



20.12.2018

OPINION

of the Committee on Legal Affairs

for the Committee on the Internal Market and Consumer Protection

on the 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

(COM(2018)0336 – C8-0211/2018 – 2018/0168(COD))

Rapporteur for opinion: Joëlle Bergeron

PA_Legam

SHORT JUSTIFICATION

The first EU directive on motor insurance dates back to 1972. Since then, five other directives have gradually strengthened and supplemented it, and were codified by Directive 2009/103/EC.

In its work programme for 2016, the Commission announced that that directive would undergo an assessment. Following the assessment, it became apparent that a number of amendments and adaptations were necessary in order for the directive to fulfil its primary purpose, namely to provide protection for victims of traffic accidents in cross-border situations. Five new points can be identified: insolvency of an insurer, recognition of claims history statements, insurance checks to combat uninsured driving, harmonisation of minimum amounts of cover, and the scope of the directive.

The rapporteur believes that this proposal for a directive will be effective in meeting the new requirements to protect victims of road accidents in EU Member States other than that of their residence, and victims of an accident caused by a driver from another Member State.

With instances of insurer insolvency multiplying, in particular in a cross-border context, and with compensation procedures in some EU countries long and complex, the rapporteur views the possibility of providing a mechanism for prompt and adequate compensation of victims as a step forward. The proposal includes the creation in each Member State of a compensation fund, financed by national insurers, subrogated to the insolvent insurer. In cross-border situations, the victim will be compensated directly by the national fund of the country where the accident occurred, before that fund is reimbursed from the national compensation fund of the insolvent insurer. A system of guarantee funds already exists in many Member States and, as far as the rapporteur is concerned, the fact that consideration is being given to extending it to all Member States in the form of voluntary agreements represents real progress.

The Commission's draft also provides for the application by insurers of the same treatment to all claims history statements issued in the EU. The rapporteur approves the Commission's move to harmonise claims history statements and at the same time to impose the same treatment for such statements, regardless of the Member State of origin of the policyholder. This measure will provide greater equality between policyholders through the application by insurers of the same treatment to all claims history statements issued in the Europe. The objective is to reduce insurance fraud and increase transparency through the authentication of claims history statements.

On the issue of insurance controls, the rapporteur considers it essential to limit their current ban and to allow Member States to carry out unobtrusive checks on a voluntary basis. Controls would be considered unobtrusive to the extent that the techniques used do not force vehicles to stop, are not discriminatory and are necessary and proportionate. The rapporteur considers that granting Member States the option to use digital number plate recognition tools is a good initiative. Any new provisions which will reduce uninsured driving should be encouraged.

The proposal for a directive also envisages guaranteeing minimum amounts of insurance cover in the event of damage to property or personal injuries, irrespective of the category of vehicle concerned. The rapporteur fully supports this new provision provided Member States

can exceed the minimum and provided it is not a question of harmonising insurance prices, as that would be unrealistic today given the economic disparities existing between EU countries.

Finally, regarding the scope of the directive, the rapporteur supports the Commission's intention to codify the case law of the Court of Justice via a definition of 'use of a vehicle'. However, the Commission considers that the definition adopted is still too restrictive and may exclude a number of vehicles which are not 'intended normally to serve as a means of transport' but which are nevertheless the cause of material damage or personal injury. The rapporteur believes that the transport activity of a vehicle in the strict sense should not be the determining factor in the application of this directive. Accidents may, for example, be caused by vehicles used in cross-border construction activities. The rapporteur believes that the definition of the use of a vehicle should be as broad as possible in order to ensure maximum protection for accident victims. An amendment will be tabled on this point.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on the Internal Market and Consumer Protection to take into account the following amendment:

Amendment 1

Proposal for a directive

Recital 1

Text proposed by the Commission

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

Amendment

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Amendment 2

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) The Commission has carried out an evaluation of the functioning of Directive 2009/103/EC of the European Parliament and of the Council¹⁵, including its efficiency effectiveness and coherence with other Union policies. The conclusion of the evaluation was that Directive 2009/103/EC functions well on the whole, and does not need amendment in most aspects. However, four areas were identified where targeted amendments would be appropriate: compensation of victims of accidents in cases of insolvency of an insurance undertaking, minimum obligatory amounts of insurance cover, insurance checks of vehicles by Member States, and the use of policyholders' claims history statements by a new insurance undertaking.

¹⁵ Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ L 263, 7.10.2009, p. 11).

Amendment 3

Proposal for a directive

Recital 3 a (new)

Amendment

(2) The Commission has carried out an evaluation of the functioning of Directive 2009/103/EC of the European Parliament and of the Council¹⁵, including its efficiency effectiveness and coherence with other Union policies. The conclusion of the evaluation was that Directive 2009/103/EC functions well on the whole, and does not need amendment in most aspects. However, four areas were identified where targeted amendments would be appropriate: compensation of victims of accidents in cases of insolvency of an insurance undertaking, minimum obligatory amounts of insurance cover, insurance checks of vehicles by Member States, and the use of policyholders' claims history statements by a new insurance undertaking. ***A compulsory 'bonus-malus' system should also be introduced to be used in the calculation of insurance premiums based on claims history statements by insurance undertakings. Such a system would be an incentive for safe driving and thus make road traffic safer. It would also lead to fairer insurance premiums for consumers.***

¹⁵ Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ L 263, 7.10.2009, p. 11).

(3a) According to the case law of the Court of Justice of the European Union, in principle all existing and new motor vehicles fall within the scope of Directive 2009/103/EC. However, particularly with new types of vehicles, such as electric bicycles, electric scooters and Segways, this does not seem to be absolutely necessary. They are much smaller and have a lower maximum speed, so their damage/injury potential is not so great. The undifferentiated application of compulsory insurance seems disproportionate, especially given the need to promote the development of new alternative modes of transport, which occupy less public road space and are more environmentally friendly. This Directive should therefore apply only to those vehicles which under Union law have to satisfy safety requirements as a condition for approval. Of course, accidents may also occur when such vehicles are used, so that Member States should be free to adopt or maintain at national level rules which also provide for liability insurance for vehicles which are not subject to type approval. By pursuing the general objectives of ensuring a high level of protection for victims of road traffic accidents and of facilitating the free movement of persons and vehicles throughout the Union, this Directive will help improve confidence in the single market for motor insurance by increasing legal certainty over cross-border sales of motor insurance based on the freedom to provide services, while reducing the risks that may arise during the compensation to victims process.

Amendment 4

**Proposal for a directive
Recital 3 b (new)**

(3b) This Directive strikes an appropriate balance between the public interest and the potential costs for public authorities, insurers and policy holders, with a view to ensuring that the measures proposed are cost-effective.

Amendment 5

Proposal for a directive Recital 4

Text proposed by the Commission

Amendment

(4) Member States currently **should refrain** from performing checks of insurance on vehicles normally based on the territory of another Member State and in respect of vehicles normally based in the territory of a third country entering their territory from the territory of another Member State. New technological developments allow for checking insurance of vehicles without stopping them and thus without interfering with the free movement of persons. It is therefore appropriate allow those checks of insurance on vehicles, only if they are non-discriminatory, necessary and proportionate, form part of a general system of checks on the national territory and do not require stopping of the vehicle.

(4) Member States currently **are refraining** 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 number-plate recognition technology**, allow for **the discrete** checking **of** 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 and do not require stopping of the vehicle **and if they guarantee the rights, freedoms and legitimate interests of the person concerned.**

Amendment 6

Proposal for a directive Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Uninsured driving, circulating

with a motor vehicle without a compulsory motor third party liability insurance is an increasing problem within the Union. The cost has been estimated at € 870 million in claims in 2011 for the Union as a whole. It should be stressed that uninsured driving negatively affects a wide range of stakeholders including victims of accidents, insurers, guarantee funds and motor insurance policyholders.

Amendment 7

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) Effective and efficient protection of victims of traffic accidents requires that those victims are always reimbursed for their personal injuries or for damage to their property, irrespective of whether the insurance undertaking of the party liable is solvent or not. Member States should therefore set up or appoint a body that provides initial compensation for injured parties habitually residing within their territory, and which has the right to reclaim that compensation from the body set up or appointed for the same purpose in the Member State of establishment of the insurance undertaking which issued the policy of the vehicle of the liable party. However, to avoid parallel claims being introduced, victims of traffic incidents should not be allowed to present a claim for compensation with that body if they have already presented their claim or have taken legal action with the insurance undertaking concerned and that claim is still under consideration and that action is still pending.

Amendment

(7) Effective and efficient protection of victims of traffic accidents requires that those victims are always reimbursed for their personal injuries or for damage to their property, irrespective of whether the insurance undertaking of the party liable is solvent or not. Member States should therefore set up or appoint a body that provides, ***without any delay***, initial compensation for injured parties habitually residing within their territory, and which has the right to reclaim that compensation from the body set up or appointed for the same purpose in the Member State of establishment of the insurance undertaking which issued the policy of the vehicle of the liable party. However, to avoid parallel claims being introduced, victims of traffic incidents should not be allowed to present a claim for compensation with that body if they have already presented their claim or have taken legal action with the insurance undertaking concerned and that claim is still under consideration and that action is still pending.

Amendment 8

Proposal for a directive

Recital 8

Text proposed by the Commission

(8) Previous claims histories of policyholders who seek to conclude new insurance contracts with insurance undertakings should be easily authenticated in order to facilitate the recognition of such claims history when concluding a new insurance policy. In order to simplify the verification and authentication of claims history statements, it is important that the content and format of the statement of such claims histories are the same across all Member States. In addition, insurance undertakings ***that take into account claims history statements*** to determine motor insurance premiums should ***not discriminate*** on the basis of nationality or solely on the basis of the previous Member State of residence of the policyholder. To enable Member States to verify how insurance undertakings treat claims history statements, insurance undertakings should publish their policies in respect of their use of claims history when calculating premiums.

Amendment

(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 ***should use a compulsory 'bonus-malus' system*** to determine motor insurance premiums. ***Claims history statements should be taken into account. There should be no discrimination*** on the basis of nationality or solely on the basis of the previous Member State of residence of the policyholder. To enable Member States to verify how insurance undertakings treat claims history statements, insurance undertakings should publish their policies in respect of their use of claims history when calculating premiums.

Amendment 9

Proposal for a directive

Recital 11

Text proposed by the Commission

(11) As part of the evaluation of the functioning of the Directive, the European Commission should monitor the application of the Directive, taking into account the number of victims, the amount of outstanding claims due to delays in payments following cross-border insolvency cases, the level of minimum amounts of cover in Member States, the amount of claims due to uninsured driving relating to cross-border traffic and the

Amendment

(11) As part of the evaluation of the functioning of the Directive, the European Commission should monitor the application of the Directive, taking into account the number of victims, the amount of outstanding claims due to delays in payments following cross-border insolvency cases, the level of minimum amounts of cover in Member States, the amount of claims due to uninsured driving relating to cross-border traffic and the

number of complaints regarding claims
history statements

number of complaints regarding claims
history statements *In the context of the
evaluation of the functioning of Directive
2009/103/EC, the Commission should also
examine and assess whether, in the light
of technological progress, including the
increasing use of autonomous and semi-
autonomous vehicles, it continues to serve
its purpose of protecting the victims of
road traffic accidents from the insolvency
of insurers in accidents caused by
vehicles. At the same time, that
monitoring should be future-proofed and
seek to ensure that the objectives of the
Directive are met as regards new
technological developments in fields such
as electric vehicles and autonomous and
semi-autonomous vehicles.*

Amendment 10

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) Since the objectives of this Directive, in particular to ensure an equal minimum protection of victims of traffic accidents across the Union **and** to ensure the protection of victims in case of insolvency of insurance undertakings, cannot be sufficiently achieved by the Member States but can rather, by reason of their effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty of the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

Amendment

(12) Since the objectives of this Directive, in particular to ensure an equal minimum protection of victims of traffic accidents across the Union, to ensure the protection of victims in case of insolvency of insurance undertakings **and to ensure equal treatment in the authentication of claims history statements by insurers for potential policy holders traversing 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.

Amendment 11

Proposal for a directive

Article 1 – paragraph 1 – point 1 a (new)

Text proposed by the Commission

Amendment

1a. In Article 2, a new paragraph is added:

‘This Directive shall only apply to motor vehicles covered by Regulation (EU) 2018/858*, Regulation (EU) 167/2013** or Regulation (EU) 168/2013.***

**** Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC (OJ L 151, 14.6.2018, p. 1).***

*****Regulation (EU) No 167/2013 of the European Parliament and of the Council of 5 February 2013 on the approval and market surveillance of agricultural and forestry vehicles (OJ L 60, 2.3.2013, p. 1).***

****** Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles(OJ L 60, 2.3.2013, p. 52).”***

Amendment 12

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2009/103/EC

Article 4 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

However, they may carry out such checks

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

on insurance provided that those checks are non-discriminatory, necessary and proportionate to achieve the end pursued, ***guarantee the rights, freedoms and legitimate interests of the person concerned***, and

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Amendment 13

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point b

Directive 2009/103/EC

Article 16 – paragraph 2 a (new)

Text proposed by the Commission

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

Amendment

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

Amendment 14

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point b

Directive 2009/103/EC

Article 16 – paragraph 2 a a (new)

Text proposed by the Commission

Amendment

Member States shall ensure that insurance undertakings and the bodies referred to in the second subparagraph incorporate a compulsory ‘bonus-malus’ system in their third-party liability motor vehicle insurance contracts, which calculates the amount of insurance

premiums of each policyholder in accordance with the claims history statements.

Amendment 15

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point b

Directive 2009/103/EC

Article 16 – paragraph 2 b (new)

Text proposed by the Commission

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

Amendment

Member States shall ensure that insurance undertakings publish their policies in respect of their use of claims history statements when calculating premiums, *in particular also in relation to the ‘bonus-malus’ system they use.*

Amendment 16

Proposal for a directive

Article 1 – paragraph 1 – point 6

Directive 2009/103/EC

Article 28c

Text proposed by the Commission

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

Amendment

No later than *five* years after the date of transposition of this Directive, an evaluation of this Directive shall be carried out. *In particular, the expediency of this Directive with regard to technological developments relating to autonomous and semi-autonomous vehicles shall be assessed, and it shall be examined whether the regime of liability of this Directive takes into account the new technological conditions or whether a new strict liability offence should be introduced which is based solely on autonomous vehicles as a source of danger and at the same time involves no uncontrolled liability risks in order not to stand in the way of the use of new technologies.* The Commission shall

communicate the conclusions of the evaluation, accompanied by its observations, to the European Parliament, the Council and the European Economic and Social Committee, ***attaching, where necessary, a legislative proposal.***

(Technical error: the directive in question is a proposal for a Directive 2018/0168 (COD) amending Directive 2009/103/EC.)

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability
References	COM(2018)0336 – C8-0211/2018 – 2018/0168(COD)
Committee responsible Date announced in plenary	IMCO 11.6.2018
Opinion by Date announced in plenary	JURI 11.6.2018
Rapporteur Date appointed	Joëlle Bergeron 9.7.2018
Discussed in committee	11.10.2018 20.11.2018
Date adopted	10.12.2018
Result of final vote	+: 18 -: 0 0: 0
Members present for the final vote	Joëlle Bergeron, Jean-Marie Cavada, Kostas Chrysogonos, Mady Delvaux, Mary Honeyball, Sajjad Karim, Sylvia-Yvonne Kaufmann, António Marinho e Pinto, Julia Reda, Evelyn Regner, Pavel Svoboda, Axel Voss, Francis Zammit Dimech, Tadeusz Zwiefka
Substitutes present for the final vote	Sergio Gaetano Cofferati, Luis de Grandes Pascual, Tiemo Wölken, Kosma Złotowski

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

18	+
ALDE	Jean-Marie Cavada, António Marinho e Pinto
ECR	Kosma Złotowski
EFDD	Joëlle Bergeron
GUE/NGL	Kostas Chrysogonos
PPE	Daniel Buda, Luis de Grandes Pascual, Pavel Svoboda, Axel Voss, Francis Zammit Dimech, Tadeusz Zwiefka
S&D	Sergio Gaetano Cofferati, Mady Delvaux, Mary Honeyball, Sylvia-Yvonne Kaufmann, Evelyn Regner, Tiemo Wölken
VERTS/ALE	Julia Reda

0	-

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention