and no protection at all in others.

- The solutions found by the CoB can only be partial and thus are not satisfactory.

4. Overview of signatories of the voluntary agreements.

Signatories (EEA) to the CoB agreements - insolvency*

		2006 Agreement (Bureaux)	1995 Agreement (GFs)	Addendum N° 1	Addendum N°2	2008 Agreement (CBs & GFs)
1.	A	V	V	V	V	V
2.	B	V	V	V	V	V
3.	BG		V***	V	V	V
4.	CY	V	V	V	V	V
5.	CZ	V	V	V	V	V
6.	D	V	V	V	V	V
7.	DK	V	V	V	V	V
8.	E	V	V	V	V	V
9.	EST	V	V	V		
10.	F	V	V	V	V	V
11.	FL	V**	V	V	V	V
12.	FIN	V	V	V	V	V
13.	GB	V**	V***			
14.	GR	V	V	V	V	V
15.	H	V	V	V	V	V
16.	HR					
17.	I	V	V***	V	V	V
18.	IRL	V**	V***	V		
19.	IS	V				
20.	LV					V
21.	LT					V
22.	L					V
23.	M	V**				V
24.	N	V				
25.	NL	V	V	V	V	V
26.	PL	V	V	V	V	V
27.	P	V	V***	V	V	V
28.	RO	V				
29.	S	V	V***	V	V	
30.	SK	V	V	V	V	V
31.	SLO	V	V	V	V	V

* Status 15/12/2016 – GB announced their withdrawal from the 2006 & 1995 Agreement on 8/11/2016; IRL did the same on 25/07/2017

**Derogations

***Reservations

**ANNEX 11: SCOPE OF THE MOTOR INSURANCE DIRECTIVE: LACK OF UNIFORM
APPLICATION OF THE MATERIAL AND TERRITORIAL SCOPE OF THE MOTOR INSURANCE
DIRECTIVE ACROSS THE EU**

In complement to the evaluation report, this Annex explores in detail the scope of application of the Directive. As outlined in the evaluation report (Annex 7), there are certain specific issues concerning the consistent application of the scope of the Directive which arose in connection with a number of CJEU rulings. Since these issues are closely linked with CJEU rulings, the codification of these court rulings in national legislation is considered the optimal approach to ensure legal certainty and achieve a high level of protection of victims of motor accidents. As the codification does not change the scope of the directive but rather only specifies it more clearly, this legislative action is not assessed in the main impact assessment. However, since there were Member States and stakeholders calling for a reassessment of the scope of the Directive as interpreted in the rulings, this annex explains the Commission's reasons for preferring codification of the rulings.

1. Background and description of the problem

Hitherto, certain Member States have interpreted the obligation for MTPL insurance as laid down in Article 3 of the Directive as not extending to all motorised vehicles used in all locations and for all purposes. In particular, certain Member States do not impose domestically an obligation for MTPL insurance for certain uses of vehicles outside road traffic. The uncertainty about the exact scope of the MTPL requirement as laid down in the MID was compounded by the terminology used in different language versions of the Directive. Thus, the English text referred to "the use of vehicles" as falling in the scope of the Directive, whereas the French text referred to "*circulation*" instead of "use".¹¹¹

Currently, there is thus divergence in the application of the obligation on the MPTL insurance across Member States. Some Member States do not extend the MPTL insurance to vehicles operating on some types of properties (such as private properties or properties that are not accessible to the public) or to some categories of motor vehicles independently of where they operate (for example, because the obligation is triggered by the registration obligation, which does not apply to vehicles operating only on private property).

The CJEU has clarified the scope of the Directive on three successive occasions, as described in Box 10. In the Vnuk ruling the Court ruled that any use of the vehicle that is consistent with its normal function should be covered. In Rodrigues de Andrade, the Court ruled that "normal function of the vehicle" is to be understood to be linked with its "transport" function and not any other function that a vehicle could have (e.g. ploughing

¹¹¹ Article 3 in French: "Chaque État membre prend toutes les mesures appropriées, sous réserve de l'application de l'article 5, pour que la responsabilité civile relative à la circulation des véhicules ayant leur stationnement habituel sur son territoire soit couverte par une assurance."

in case of a motorised plough). In *Torreiro*, the Court ruled that the characteristics of the terrain have no bearing to determine whether the vehicle is in "normal use" or not.

This means that victims are protected in case of motor accidents, regardless of the characteristics of the property or terrain on which the accident occurred. However, the use of the vehicle in case of a motor accident should be linked to its transport function and not to any other potential function it may have.

Box 10: CJEU Court rulings on scope of the Directive

There have been three main rulings which addressed the topic of the scope of application of the directive in the period 2014-2017.

1. CJEU *Vnuk* Judgement

In 2013, the CJEU was asked by a Slovenian Court to rule on whether an accident involving a tractor reversing in an enclosed area of a barn should be covered by MTPL insurance. In the "*Vnuk v Triglav* ruling"¹¹² of 4 September 2014, the Court clarified the scope of the MTPL insurance obligation in article 3 of the Directive as being any activities consistent with the "normal function" of a vehicle. The accident involving the tractor in question should have therefore been covered. It was implicit in the *Vnuk* ruling that this requirement exists regardless of the place where the vehicle is used for its normal function. However, the Court failed to clarify how the "normal function" of a vehicle should be determined.

2. CJEU *Rodrigues de Andrade* Judgement

The CJEU stance on the matter has been further clarified in the *Rodrigues de Andrade* judgment on 28 November 2017¹¹³. In that ruling, the Court clarified that only the "normal use of the vehicle as means of transport" and "irrespective of the terrain" should be covered by MTPL insurance, excluding accidents where the vehicle was used for exclusively agricultural use. This statement of the Court could further be interpreted as meaning that any other use of a vehicle e.g for purely industrial, construction, agricultural or fairground activities are out of the scope of the MTPL insurance obligation in article 3 of the Directive. The ruling nevertheless makes it clear that accidents caused during the normal use of a vehicle for the purpose of transportation, including its use on private properties, remain within the scope of the Directive

3. CJEU *Torreiro* Judgement

¹¹² See Annex 7, Section 3.2 for more details of the *Vnuk* judgement of 14 September 2014 (C-162/2013).

¹¹³ See Annex 7, Section 3.2 for more details of the *Rodrigues de Andrade* judgement C-514/16

On 20 December 2017, the Torreiro judgement¹¹⁴ further specified the position of the Court. This ruling related to an accident that happened on a military ground that was used mainly by tracked vehicles. The insurer argued that the terrain was not suitable for the vehicle in question which is permissible under the current Spanish legislation. The CJEU rejected the possibility of the Spanish law to "*exclude from compulsory insurance cover injuries and damage that result from the driving of motor vehicles on roads or terrain that are not 'suitable for use by motor vehicles', with the exception of roads or terrain which, although not suitable for that purpose, are nonetheless 'ordinarily so used'.*"

Following the Vnuk judgement, certain Member States where MTPL insurance did not extend to the use of motor vehicles outside public road traffic considered that the CJEU's broad interpretation of the scope, covering private land outside of traffic, would risk causing excessive cost due to increased MTPL premiums. Therefore, they requested the Commission to propose to limit the scope of article 3 of the MID to traffic only and to places that are publicly accessible. However, other Member States did not consider that there is any need for action. Those Member States regard their application of the Directive to already be in line with the recent rulings and contest that the refined interpretation of scope has any strong detrimental impacts on insurance premiums.

In addition, during the consultative work, (see Annexes 2 and 3), a large number of stakeholders representing or supporting the motor racing sector called for a complete exclusion of that sector from the scope of the Directive, arguing that the cost of MTPL insurance, especially as regards accidents between motor sports competitors, would be prohibitive for the sector and put its very existence into question. A restriction of the scope of the Directive to public traffic only, as advocated by some Member States, would also have the effect of excluding the motor racing sector, as public access to motor sports circuits must be prohibited for safety reasons.

The Vnuk ruling thus triggered discussions as regards the impact on territorial and material scope of the Directive¹¹⁵. It was argued by some Member States that the ruling effectively clarified the scope of the Directive so that MTPL insurance cover for motor vehicles must extend to activities that are unrelated to traffic, such as purely industrial, construction, agricultural and motor sports activities. These discussions revealed that Member States approach the scope of the insurance cover differently. As the Rodrigues de Andrade ruling clarified that purely operational activities that do not involve transport need not be covered by mandatory MTPL insurance, it can be interpreted that, in addition to agricultural activities, also industrial and construction activities do not fall within the scope of the MTPL insurance. Yet despite the CJEU rulings the transposition of the scope of the Directive remains divergent across the EU, as some Member States have not adapted their national legislation in line with the rulings.

¹¹⁴ See Annex 7, Section 3.2 for more details of the Torreiro judgement (C-334/16)

¹¹⁵ See Annex 1 for the meetings of the expert group of Member States on this issue.

In those Member States which do not extend the insurance obligation for motor vehicles to private property without public access, there might be a domestic obligation for another liability insurance policy to be taken. However, this is not the case for all Member States, and where it is the case, the amounts of cover may be inferior to those laid down in the Directive. This exposes citizens to a risk of insufficient compensation for accidents caused by certain motor vehicle activities in certain Member States.

2. Assessment of the possible approaches regarding the scope of the Directive.

2.1 Take no action

If no action were taken the material and territorial scope of the Directive would remain unchanged as clarified in the CJEU's rulings on "Vnuk" and "Rodrigues de Andrade" and Torreira. This means that in line with the Vnuk ruling any activities consistent with the "normal function" of a vehicle should be covered by third party liability insurance. Furthermore, in line with the Rodrigues de Andrade ruling, only the "normal use of the vehicle as means of transport" irrespective of the terrain should be covered by third party liability insurance. In effect, accidents on private property would remain within the scope of the Directive. On the other hand, accidents where the vehicle was not used as a means of transport (agricultural use, industrial use etc.) would not be covered by the Directive.

Under this approach, Member States that are not in compliance with the Directive as interpreted by the CJEU would be required to change national legislation to extend the range of vehicles and activities subject to a requirement for MTPL insurance. Based on feedback received from Member States, a certain number of Member States would be required to amend national legislation. If any of these Member States would fail to comply with the Directive as interpreted by the Court, the Commission may be required to initiate infringement proceedings against them. In Member States which do not require MTPL insurance for vehicles solely used on private property, there might be some vehicles that were previously not subject to compulsory insurance, but which would be now required to obtain motor liability insurance cover. Alternatively, given the extension of the scope at national level, this could be also reflected in higher costs for insurance premiums, as insurers cover additional risks.

This option would risk that implementation would be rushed and disorderly, and without the opportunity for the Commission to oversee implementation based on systematic information provided by member States in a transposition process. A disorderly implementation could lead to unequal protection of victims of motor accidents and legal uncertainty which might delay the compensation of victims in accidents where Member States laws were not in compliance with the Court's rulings. Furthermore, the implementation would be complex given the extensive case-law that has been built up at national level which makes it difficult to assess how Member States have implemented the Directive.

2.2 Codify the CJEU rulings

Given the inherent risks of disorderly implementation in the case of no action and as the described issues of scope arise solely as a result of CJEU rulings, the Commission

considers it preferable to codify these rulings in order to ensure legal clarity. The codification of the CJEU rulings involves explicitly inserting the key provision of the consecutive rulings on the scope of the directive, (including VNUK, Rodrigues de Andrade and Torreiro) in the Directive. This would mean, as with no action, that the current material scope of the Directive remains unchanged as clarified in the CJEU's rulings on "Vnuk" and "Rodrigues de Andrade" and Torreiro" and that the implementation of the rulings in national legislation would be verified by normal transposition checks.

This approach allows Member States to implement the changes implied by the rulings in an orderly and transparent fashion. Furthermore, it would provide more legal certainty for stakeholders on the scope of the MID 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 regular transposition exercise. In addition, it would provide Member States with sufficient time to implement the Court's interpretation of the scope of the Directive. Infringement procedures would only be initiated after the transposition exercise has been finalised and only against those Member States that failed to transpose correctly. The consequences are otherwise the same as under the 'no action' approach. Enforcing the CJEU rulings directly without codification would however not guarantee the same degree of uniformity across Member States.

2.3 Limit the scope to traffic, excluding property that is not accessible to the public

Several of the Member States whose national legislation is currently not in line with the recent CJEU rulings argue that the Directive should be amended so that the MTPL insurance obligation under the Directive only applies to accidents caused by motor vehicles in the context of traffic¹¹⁶. Under this approach, compensation bodies provided in Article 10 of the Directive would not be obliged, under EU law, to compensate consequences of accidents caused by motor vehicles when the accident did not occur "in traffic".

Changing the material and territorial scope of application of the Directive in this way would imply that accidents involving vehicles used outside of the context of traffic would not be covered by the Directive. Victims would thus not be compensated by MTPL insurance in accordance with the respective provisions, and may have to sue the responsible party directly for compensation. In many Member States third party liability arising from these types of events would be covered by other insurance policies required by law or commonly used, such as policies for public liability, employment liability or professional liability; however the level of obligatory amount of cover may well be lower than the minimum amounts laid down by the Directive. The level of protection of victims could therefore be lower. Fewer victims would be covered by compulsory insurance

¹¹⁶ Some definition of traffic would be required, for example "the use of a motor vehicle, whether in movement or not, for the transport of persons or goods, in a place to which the public has access in accordance with national law".

policies and there would often be a lower level of compensation depending on the contractual obligations of alternative insurance policies that cover these accidents.

This lower level of protection of victims that the approach implies would go against one of the key objectives of the Directive, to ensure a high level of protection for victims of motor vehicle accidents. Third party liability coverage would not be compulsorily provided in areas that are not accessible to the public. This means that victims would not be protected, for example, on private driveways, holiday resorts, secured areas of airports, roads on golf courses, any clubs' private terrains, or farms.

It has been put forward that in certain Member States amending national law to comply with the wide scope in the CJEU judgements would lead to increases in premiums. There is however no conclusive evidence on the actual impact on premiums. Certain stakeholders claimed that the cost of MTPL policies for vehicles used in areas without public access would be expensive. It was alleged that premiums would increase in particular as there would be a significant scope for fraud in the case of accidents occurring on private property. The written submission of the UK estimates the cost of extending obligatory MTPL cover for motor cars to private land as UK£1.2 billion per year, of which 60% is estimated as being due to increased fraud. The UK furthermore estimates that the total cost of extending obligatory MTPL cover for all kinds of motor vehicles to private land as UK£1.8 billion, of which 28% would be due to fraud, and 12.5% (UK£229 million) would be attributable to motor sports¹¹⁷. These calculations are however based on internal figures and models that the Commission was not able to verify in detail. Other Member States, such as France, have emphasised that they already apply the MTPL insurance requirement to private land without public access. While the current level of MTPL premiums in France should therefore already reflect the wide scope, the average French premiums are far from being the highest in the EU¹¹⁸. This casts significant doubt as to the detrimental impact on premiums projected by the UK, especially as other Member States that also appear to be in conformity with the rulings do not exhibit extensively high premiums either.

On the specific case of motor sports, there is equally insufficient evidence to support the claim that the codification of rulings would lead to prohibitively high pricing of policies and threaten the very existence of motor sports. Many stakeholders have argued that amateur motor sports would no longer be viable if the MTPL insurance requirement is applied. However, countries such as Finland which already require MTPL insurance in line with the Directive nonetheless have a flourishing motor sports sector both at professional and amateur level¹¹⁹. This strongly suggests that the claims of the motor sports sector are not justified.

¹¹⁷ See the reference to the UK submission in annex 2. The UK calculation is based on unlimited cover for personal injury rather than the minimum amounts laid down in the Directive. The basis for the fraud estimate is not clear.

¹¹⁸ Insurance Europe report: European Motor Insurance Markets, November 2015

¹¹⁹ The written contribution of the Finnish authorities to the Commission confirms this situation in Finland.

Lastly, it should be noted that there are already possibilities at national level to exempt certain activities or categories of vehicle from the application of the motor insurance directive, by means of article 5. But in that case victims of accidents caused by exempted vehicles must be compensated from compensation bodies and the cost shared among all MTPL policyholders.

3. Conclusion

Both the option of 'no action' and codification of rulings would ensure that the wide scope of the Directive as interpreted by the CJEU is maintained and enforced accordingly across the EU. The option of codification however provides for a more uniform transposition of the court rulings in national legislation. As such, it creates greater legal certainty on the scope of application of the Directive. This will ultimately benefit both victims of motor insurance accidents as well as insurers. Victims will have more uniform protection across all EU Member States, resulting in timely compensation without the need for litigation. Insurers will equally benefit from legal certainty and a lower likelihood of litigation. Clarifying the scope of the Directive by codification will furthermore give Member States sufficient time to implement any necessary changes to national legislation in an orderly fashion. In turn, this will allow insurers to assess more accurately the new risk situation and, if necessary, adjust premiums.

Restricting the scope of application to traffic, on the other hand, would unduly lower the level of protection of victims. Accidents on private property are a common occurrence and any victims of such accidents would be insufficiently protected. This would create litigation costs for victims to obtain compensation for damages and injury through damages proceedings. Insurers would also face an increased risk of litigation. There is insufficient evidence to substantiate claims that the codification of rulings would have any significant detrimental impact on premiums. Even for the specific case of motor sports, there is no conclusive evidence to suggest that these activities could no longer take place due to prohibitive pricing of policies.

ANNEX 12: DETAILED DESCRIPTION OF KEY PERFORMANCE INDICATORS

Operational Objective	Indicator	Definition	Unit of measurement	Data Source	Frequency of measurement	Baseline	Target
<i>Ensure a high level of protection for victims of motor vehicle accidents (even in</i>	KPI 1	Number of victims awaiting payment and amount of outstanding claims due to delays in payments	N/A Amounts in EUR	MS data	Biennial	Current annual average	Reduce / No specific target level

<i>case of insolvency of the insurer)</i>	KPI 2	following cross-border insolvency cases Level of minimum amounts of cover in Member States	EUR	MS data	Biennial	N/A	Level of cover stipulated the respective provision
	KPI 3	Amount of claims due to uninsured driving of cross-border traffic.	N/A	MS data	Biennial	Current annual average	Reduce / No specific target level
<i>Ensure equal treatment of policyholders across the EU. (in particular when changing Member State of residence).</i>	KPI 4	Number of complaints regarding claims history statements	N/A	MS data	Biennial	Current annual average	Reduce / No specific target level