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'I' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 2)

Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2009/103/EC of the European Parliament and the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability
- Confirmation of the final compromise text with a view to agreement

I. INTRODUCTION

1. On 24 May 2018, the Commission transmitted to the Council the above-mentioned proposal.¹
2. The European Economic and Social Committee delivered its opinion on 19 September 2018.²
3. The European Parliament in plenary adopted 54 amendments to the proposal on 13 February 2019. Since it did not adopt a legislative resolution, however, this did not bring its first reading to a close. These amendments were the basis on which the European Parliament was to enter into negotiations with the Council.
4. At its meeting on 18 December 2019, the Permanent Representatives Committee granted a mandate to start negotiations with the European Parliament.³

¹ Doc. 9365/18

² OJ C 440/85 of 6.12.2018

³ Doc. 14645/19

5. The Croatian, German and Portuguese presidencies then successively conducted negotiations with the European Parliament and the Commission with a view to reaching a first-reading agreement on the proposal.
6. These negotiations resulted in a provisional agreement between the institutions on 22 June 2021. The final compromise text is set out in Annex 1 to this note. The text of a Commission statement on limitation periods that is to be published in the L series of the Official Journal together with the final act is set out in Annex 2 to this note.

II. CONCLUSION

7. Against this background, the Permanent Representatives Committee is invited to:
 - approve the final compromise text; and
 - confirm that the Chair of the Permanent Representatives Committee can inform the Chair of the European Parliament's Internal Market and Consumer Protection committee that, should the European Parliament adopt as its first-reading position the final compromise text (subject, where necessary, to revision by the legal linguists of both institutions), the Council would then approve the European Parliament's position and the act would thus be adopted in the wording which corresponds to the European Parliament's first-reading position.
8. Unless the Permanent Representatives Committee objects, this document and its annexes will be made public by the General Secretariat of the Council after its approval.

DIRECTIVE (EU) 2021/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of ...

amending Directive 2009/103/EC of the European Parliament and the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee⁴,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Insurance against civil liability in respect of the use of motor vehicles (motor insurance) is of special importance for European citizens, whether they are policyholders or can potentially be injured parties as a result of an accident. It is also a major concern for insurance undertakings, as it constitutes an important segment of non-life insurance business in the Union. Motor insurance also has a significant impact on the free movement of persons, goods and vehicles, and hence on the internal market. It should therefore be a key objective of the Union action in the field of financial services to reinforce and consolidate the internal market for motor insurance.

⁴ OJ C , , p. .

- (2) The Commission has carried out an evaluation of the functioning of Directive 2009/103/EC of the European Parliament and of the Council⁵, including its efficiency effectiveness and coherence with other Union policies. The conclusion of the evaluation was that Directive 2009/103/EC functions well on the whole, and does not need amendment in most aspects. However, four areas were identified where targeted amendments would be appropriate: compensation of parties injured in accidents in cases of insolvency of an insurance undertaking, minimum obligatory amounts of insurance cover, insurance checks of vehicles by Member States, and the use of policyholders' claims-history statements by a new insurance undertaking.
- In addition to those four areas, dispatched vehicles, accidents involving a trailer towed by a vehicle, motor insurance independent price comparison tools, information centres and information to injured parties were also identified as areas where targeted amendments would be appropriate.
- Further, the term 'victim' should be replaced by the term 'injured party' throughout Directive 2009/103/EC through appropriate amendments. Those amendments have the exclusive objective of harmonising the terminology used in that Directive and they are not in any way aimed at introducing any change of substance.
- (2a) Since the entry into force of Directive 2009/103/EC, there has been an influx of many new types of motor-powered vehicles into the market. Some of them are powered by a purely electrical motor, some of them by an auxiliary equipment. Such vehicles should be taken into account in the definition of vehicle. The definition should be based on general characteristics of such a vehicle, in particular its maximum design speed and its net weight, and should provide for that only vehicles propelled exclusively by mechanical power are covered. The definition should not apply to any wheelchair intended for use by persons with physical disabilities. The definition should apply independently from the number of wheels of the vehicle.

⁵ Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ L 263, 7.10.2009, p. 11).

- (2b) Light electric vehicles that do not meet the definition should be excluded from the scope of application of the Directive. However, nothing in Directive 2009/103/EC should hinder Member States from requiring under national law motor third party liability insurance, according to conditions set by Member States, for any motor equipment used on land that does not fall within that Directive's definition of "vehicle" and for which that Directive does not require such insurance, or from determining that the victims of accidents caused by any other motor equipment have access to the Member State's compensation body as determined in Chapter IV. Member States may equally decide that, where their inhabitants are parties injured in an accident caused by such other motor equipment in another Member State where motor third party liability insurance is not required for that motor equipment, those inhabitants have access to their compensation body as determined in Chapter IV in the Member State where they are habitually residing. Compensation bodies of Member States have the possibility to enter into a mutual agreement about their ways of co-operating in this kind of situation.
- (3) In recent decisions of the European Court of Justice of the European Union, namely *Vnuk*⁶, *Rodrigues de Andrade*⁷ and *Torreiro*⁸, the Court has clarified the meaning of the words 'use of a vehicle'. In particular, the European Court of Justice has clarified that motor vehicles are intended normally to serve as means of transport, irrespective of such vehicle's characteristics, and it has clarified that the use of such vehicles covers any use of a vehicle consistent with its normal function as a means of transport, irrespective of the terrain on which the motor vehicle is used and of whether it is stationary or in motion. Directive 2009/103/EC does not apply if, at the time of the accident, the normal function of such a vehicle is to use it for a purpose other than as a means of transport. This may be the case if the vehicle is not used in the sense of the first subparagraph of Article 3 of the Directive, as its normal function is to use it as, for instance, an industrial or agricultural power source. In the interest of legal certainty, it is appropriate to reflect that case law in Directive 2009/103/EC by introducing a definition of 'use of a vehicle'.

⁶ Judgement of the Court of Justice of 4 December 2014, *Vnuk*, C-162/13, ECLI:EU:C:2014:2146

⁷ Judgement of the Court of Justice of 28 November 2017, *Rodrigues de Andrade*, C-514/16, ECLI:EU:C:2017:908.

⁸ Judgement of the Court of Justice of 20 December 2017, *Torreiro*, C-334/16, ECLI:EU:C:2017:1007.

- (3a) Some motor vehicles are smaller and are therefore less likely to cause significant damage to persons or property than others. It would be disproportionate and not future proof to include them in the scope of Directive 2009/103/EC. Such situation would also undermine the uptake of newer vehicles, such as electric bicycles not exclusively propelled by mechanical power, and discourage innovation, although there is insufficient evidence that these vehicles could cause accidents resulting in injured parties at the same scale as other vehicles, such as cars or trucks. In line with the principles of subsidiarity and proportionality, requirements at Union level should therefore cover only those vehicles that qualify as such under Directive 2009/103/EC.
- (3b) As a matter of principle, a motor insurance should cover accidents in all areas of the Member States. Yet, in certain Member States there are provisions related to the vehicle used exclusively in specific areas with limited access. It should be possible for the Member States to make limited derogations from Article 3 in respect of restricted areas to which unauthorised persons should not enter, for instance location-specific areas and equipment at ports and airports. A Member State so derogating should take the appropriate measures to ensure that compensation is paid in respect of any loss or injury caused by such a vehicle.
- (3c) It should also be possible for the Member States to not require compulsory motor vehicle insurance for vehicles that have not been admitted to be used in public roads in accordance with the national law of the Member State. Such Member States should nevertheless take the appropriate measures to ensure that compensation is paid in respect of any loss or injury caused by those vehicles, except for where the Member State decides also to derogate from Article 10 of Directive 2009/103/EC in respect of compensation for damage caused by those vehicles in areas not accessible to the public due to a legal or physical restriction on access to such areas, as defined by its national laws. Such derogation from Article 10 should apply to the vehicles in respect of which a Member State decided to derogate from the insurance obligation because of them not being admitted to be used in public roads in accordance with its national law, even if those vehicles' insurance obligation could also be derogated under a different possibility of derogation provided for in Article 5 of Directive 2009/103/EC.

- (3d) In certain Member States there are provisions regarding the use of the vehicle as a means of deliberately causing damage to people or property. Where applicable, in the most serious offences the Member States are allowed to continue their legal practices of not covering such damage from the compulsory motor insurance or reclaiming from the tortfeasor the amount of insurance compensation that is paid out to the injured party for such damage. In order not to reduce the protection granted by Directive 2009/103/EC, such legal practices should be allowed only if Member States ensure that in such cases the injured parties are compensated for such damage in a manner that is as close as possible to that of Directive 2009/103/EC. Unless the Member State has provided for such an alternative compensation mechanism or guarantee, ensuring compensation of injured parties for such damage in a manner that is as close as possible to that of Directive 2009/103/EC, the damage should be covered in accordance with Directive 2009/103/EC.
- (3e) The Member States should not apply Directive 2009/103/EC to use of vehicles in motorsport events and activities, including races, competitions, training, testing and demonstrations e.g. of speed, reliability or skills, allowed in accordance with the national law of the Member State. Such exempted activities should take place in a restricted and demarcated area, with the purpose of and in a manner that the ordinary traffic, the public or any party unrelated to the activity cannot actually or potentially share the route that is being driven. Such activities should usually entail those on designated motorsport tracks or routes and the areas of immediate vicinity, e.g. security areas, pit stop areas and garages, where the risk of an accident is highly elevated in comparison to normal roads and to which unauthorised persons should not enter.
- (3f) Such exemption on motorsports events and activities should only apply if the Member State ensures that the organiser of the event or activity, or any other party, has taken an alternative insurance or guarantee policy covering the damage to any third party, including spectators and other bystanders, but not necessarily the damages to participating drivers and their vehicles. Unless the organisers or other parties have as a condition of this exemption taken an alternative insurance or guarantee policy, the damage should be covered, excluding the participating drivers and their vehicles, in accordance with Directive 2009/103/EC.

- (3g) In order not to reduce the protection granted by Directive 2009/103/EC, those Member States should ensure that in the motorsport events and activities, allowed in accordance with their national law and eligible to the exemption, the injured parties are compensated for such damage in a manner that is as close as possible to that of Directive 2009/103/EC.
- (3h) While being manufactured and transported, vehicles lack transport function and are not considered to be used in the sense of the first subparagraph of Article 3 of Directive 2009/103/EC. However, there should be a business liability insurance to cover the damage which those vehicles may cause, to the extent a Member State does not choose to apply the requirement to have motor third party liability insurance also in respect of such vehicles pursuant to Article 28, paragraph 1 of Directive 2009/103/EC.
- (3i) Currently the national laws of many Member States link the insurance obligation to the use of a vehicle in the sense of the first subparagraph of Article 3 of the Directive 2009/103/EC, that is, in those Member States the use of a vehicle is only allowed when the vehicle is registered. The laws of those Member States stipulate that motor insurance cover has to exist during active registration of the vehicle and its use in the above mentioned sense. Consequently, those Member States do not require insurance cover for the use of vehicles which are permanently or temporarily de-registered because, for example, they are in a museum, they are undergoing restoration or they have not been used for an extended period of time for another reason, such as seasonal use. Those Member States need to take the appropriate measures to ensure that compensation in line with Directive 2009/103/EC is paid in respect of any loss or injury caused in its territory and in the territory of other Member States by vehicles as defined in point 1 of Article 1 which are used in the above-mentioned sense.
- (3j) Currently some Member States, where the obligation to insure against civil liability in respect of the use of a motor vehicle is not linked to registration of a vehicle, choose not to require compulsory motor vehicle insurance for vehicles that have been formally withdrawn from use in accordance with the national law of the Member State, e.g. via a notification to the competent authority or other designated parties performing the function of the competent authority or by taking other verifiable physical measures. Those Member States need to take the appropriate measures to ensure that compensation in line with

Directive 2009/103/EC is paid in respect of any loss or injury caused in its territory and in the territory of other Member States by such vehicles.

- (4) Member States currently should refrain from performing checks of insurance on vehicles normally based on the territory of another Member State and in respect of vehicles normally based in the territory of a third country entering their territory from the territory of another Member State. New technological developments, such as the technology allowing automatic number-plate recognition, allow for checking insurance of vehicles without stopping them and thus without interfering with the free movement of persons. It is therefore appropriate to allow those checks of insurance on vehicles, only if they are non-discriminatory, necessary and proportionate, form part of a general system of checks on the national territory, which are carried out also in respect of vehicles based in the territory of the Member State performing the checks, and do not require stopping of the vehicle.
- (5) Member States that opt to set up a system that processes personal data which may subsequently be shared with other Member States, such as data from number plate recognition technology, need to legislate to allow for the processing of personal data for the purposes of combatting uninsured driving, whilst establishing suitable measures to safeguard the data subject's rights and freedoms and legitimate interests. The provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council⁹ apply to the processing of personal data for the purpose of combatting uninsured driving. The Member States' legislation should in particular specify the precise purpose, refer to the relevant legal basis, comply with the relevant security requirements and respect the principles of necessity, proportionality, and purpose limitation, and should set a proportionate data retention period. In addition, the principles of personal data protection by design and data protection by default should be applied to all data processing systems developed and used within the framework of the Member States' legislation.

⁹ 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).

- (5a) In line with those principles, Member States should not retain the personal data processed exclusively for the purpose of handling an insurance check longer than the period needed to verify whether a vehicle holds valid insurance coverage. When a vehicle is found to be covered, all data related to this verification should be erased. When a verification system is unable to determine if a vehicle is insured, that data should only be held for a limited number of days, not exceeding the time necessary to determine whether the insurance coverage exists. For those vehicles which have been found not to be covered by a valid insurance coverage, it is reasonable to require that this data are retained until any administrative or judicial processes are completed and the vehicle is covered by a valid insurance policy.
- (6) Directive 2009/103/EC currently lays down different reference dates for the periodic recalculation of the minimum amounts of cover in different Member States, which leads to diverging minimum amounts of cover depending on the Member State. To ensure equal minimum protection of injured parties across the Union, those minimum amounts should be harmonised and a uniform review clause should be introduced, using as a benchmark the harmonised index of consumer prices as published by Eurostat, as well as procedural rules governing such a review and setting out a uniform timeframe.
- (7) Effective and efficient protection of parties injured as a result of traffic accidents requires that those injured parties are entitled to claim compensation in their Member States of residence and to receive a response within a reasonable time and, where their claims are justified, are always reimbursed the amounts due for their personal injuries or for damage to their property, irrespective of whether the insurance undertaking of the party liable is solvent or not. Member States should therefore set up or appoint a body, allowing for an existing compensation arrangement of a Member State to continue its operations, that provides initial compensation for injured parties habitually residing within their territory, and which has the right to reclaim that compensation from the body set up or appointed for the same purpose in the home Member State of the insolvent insurance undertaking which issued the policy of the vehicle of the liable party.

- (7a) The insurance undertaking may have become insolvent in various ways, e.g. as a result of being declared bankrupt or being in default of performing its obligations once it has renounced its authorisation in its home country or having been the subject of a revocation measure or a decision prohibiting its activity. When an order is made or a decision is taken to commence the bankruptcy or winding-up proceedings, it should be made public. The body set up or authorised to compensate injured parties in the case of insolvency of an insurance undertaking in the home Member State of the insurance undertaking should inform such bodies in all other Member States about this order or decision.
- (7b) The Member States should ensure that the body set up or authorised to compensate injured parties in the case of insolvency of an insurance undertaking in the Member State in whose territory the injured party habitually resides should be competent to request information, inform and be informed by, and cooperate with, the other relevant bodies, authorities and stakeholders in the EU at all stages of the proceedings. Such information should at least provide a general level of understanding of the situation to and from other relevant bodies, authorities and stakeholders. Such information is important to ensure that the body which compensates an injured party is able to, before the payment of compensation is made, ascertain by itself or together with all the relevant parties pursuant to the national legislation, whether the insurance undertaking has already compensated the claimant in respect of his or her claim. The claim presented to the body may even be transferred to the insurance undertaking for further scrutiny or for a decision, where the national provisions of procedure so require. The Member States should ensure that the body requests and receives more detailed information about specific claims.
- (7c) The system of reimbursement has no effect on the applicable law regarding coverage levels of injured parties. The same principles are applicable with regard to claims in the cases of solvent and insolvent insurance undertakings. The body of the home Member State of the insurance undertaking which issued the policy of the liable party should make the payment to the body of the Member State in whose territory the injured party habitually resides within a reasonable time after the former body received a claim for recompensation regarding a payment that the latter body has made to the injured party.

- (7d) Depending on the different stages of claims handling, on payments made to the injured parties and on reimbursement processes in different bodies, there may be outstanding liabilities between bodies set up or authorised to compensate injured parties in the case of insolvency of an insurance undertaking. The right of subrogation should pass from the body that paid out compensation first to that of the other Member State as the reimbursement of bodies progresses. Therefore, the body, to the extent that it has provided compensation for the loss or injury suffered and has not yet been reimbursed, should be subrogated to the rights of the injured party against the person who caused the accident, or his or her insurance undertaking. However, that body should not be subrogated to the rights of the injured party against the policyholder or other insured person who caused the accident in so far as his or her liability would be covered by the insolvent insurance undertaking in accordance with the applicable national law. Each Member State should be obliged to acknowledge this subrogation as provided for by any other Member State.
- (7e) To ensure efficient and effective protection of injured parties in the case of insolvency of the responsible insurer, it is necessary that the Member States take the appropriate arrangements to ensure that the funds needed to compensate injured parties are available when compensation payments are due. In accordance with the principle of subsidiarity, home Member States should consider these arrangements at national level. These arrangements however should be in compliance with EU law and with such principles as *lex specialis* and *lex posterior* in particular. In order to prevent placing an unjustified and disproportionate burden on insurers, if financial contributions by insurance undertakings are imposed, they should be collected only from insurance undertakings authorised by the Member State concerned. This would be without prejudice to the funding of other functions that might also be attributed to the body set up or authorised to compensate injured parties in the case of insolvency of the responsible insurance undertaking, where this is the case.

- (7f) The bodies with the task of compensating injured parties in case of insolvency of an insurance undertaking in all Member States should strive to conclude agreements to implement the related provisions, containing provisions relating to their functions and obligations and the procedures for reimbursement. In the absence of such agreement by ... [24 months after the date of entry into force of this amending Directive], the Commission should adopt a delegated act to define the procedural tasks and obligations of such bodies with regard to the reimbursement.
- (7g) Injured parties are entitled to claim compensation, in case of insolvency of the insurance undertaking, from a body in their Member State of residence, also when they are injured in result of accidents occurring in a Member State other than their Member State of residence. Member States may attribute the function of compensating such injured parties to any already existing body, including the compensation body under Article 24 of Directive 2009/103/EC, or to a new body. Member States may also choose to attribute the tasks of compensation, in case of insolvency of the insurance undertaking, of parties injured in result of accidents in their Member State of residence and of parties injured in result of accidents in Member States other than their Member State of residence to the same body. In the case of parties injured in Member States other than their Member State of residence, exchange of information and cooperation has to be ensured also with the compensation bodies foreseen in Article 24 of Directive 2009/103/EC in all MS and with claims representatives.
- (7h) Member States may establish or authorise more than one compensation body under Directive 2009/103/EC, which could potentially make it harder for injured parties to identify the body to which they should submit their claims. Member States that establish or authorise more than one compensation body should therefore ensure that injured parties have access to essential information on the possible ways to apply for compensation in a manner that allows them to easily understand to which body they should apply.

- (7i) In case of a dispatched vehicle, it should be possible for the person responsible for third party liability cover to choose whether to take up insurance policy in the Member State in which the vehicle is registered or the Member State of destination, for a period of 30 days. The information centre of the Member State where the vehicle is registered, and of the Member State of destination where different, and of any other relevant Member State, such as where an accident occurred, or where an injured party is resident, should cooperate with each other to ensure that the necessary information on the dispatched vehicle that they have in accordance with Article 23 of Directive 2009/103/EC is available.
- (7j) In case of accidents involving trailers to which a third party liability insurance separate from the one of the towing vehicle was issued, the injured party may bring the claim against the insurer of the trailer where national law so provides. Upon request, the injured party should be able to obtain from the insurer of the trailer information about the identity of the insurer of the towing vehicle or, when, after reasonable efforts, the insurer of the trailer is unable to identify the insurer of the towing vehicle, the compensation mechanism foreseen in Article 10 of Directive 2009/103/EC.
- (8) Previous claims histories of policyholders who seek to conclude new insurance contracts with insurance undertakings should be easily authenticated in order to facilitate the recognition of such claims history when concluding a new insurance policy. In order to simplify the verification and authentication of claims-history statements, it is important that the content and format of the statement of such claims histories are the same across all Member States. In addition, insurance undertakings that take into account claims-history statements to determine motor insurance premiums should not discriminate on the basis of nationality or solely on the basis of the previous Member State of residence of the policyholder. Additionally, insurance undertakings should treat a statement from another Member State as equal to a domestic statement and apply any discounts available to an otherwise identical potential client, including those discounts that are required by the Member State's national legislation, such as 'bonus-malus' discounts. Member States should remain free to adopt national legislation on the 'bonus-malus' systems since such systems are national in nature, without any cross- border element, and therefore, under the principle of subsidiarity, decision-making with regard to those systems should remain with the Member States.

To enable Member States to verify whether and how insurance undertakings treat claims-history statements, insurance undertakings should publish a general overview of their policies in respect of their use of claims history when calculating premiums.

Without prejudice to Directive (EU) 2016/943 of the European Parliament and of the Council¹⁰, insurance undertakings are not required to publish commercially sensitive information, such as details of tariff rules.

- (9) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission regarding the form and content of the claims-history statement. Those implementing powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹¹.
- (9a) Member States may choose to certify tools which enable consumers to compare prices, tariffs and coverage between providers of motor third party liability insurance which comply with the conditions set out in Directive 2009/103/EC. If duly certified, such tools can be denominated as ‘motor insurance independent price comparison tools’. Member States may also establish public price comparison tools, run by a public authority.
- (9b) To ensure a smooth handling of claims when an accident report is required under national law, it is important that, where such national law ensures the right of the injured party to obtain a copy of the accident report from competent authorities, the injured party has access to it in a timely manner.

¹⁰ Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).

¹¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (10) To ensure that the minimum amounts of cover of motor third party liability insurance stay in line with the evolving economic reality (and are not eroded over time) the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the adaptation of those minimum amounts to reflect the evolving economic reality, as well as the definition of the procedural tasks and the procedural obligations of the bodies set up to provide compensation or entrusted with the task of providing compensation pursuant to Articles 10a and 25a of Directive 2009/103/EC with regard to the reimbursement. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016¹². In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (11) As part of the evaluation of the functioning of Directive 2009/103/EC, the European Commission should monitor the application of that Directive, taking into account the number of injured parties, the amount of outstanding claims due to delays in payments following cross-border insolvency cases, the level of minimum amounts of cover in Member States, the amount of claims due to uninsured driving relating to cross-border traffic and the number of complaints regarding claims- history statements. The Commission should prepare a report on the situation of functioning, cooperation and funding of the compensation bodies referred to in Articles 10a and 25a of Directive 2009/103/EC. If appropriate, the report shall be accompanied by a legislative proposal.

¹² OJ L 123, 12.5.2016, p. 1.

The Commission should also monitor and review Directive 2009/103/EC in light of technological developments, including the increased use of autonomous and semi-autonomous vehicles, to ensure that it continues to serve its purpose, which is to protect potential injured parties from accidents involving motor vehicles. It should also analyse the use by insurance undertakings of systems in which premiums are influenced by the policyholders' claims- history statements.

Moreover, the Commission should assess the effectiveness of exchange of information systems used for the purpose of cross-border checks on insurance.

- (12) Since the objectives of this Directive, in particular to ensure an equal minimum protection of parties injured as a result of traffic accidents across the Union, to ensure their protection in case of insolvency of insurance undertakings and to ensure equal treatment of claims-history statements by insurers for potential policy holders crossing internal Union borders, cannot be sufficiently achieved by the Member States but can rather, by reason of their effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty of the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (13) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹³, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (14) Directive 2009/103/EC should therefore be amended accordingly,

¹³ OJ C 369, 17.12.2011, p. 14.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2009/103/EC is amended as follows:

(0) in Article 1, point 1 is replaced by the following:

“1. ‘vehicle’ means:

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

- a maximum design speed of more than 25 km/h, or
- a maximum net weight of more than 25 kg and a maximum design speed of more than 14 km/h;

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

Without prejudice to points (a) and (b), wheelchair vehicles exclusively intended for use by persons with physical disabilities are not considered to be vehicles referred to in this Directive;”;

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

“1a. ‘use of a vehicle’ means any use of a vehicle that is consistent with the vehicle's function as a means of transport at the time of the accident, irrespective of the vehicle's characteristics and irrespective of the terrain on which the motor vehicle is used and of whether it is stationary or in motion;”;

(1a) in Article 1, point 2 is replaced by the following:

“2. ‘injured party’ and ‘party injured’ means any person entitled to compensation in respect of any loss or injury caused by vehicles;”;

(1b) in Article 1, the following point is added:

“8. ‘home Member State’ means ‘home Member State’ as defined in Article 13(8)(a) of 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).”;

- (1a) in Article 3, the first subparagraph is replaced by the following:
“Each Member State shall, subject to Article 5, take all appropriate measures to ensure that civil liability in respect of the use of a vehicle normally based in its territory is covered by insurance.”
- (1d) in Article 3, the following paragraph is inserted after the first paragraph:
“This Directive shall not apply to the use of a vehicle in motorsport events and activities, including races, competitions, training, testing and demonstrations in a restricted and demarcated area, provided that the Member State ensures that the organiser of the activity or any other party has an alternative insurance or guarantee policy covering the damage to any third party, including spectators and other bystanders, but excluding the participating drivers and their vehicles.”;

- (2) Article 4 is replaced by the following:

“Article 4

Checks on insurance

1. Member States shall refrain from making checks on insurance against civil liability in respect of vehicles normally based in the territory of another Member State and in respect of vehicles normally based in the territory of a third country entering their territory from the territory of another Member State.
However, they may carry out such checks on insurance provided that those checks are non-discriminatory, necessary and proportionate to achieve the end pursued, and
 - a) are carried out as part of a control which is not aimed exclusively at insurance verification or
 - b) they form part of a general system of checks on the national territory which are carried out also in respect of vehicles normally based in the territory of the Member State carrying out the check, and do not require the vehicle to stop.

2. On the basis of the law of the Member State to which the controller is subject, personal data may be processed where necessary for the purpose of combatting uninsured driving of vehicles travelling in Member States other than where they are normally based as set out in Article 1. This law shall be in accordance with Regulation (EU) 2016/679¹⁴ and shall also lay down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests.

Member States shall, in particular, specify the precise purpose, refer to the relevant legal basis, comply with the relevant security requirements and respect the principles of necessity, proportionality, and purpose limitation, and shall set a proportionate data retention period. The personal data processed pursuant to this Article exclusively for the purpose of handling an insurance check shall not be retained longer than necessary for that purpose. Those data shall be fully erased as soon as they are no longer necessary for that purpose. Where an insurance check shows that a vehicle is covered by a compulsory insurance subject to Article 3, the controller shall immediately erase those data. When a check is unable to determine if a vehicle is covered by a compulsory insurance subject to Article 3, the data shall only be retained for a limited number of days, not exceeding the time necessary to determine whether the insurance coverage exists.

(2a) in Article 5, the following paragraphs are added:

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

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

¹⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).”;

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

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

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

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

5. A Member State may derogate from Article 3 in respect of vehicles not admitted to be used in public roads in accordance with its national laws. Any Member State derogating from Article 3 in respect of vehicles referred to in the first subparagraph shall ensure that those vehicles are treated in the same way as vehicles for which the insurance obligation referred to in Article 3 has not been satisfied.

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

- 5a. Where a Member State derogates, under paragraph 5, from Article 3 in respect of vehicles not admitted to be used in public roads, that Member State may also derogate from Article 10 in respect of compensation for damage caused by those vehicles in areas not accessible to the public due to a legal or physical restriction on access to such areas, as defined by its national laws.

6. For paragraphs 3, 4, 5 and 5a Member States shall notify the Commission of the use of the derogation and the modalities of its implementation. The Commission shall publish a list of the use made by Member States of those derogations.”;

(3) Article 9 is replaced by the following:

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

- (a) for personal injuries: EUR 6 070 000 per accident, irrespective of the number of injured parties, or EUR 1 220 000 per injured party;
- (b) for damage to property, EUR 1 220 000 per accident, irrespective of the number of injured parties.

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

2. Every five years from [date of entry into force of this Directive], the Commission shall review the amounts referred to in paragraph 1 in line with the harmonised index of consumer prices (HICP) established pursuant to Regulation (EU) 2016/792 of the European Parliament and of the Council¹⁵. The Commission shall be empowered to adopt delegated acts in accordance with Article 28b concerning the adaptation of those amounts to the HICP within six months after the end of each five year period.

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

¹⁵ Regulation (EU) 2016/792 of the European Parliament and of the Council of 11 May 2016 on harmonised indices of consumer prices and the house price index, and repealing Council Regulation (EC) No 2494/95 (OJ L 135, 24.5.2016, p. 11). ”;

(3a) the title of Chapter 4 is replaced by the following:

“CHAPTER 4

COMPENSATION FOR DAMAGE CAUSED BY AN UNIDENTIFIED VEHICLE OR A VEHICLE FOR WHICH THE INSURANCE OBLIGATION PROVIDED FOR IN ARTICLE 3 HAS NOT BEEN SATISFIED AND COMPENSATION IN CASE OF INSOLVENCY”;

(3b) Article 10 is amended as follows:

(a) in paragraph 1, the second subparagraph is replaced by the following:

“The first subparagraph shall be without prejudice to the right of the Member States to regard compensation by the body as subsidiary or non-subsidiary and the right to make provision for the settlement of claims between the body and the person or persons responsible for the accident and other insurers or social security bodies required to compensate the injured party in respect of the same accident. However, Member States may not allow the body to make the payment of compensation conditional on the injured party establishing in any way that the person liable is unable or refuses to pay.”;

(b) in paragraph 2, the first subparagraph is replaced by the following:

“2. The injured party may in any event apply directly to the body which, on the basis of information provided at its request by the injured party, shall be obliged to give him a reasoned reply regarding the payment of any compensation.”;

(c) in paragraph 3, the second subparagraph is replaced by the following:

“However, where the body has paid compensation for significant personal injuries to any party injured as a result of the same accident in which damage to property was caused by an unidentified vehicle, Member States may not exclude the payment of compensation for damage to property on the basis that the vehicle is unidentified. Nevertheless, Member States may provide for an excess of not more than EUR 500 to be borne by the injured party who suffers such damage to property.”;

(d) paragraph 4 is replaced by the following:

“4. Each Member State shall apply its laws, regulations and administrative provisions to the payment of compensation by the body, without prejudice to any other practice which is more favourable to the injured party.”;

(4) the following Article 10a is inserted:

“Article 10a

Protection of injured parties in respect of damage resulting from accidents occurring in their Member State of residence in case of insolvency of an insurance undertaking

1. Each Member State shall set up or authorise a body with the task of providing compensation to injured parties habitually residing within their territory, at least up to the limits of the insurance obligation, for damage to property or personal injuries caused by a vehicle insured by an insurance undertaking, from the moment where:
 - (a) the insurance undertaking is subject to bankruptcy proceedings; or
 - (b) the insurance undertaking is subject to winding-up proceedings as defined in Article 268(d) of Directive 2009/138/EC of the European Parliament and of the Council¹⁶.

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

¹⁶ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335 17.12.2009, p. 1).

Without prejudice to any obligation under Article 280 of Directive 2009/138/EC, each Member State shall ensure that, whenever an order is made or a decision is taken to commence the proceedings referred to in the first subparagraph, point (a) or (b), in respect of an insurance undertaking of which that Member State is the home Member State by a competent court or any other competent authority, that order or decision is made public. The body referred to in the first subparagraph established in the home Member State of the insurance undertaking shall ensure that all the bodies referred to in the first subparagraph in all Member States are promptly informed about this order or decision.

2. The injured party may present a claim directly to the body referred to in paragraph 1.
- 2a. Upon receipt of the claim, the body referred to in paragraph 1 shall inform such body in the home Member State of the insurance undertaking and the insurance undertaking subject to bankruptcy or winding-up proceedings, or its administrator or liquidator, as respectively defined in Article 268(e) and (f) of Directive 2009/138/CE, that it has received a claim from the injured party. The insurance undertaking subject to bankruptcy or winding-up proceedings, or its administrator or liquidator shall inform the body referred to in paragraph 1 when it compensates or denies liability regarding a claim that was also received by the body referred to in paragraph 1.
3. The Member States shall ensure that the body referred to in paragraph 1, on the basis of, among other, information provided at its request by the injured party, provides the injured party with a reasoned offer of compensation or a reasoned reply as foreseen in the second subparagraph, in accordance with the applicable national law, within three months from the date when the injured party presented his or her claim for compensation to the body.

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

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

- 3a. Where compensation is due in accordance with point (a) of the second subparagraph of paragraph 3, the body referred to in paragraph 1 shall pay out the compensation to the injured party without undue delay and within three months of the acceptance by the injured party of the reasoned offer of compensation referred to in point (a) of the second subparagraph of paragraph 3.

Where the damages have only been partially quantified, the previous subparagraph applies to the reasoned offer of compensation regarding such partially quantified damage and from the moment of acceptance of the corresponding reasoned offer of compensation.

- 3b. Member States shall ensure that the body referred to in paragraph 1 has all the necessary powers and competences to, in due time, cooperate with other such bodies in other Member States, bodies established or approved under Article 25a in all Member States and other interested parties, including the insurance undertaking subject to bankruptcy or winding-up proceedings, its administrator or liquidator, and the national competent authorities of the Member States, at all stages during the proceedings referred to in this Article. Such cooperation shall include requesting, receiving and providing information, including on the details of specific claims, where relevant.

4. Where the home Member State of the insurance undertaking referred to in paragraph 1 is different from the Member State in which the injured party is habitually residing, the body referred to in paragraph 1 which has compensated the injured party, shall be entitled to claim full reimbursement of the sum paid by way of compensation from the body referred to in paragraph 1 in the home Member State of the insurance undertaking.

The body referred to in paragraph 1 of the home Member State of the insurance undertaking shall make the payment to the body referred to in paragraph 1 which has compensated the injured party in a reasonable time not exceeding six months, unless otherwise agreed in writing by these bodies, after it has received a claim for recompensation regarding a payment that has been made to the injured party by the body referred to in paragraph 1.

The body that has provided compensation pursuant to the first subparagraph shall be subrogated to the rights of the injured party against the person who caused the accident or his or her insurance undertaking, except against the policyholder or other insured person who caused the accident in so far as his or her liability would be covered by the insolvent insurance undertaking in accordance with the applicable national law. Each Member State shall be obliged to acknowledge this subrogation as provided for by any other Member State.

5. Paragraphs 1 to 4 are without prejudice to:
- (a) the right of Member States to regard compensation paid by the body referred to in paragraph 1 as subsidiary or non-subsidiary;
 - (b) the right of Member States to make provision for the settlement of claims in respect of the same accident between:
 - (i) the body referred to in paragraph 1;
 - (ii) the person or persons liable for the accident;
 - (iii) other insurance undertakings or social security bodies required to compensate the injured party.

6. Member States shall not allow the body referred to in paragraph 1 to make the payment of compensation subject to any requirements other than those laid down in this Directive. In particular, Member States shall not allow the body referred to in paragraph 1 to make the payment of compensation subject to the requirement that the injured party establishes that the legal or natural person liable is unable or refuses to pay.
7. All the bodies set up or authorised under paragraph 1 shall strive to conclude an agreement by ... [PO: Please insert date 24 months after the date of entry into force of this amending Directive] on the implementation of this Article, containing provisions relating to their functions and obligations and the procedures for reimbursement resulting from this Article. That agreement shall be immediately notified to the Commission.

In the absence of the agreement referred to in the previous subparagraph the Commission shall be empowered to adopt delegated acts in accordance with the procedure referred to in Article 28b in order to define the procedural tasks and the procedural obligations of the bodies set up or authorised pursuant to this Article with regard to the reimbursement.

- (4a) in Article 11, the first paragraph is replaced by the following:
“In the event of a dispute between the body referred to in Article 10(1) and the civil liability insurer as to which must compensate the injured party, the Member States shall take the appropriate measures so that one of those parties is designated to be responsible in the first instance for paying compensation to the injured party without delay.”;
- (4b) the title of Chapter 5 is replaced by the following:
“SPECIAL CATEGORIES OF INJURED PARTY, EXCLUSION CLAUSES,
SINGLE PREMIUM, VEHICLES DISPATCHED FROM ONE MEMBER STATE
TO ANOTHER”;

- (4c) the title of Article 12 is replaced by the following:
“Special categories of injured party”;
- (4d) Article 13 is amended as follows:
- (a) the introductory part of the first subparagraph of paragraph 1 is replaced by the following:
“1. Each Member State shall take all appropriate measures to ensure that any statutory provision or any contractual clause contained in an insurance policy issued in accordance with Article 3 shall be deemed to be void in respect of claims by third parties injured as a result of an accident where that statutory provision or contractual clause excludes from insurance the use or driving of vehicles by.”;
- (b) in paragraph 1, the third subparagraph is replaced by the following:
“Member States shall have the option — in the case of accidents occurring on their territory — of not applying the provision in the first subparagraph if and in so far as the injured party may obtain compensation for the damage suffered from a social security body.”;
- (c) in paragraph 2, the second subparagraph is replaced by the following:
“Member States which, in the case of vehicles stolen or obtained by violence, provide that the body referred to in Article 10(1) is to pay compensation may fix in respect of damage to property an excess of not more than EUR 250 to be borne by the injured party.”;

(4e) in Article 15, paragraph 1 is replaced by the following:

“1. By way of derogation from point (b) of Article 13, point 13 of Directive 2009/138/EC of the European Parliament and of the Council¹⁷, where a vehicle is dispatched from one Member State to another, the Member State where the risk is situated shall be considered to be either the Member State of registration or, immediately upon acceptance of delivery by the purchaser, the Member State of destination, for a period of 30 days, even if the vehicle has not formally been registered in the Member State of destination.

Member States shall ensure that the information centre referred to in Article 23 of the Member State where the vehicle is registered, and of the Member State of destination, where different, and of any other relevant Member State, such as where an accident occurred, or where an injured party is resident, cooperate with each other to ensure that the necessary information on the dispatched vehicle that they have in accordance with Article 23 is available.”;

(4f) the following Article is inserted:

“Article 15a

Protection of injured parties in accidents involving a trailer towed by a vehicle

1. In case of an accident caused by a set of vehicles consisting of a trailer towed by a vehicle and where separate third party liability insurance was issued for the trailer, the injured party may bring his or her claim directly against the undertaking that insured the trailer, where:

- the applicable national law provides for the insurer of the trailer to provide this compensation, and
- the trailer can be identified, but the vehicle that towed it cannot be identified.

The undertaking compensating the injured party in this case shall have recourse to the undertaking that insured the towing vehicle or to the body under Article 10 if and to the extent provided for under the applicable national law.

This paragraph shall be without prejudice to applicable national law providing for rules more favourable to the injured party.

¹⁷ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335 17.12.2009, p. 1).”;

2. In the case of an accident caused by a set of vehicles consisting of a trailer towed by a vehicle, the insurer of the trailer, unless the applicable national law requires it to provide full compensation, shall, upon request of the injured party, inform the injured party without undue delay about:

- a) the identity of the insurer of the towing vehicle; or
- b) where the insurer of the trailer cannot identify the insurer of the towing vehicle, the compensation mechanism foreseen in Article 10.”;

(5) Article 16 is amended as follows:

(a) the following sentence is added at the end of the second paragraph:
“They shall do so using the form of the claims history statement”;

(b) the following paragraphs are added:

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

Member States shall ensure that, where an insurance undertaking takes into account claims-history statements when determining premiums, it shall treat claims-history statements issued in other Member States equally to those issued by an insurance undertaking or bodies as referred to in the second paragraph within the same Member State, including when applying any discounts.

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

The Commission shall adopt by [PO: Please insert date 19 months after the date of entry into force of this Directive] implementing acts specifying by means of a template, the form and content of the claims-history statement referred to in the second paragraph. That template shall contain information on the following:

- (a) the identity of the insurance undertaking or the body issuing the claims history statement;
- (b) the identity of the policyholder, including contact information;
- (c) the vehicle insured and its Vehicle Identification Number;
- (d) the start date and date of termination of the insurance cover of the vehicle;

- (e) the number of third party liability claims settled under the insurance contract of the policyholder during the period covered by the claims-history statement, including the date of each claim;
- (f) additional information relevant under the rules or practices applicable in the Member States.

The Commission shall consult with all interested parties and work closely with the Member States before adopting those implementing acts.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 28a(2).”;

(5a) the following Article is inserted:

“Article 16a

Motor Insurance Price Comparison Tools

1. Member states may choose to certify tools which enable consumers free of charge to compare prices, tariffs and coverage between providers of the compulsory insurance referred to in Article 3 as "motor insurance independent price comparison tool" if the conditions of paragraph 2 are met.
2. A comparison tool within the meaning of paragraph 1 shall:
 - (a) be operationally independent from the providers of the compulsory insurance referred to in Article 3 and ensure that service providers are given equal treatment in search results;
 - (b) clearly disclose the owners and operators of the comparison tool;
 - (c) set out clear, objective criteria on which the comparison is based;
 - (d) use plain and unambiguous language;
 - (e) provide accurate and up-to-date information and state the time of the last update;
 - (f) be open to any provider of the compulsory insurance referred to in Article 3 making available the relevant information, and include a broad range of offers covering a significant part of the market and, where the information presented is not a complete overview of the market, a clear statement to that effect, before displaying results;

- (g) provide an effective procedure to report incorrect information;
- (h) include a statement that prices are based on the information provided and are not binding on insurance providers.”;

(5b) Article 23 is amended as follows:

(a) the following paragraph is inserted:

“1a. Member States shall ensure that insurance undertakings or other entities are required to provide to information centres the information referred to in point (a), (i), (ii) and (iii), of paragraph 1, and to inform the information centre whenever a policy becomes invalid or otherwise no longer covers a registered vehicle number.”;

(c) paragraph 6 is replaced by the following:

“6. The processing of personal data resulting from paragraphs 1 to 5 shall be carried out in accordance with Regulation (EU) 2016/679.”;

(5ca) the following Article is inserted:

“Article 25a

Protection of injured parties in respect of damage resulting from accidents occurring in a Member state other than the Member state of residence of the injured party in case of insolvency of an insurance undertaking

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

- (a) the insurance undertaking is subject to bankruptcy proceedings; or
- (b) the insurance undertaking is subject to winding-up proceedings as defined in Article 268(d) of Directive 2009/138/EC¹⁸.

¹⁸ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335 17.12.2009, p. 1).”;

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

Without prejudice to any obligation under Article 280 of Directive 2009/138/EC, each Member State shall ensure that, whenever an order is made or a decision is taken to commence the proceedings referred to in the first subparagraph, point (a) or (b), in respect of an insurance undertaking of which that Member State is the home Member State by a competent court or any other competent authority, that order or decision is made public. The body referred to in the first subparagraph established in the home Member State of the insurance undertaking shall ensure that all the bodies referred to in the first subparagraph and all the compensation bodies referred to in Article 24 in all Member States are promptly informed about this order or decision.

2. The injured party may present a claim directly to the body referred to in paragraph 1.
- 2a. Upon receipt of the claim, the body referred to in paragraph 1 shall inform such body in the home Member State of the insurance undertaking, the compensation body under Article 24 in the Member State of residence of the injured party and the insurance undertaking subject to bankruptcy or winding-up proceedings, or its administrator or liquidator, as respectively defined in Article 268 (e) and (f) of Directive 2009/138/CE, that it has received a claim from the injured party. The insurance undertaking subject to bankruptcy or winding-up proceedings, or its administrator or liquidator, shall inform the body referred to in paragraph 1 when it compensates or denies liability regarding a claim that was also received by the body referred to in paragraph 1.

3. The Member States shall ensure that the body referred to in paragraph 1, on the basis of, among other, information provided at its request by the injured party, provides the injured party with a reasoned offer of compensation or a reasoned reply as foreseen in the second subparagraph, in accordance with the applicable national law, within three months from the date when the injured party presented his or her claim for compensation to the body.

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

- (a) make a reasoned offer of compensation to the extent that the body has established that it is liable pursuant to paragraph 1, point (a) or (b), the claim is not contested and the damages have been partially or fully quantified;
 - (b) provide a reasoned reply to the points made in the claim to the extent that the body has established that it is not liable pursuant to paragraph 1, point (a) or (b), or where liability is denied or has not been clearly determined or the damages have not been fully quantified.
- 3a. Where compensation is due in accordance with point (a) of the second subparagraph of paragraph 3, the body referred to in paragraph 1 shall pay out the compensation to the injured party without undue delay and within three months of the acceptance by the injured party of the reasoned offer of compensation referred to in point (a) of the second subparagraph of paragraph 3.
- Where the damages have only been partially quantified, the previous subparagraph applies to the reasoned offer of compensation regarding such partially quantified damage and from the moment of acceptance of the corresponding reasoned offer of compensation.
- 3b. Member States shall ensure that the body referred to in paragraph 1 has all the necessary powers and competences to, in due time, cooperate with other such bodies in other Member States, bodies established or approved under Articles 10a and 24 in all Member States and other interested parties, including the insurance undertaking subject to bankruptcy or winding-up proceedings, its claims representative or administrator or liquidator, and the national competent authorities of the Member States, at all stages during the proceedings referred to in this Article. Such cooperation shall include requesting, receiving and providing information, including on the details of specific claims, where relevant.

4. Where the home Member State of the insurance undertaking referred to in paragraph 1 is different from the Member State in which the injured party is habitually residing, the body referred to in paragraph 1 which has compensated the injured party shall be entitled to claim full reimbursement of the sum paid by way of compensation from the body referred to in paragraph 1 in the home Member State of the insurance undertaking.

The body referred to in paragraph 1 of the home Member State of the insurance undertaking shall make the payment to the body referred to in paragraph 1, which has compensated the injured party in a reasonable time not exceeding six months, unless otherwise agreed in writing by these bodies, after it has received a claim for recompensation regarding a payment that has been made to the injured party by the body referred to in paragraph 1.

The body that has provided compensation pursuant to the first subparagraph shall be subrogated to the rights of the injured party against the person who caused the accident or his or her insurance undertaking, except against the policyholder or other insured person who caused the accident in so far as his or her liability would be covered by the insolvent insurance undertaking in accordance with the applicable national law. Each Member State shall be obliged to acknowledge this subrogation as provided for by any other Member State.

5. Paragraphs 1 to 4 are without prejudice to:
- (a) the right of Member States to regard compensation paid by the body referred to in paragraph 1 as subsidiary or non-subsidiary;
 - (b) the right of Member States to make provision for the settlement of claims in respect of the same accident between:
 - (i) the body referred to in paragraph 1;
 - (ii) the person or persons liable for the accident;
 - (iii) other insurance undertakings or social security bodies required to compensate the injured party.

6. Member States shall not allow the body referred to in paragraph 1 to make the payment of compensation subject to any requirements other than those laid down in this Directive. In particular, Member States shall not allow the body referred to in paragraph 1 to make the payment of compensation subject to the requirement that the injured party establishes that the legal or natural person liable is unable or refuses to pay.
7. All the bodies set up or authorised under paragraph 1 shall strive to conclude an agreement by [PO: Please insert date 24 months after the date of entry into force of this amending Directive] on the implementation of this Article, containing provisions relating to their functions and obligations and the procedures for reimbursement resulting from this Article. That agreement shall be immediately notified to the Commission.

In the absence of the agreement referred to in the previous subparagraph the Commission shall be empowered to adopt delegated acts in accordance with the procedure referred to in Article 28b in order to define the procedural tasks and the procedural obligations of the bodies set up or authorised pursuant to this Article with regard to the reimbursement.

(5d) in Article 26, the first paragraph is replaced by the following:

“Member States shall take all appropriate measures to facilitate the timely provision to the injured parties, their insurers or their legal representatives of the basic data necessary for the settlement of claims.”;

(5e) the following Article is inserted:

"Article 26a

Information to injured parties

Member States which establish or authorise different compensation bodies under Articles 10(1), 10a and 25a(1) and 24(1) shall ensure that injured parties have access to essential information on possible ways to apply for compensation.”;

- (5f) in Article 28(1), the following subparagraph is inserted after the first subparagraph:
“The Member States may require motor third party liability insurance that meets the requirements of this Directive for any motor equipment used on land that is not referred to as a vehicle in Article 1, point 1, and to which Article 3 does not apply.”;
- (6) the following Articles 28a, 28b and 28c are inserted:
"Article 28a
Committee procedure
1. The Commission shall be assisted by the European Insurance and Occupational Pensions Committee established by Commission Decision 2004/9/EC¹⁹. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council²⁰.
 2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

¹⁹ Commission Decision 2004/9/EC of 5 November 2003 establishing the European Insurance and Occupational Pensions Committee (OJ L3, 7.1.2004, p.34).

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

Article 28b

Exercise of delegated powers

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 9(2) shall be conferred on the Commission for an indeterminate period of time from [the date of entry into force of this amending Directive].

The power to adopt delegated acts referred to in Articles 10a(7) and 25a(7) shall be conferred on the Commission for a period of seven years from [the date of entry into force of this amending Directive].

The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension no later than three months before the end of each period.

3. The delegation of power referred to in Articles 9(2), 10a(7) and 25a(7) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of that decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles 9(2), 10a(7) and 25a(7) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

Article 28c

Evaluation and review

1. No later than five years after the date of application of Articles 10a and 25a as referred to in Article 2(1a) and (1b) of Directive [title of the amending Directive], the Commission shall submit to the European Parliament and to the Council a report on the situation of functioning, cooperation and funding of the bodies referred to in Articles 10a and 25a. If appropriate, the report shall be accompanied by a legislative proposal. With regard to the funding of the bodies, that report shall include at least:
 - (a) an assessment of the financing capacities and financing needs of the compensation bodies in relation to their potential liabilities, taking into account the risk of insolvency of motor insurers in the Member States' markets;
 - (b) an assessment of the harmonisation of the funding approach of the compensation bodies;
 - (c) if the report is accompanied by a legislative proposal, an assessment of the impact of contributions upon Motor Third Party Liability Insurance contract premiums.

2. No later than [seven years after the date referred to in the first subparagraph of Article 2(1) of this amending Directive], the Commission shall submit a report to the European Parliament, to the Council and to the European Economic and Social Committee evaluating the implementation of this Directive, with the exception of the elements that are concerned by the evaluation referred to in paragraph 1, including in respect of:
 - (a) its application with regard to technological developments, in particular with regard to autonomous and semi- autonomous vehicles;
 - (b) the adequacy of its scope, considering the accident risks posed by different motor vehicles;
 - (ba) review the effectiveness of exchange of information systems for the purpose of checks on insurance in cross-border situations and, if needed, consider for such cases the feasibility of using existing information exchange systems; the review shall include an analysis of the objectives and an assessment of the costs of that data exchange; and
 - (c) the use by insurance undertakings of systems in which premiums are influenced by the policyholders' claims- history statements, inter alia bonus-malus systems or "no claims bonus".

That report shall be accompanied, where appropriate, by a legislative proposal.

Article 2

Transposition and application

1. Member States shall adopt and publish, by ... [PO: Please insert date 24 months after the date of entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.
They shall apply those provisions from ... [PO: Please insert date 24 months after the date of entry into force of this Directive].
When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
- 1a. Article 10a shall apply as of the date of application of the Commission delegated act referred to in Article 10a(7) or the date of the agreement referred to in the first subparagraph of that Article.
- 1b. Article 25a shall apply as of the date of application of the Commission delegated act referred to in Article 25a(7) or the date of the agreement referred to in the first subparagraph of that Article.
- 1ba. Articles 10a and 25a shall not apply before [PO: Please insert date 24 months after the date of entry into force of this Directive].
- 1c. The changes introduced to Article 16 shall apply as of [PO: Please insert date 4 months after date of transposition of this amending Directive] or as of the date of application of the Commission implementing act referred to in Article 16, whichever is the later date.
- 1d. The Commission may adopt delegated and implementing acts prior to the dates of application referred to in this Article.

- 1e. By [PO: Please insert date 18 months after the date of entry into force of this amending Directive], Member States shall set up or authorise the bodies referred to in Articles 10a(1) and 25a(1) and empower them to negotiate and conclude the agreements foreseen in the first subparagraphs of Articles 10a(7) and Article 25a(7) or otherwise designate an entity with powers to negotiate and conclude such agreements, to which the bodies shall become parties when they are set up or authorised.
- The first subparagraphs of Articles 10a(7) and 25a(7) shall apply as of [PO: Please insert date 18 months after the date of entry into force of this amending Directive].
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

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

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President

Commission statement on limitation periods

for publication in the Official Journal (L series)

“The Commission remains committed to defend a high degree of protection of victims in the context of the Motor Insurance Directive. Our objective is to ensure that victims, including in cross-border situations, are compensated as swiftly as possible and are not subject to disproportionate procedural requirements that might hamper their access to compensation. The effectiveness of compensation largely depends on whether it is done in timely manner. We note in this respect the concerns repeatedly expressed by the European Parliament as regards differences across Member States in relation to limitation periods, i.e. the relevant timespan during which an injured party may address a claim. The Commission will consider this issue carefully and examine possible remedies in order to further strengthen the protection of victims, should the evidence show that action at Union level is warranted.”
