



## INSURANCE EUROPE PRELIMINARY COMMENTS ON THE EC PROPOSAL TO REVISE THE MID

24 July 2018

The Motor Insurance Directive (MID) has proven an efficient instrument for the protection of road users over the years, and through this role it has contributed to making the freedom of movement a reality across Europe. Insurance Europe welcomes the European Commission's efforts to ensure the MID carries on playing this role through an increased protection for victims of motor vehicle accidents and ensuring motor insurance policyholders are all treated fairly and without discrimination.

Motor insurers are at the heart of the system put in place through the MID. The European Commission rightly notes in its Impact Assessment that motor insurers will bear any cost resulting from the implementation of this proposal. Insurance Europe would therefore like to share its views on the main aspects of this proposal to ensure it provides real added value for European policyholders and road users.

### ■ Scope of the MID

Insurance Europe is highly supportive of the European Commission when it confirms not only that autonomous vehicles are within the scope of the MID, but that the MID is fit for purpose as far as these vehicles are concerned. This is in line with the recommendations made by the GEAR 2030 high-level group in October 2017, which concluded that no changes to the MID were needed to ensure the quick compensation of victims of accidents involving autonomous vehicles.

Having said this, it is important to keep in mind that as a minimum harmonisation instrument, the MID allows for variations from one Member State to another, in order to adapt to the realities of the various markets in which it is implemented. It is also important to remember that the question of liability remains an issue decided at national level, and this question is distinct from the issue of what is or is not covered by the MID. It is therefore essential to ensure that any amendments made to the MID, and in particular to its scope, do not disrupt the balance reached in those markets, whilst also maintaining the existing high level of protection for road users.

In this respect, Insurance Europe is particularly concerned that the proposal has opted for a maximum interpretation of the MID's scope, thus requiring Member States to include activities entirely unrelated to the use of vehicles in traffic within the scope of compulsory Motor Third Party Liability (MTPL) insurance. Whilst the proposal seeks to codify and clarify the recent jurisprudence of the Court of Justice of the European Union, it fails to provide legal certainty and clarity, and does not follow fully the reasoning in the relevant rulings. Indeed, the proposal refers to 'means of transport' without defining the term and it fails to exclude vehicles used for purely agricultural or industrial purposes. It also fails to provide any clarity whatsoever regarding motor sports, implying they could now possibly be included within the scope of compulsory MTPL insurance, even for competitor-to-competitor injuries (depending on national liability regimes).

Insurance Europe maintains that accidents resulting from agricultural, construction, industrial, motor sports or fairground activities should not be included within the compulsory MTPL insurance cover as envisaged by the Commission proposal at EU level. Member States should continue to remain free to provide a wider scope for mandatory MTPL insurance, thus pooling the risks included within the MID's scope with other activities beyond traffic. The defining factor for the scope of the MID should be the use of a vehicle in traffic.

### ■ Checks on insurance

Insurance Europe is highly supportive of the European Commission's proposal to allow new technological developments such as number plate recognition technology to be used in order to carry checks on insurance without obstructing vehicles at the borders. Insurance Europe sees this as a significant instrument in the fight

against uninsured driving, especially in its cross-border dimension. Whether to use this technology, and whether to use it systematically, should be decided at national level given the different approaches to tackling uninsured driving from one Member State to another. It should also be noted that the existing EUCARIS system should be sufficient for the exchange of insurance data between Member States (but the uptake could be strengthened).

■ Minimum amounts covered by compulsory insurance

Insurance Europe welcomes the proposal to end the differences in minimum amounts of cover between the Member States which made use of the available transition period and those which did not. Insurance Europe would nonetheless point out that in some Member States the applicable minimum amounts are still significantly behind those in force in Member States that are up to date. It is therefore important to ensure that the proposed increases are implemented in a way that allows those Member States to adjust, based on a clear timeline, and without a sudden increase which would disrupt the MTPL insurance market.

Insurance Europe also notes an inconsistency between the provision for personal injuries, which refers to 'accidents', and the provision for damage to property, which refers to 'claims'. Both provisions should refer to claims, in the interest of consistency as well as for the continuity with the wording found in the current MID.

■ Insolvency of motor insurers

Insurance Europe supports the EC's proposal to extend the MID's protection of road traffic accident victims to cases of insolvency of a MTPL insurer in a new article 10a. No victim of a road traffic accident should be left without compensation, and certainly not as a result of the insolvency of an MTPL insurer. Thankfully, the systems currently in place across Europe make that a very unlikely scenario, even more so with the framework put in place through the Solvency II Directive (2009/138/EC). While insolvencies of MTPL insurers with cross-border activity have created issues in some markets, in most member states, the guarantee of financial compensation in the event of the insolvency of an MTPL insurer does not raise difficulties.

■ Recovery mechanism between compensation bodies (proposed article 10a (4))\*

Insurance Europe supports the general principle underpinning the proposed article 10a (4), in respect of insurers operating on the basis of the freedom to provide services (FOS). However, the proposal in its current wording omits insurers operating on the basis of the freedom of establishment (FOE). This means that where an insolvent insurer had its corporate seat in Member State B (home Member State) but operated on the basis of FOE in Member State A, the compensation body in Member State A would have to compensate the claims, without any right of recourse against Member State B's compensation body. Member State B's National Competent Authority (NCA) was solely responsible for the financial supervision of the insolvent insurer while Member State A's NCA was not competent. Therefore, there is no difference between FOS and FOE situations and this should be reflected in the proposal.

Where the victim's insolvent insurer operated on the basis of FOS/FOE, then the victim should be able to seek compensation from the competent body in the Member State of her/his residence. This body would then have a recourse towards the equivalent body in the Member State where the FOS/FOE insurer has its corporate head office. It is important for the MID's provisions on insolvency to be fully consistent with the Solvency II Directive and for the compensation body to be linked to the 'home Member State' rather than the 'Member State of establishment'.

\*The Estonian, Irish and Maltese insurance associations have strong concerns this aspect of the position paper.

■ Failure to provide a reasoned reply (proposed article 10a (1)(c))

Insurance Europe supports the European Commission's objective to address cases where an insurer fails to cooperate. However, this is an issue entirely distinct from insolvencies which should not be dealt with by the

same bodies. Indeed, it is not for compensation bodies (article 24) to bear the financial burden of operational issues with insurers. Moreover, in case the injured party has suffered an accident in a Member State other than the Member State of residence and the claims representative does not provide a reasoned reply within three months, the injured party will have the choice either to present a claim to the Compensation Body of Article 24 or to the body as indicated in Article 10a. The latter body can either be the Guarantee Fund (Article 10) or still a third body. This means that injured parties will have the possibility to simultaneously present the same claim to two separate bodies.

It is not clear to which extent this aspect of the proposal is based on evidence of a significant issue and Insurance Europe notes that it was not addressed in the Impact Assessment published with the proposal, or the public consultation that preceded the proposal and closed in October 2017. In any event, there are concerns about the proposed wording for article 10a (1) (c) which is (unintentionally) misleading, as it could result in compensation bodies intervening in purely domestic cases. Indeed, as it is currently worded it would require compensation bodies to intervene where a domestic insurer failed to respond to a claimant in a purely domestic claim, without any cross-border element.

On article 10a (3), Insurance Europe would also question the reason for a different delay to apply in this case (two months) as opposed to cases involving an unidentified or uninsured vehicle (three months).

#### ■ Claims history statements

Insurance Europe supports the proposal's overriding principle of non-discrimination, in line with the rules governing the Single Market. European insurers are committed to ensuring policyholders are not treated in a discriminatory manner because of their nationality or solely on the basis of their previous Member State of residence.

Insurance Europe also believes that a healthy, competitive and innovative market for motor insurance is the best way to ensure two policyholders in the same situation are treated the same, regardless of their previous Member State of residence. The MTPL market in Europe is particularly competitive and it is essential to preserve the right for European insurers to freely exercise their commercial judgement. Any interference with this right should be backed up by clear evidence of a significant European-wide issue.

It should also be pointed out that claims history is just one of many factors potentially considered by insurers when calculating insurance premiums. Ongoing technological and commercial developments mean that claims history can in fact be completely disregarded by some insurers. An insurer should be able to devise a business model (and corresponding underwriting process) where a policyholder's claims history is irrelevant, and other factors are taken into account instead, in order to decide the policy's terms and conditions, and price this policy accordingly. Moreover, the increased digitalisation of processes from sales to claims mean that the idea of a (paper) statement is already obsolete in a number of markets, and increasingly so in the others. Finally, it should also be noted that claims history statements are not necessarily issued by insurers: in some cases, the claims history is made available by the relevant national database (eg Motor Insurance Bureau, supervisory authority).

#### ■ Standardisation of claims history statements

Insurance Europe is particularly concerned with the proposed standardisation of the claims history statement which insurers are required to provide under the current article 16 of the MID. This will involve compliance efforts for insurers without any clear added value in practice, and to solve an issue of which there is only anecdotal evidence, as shown in the Impact Assessment published with the proposal.

The current proposal would not only fail to add value for European policyholders, it is also impractical as it is currently worded. Indeed, the proposal requires the claims history statement to include the "*number and value of the declared third party liability claims during the period covered by the claims history statement*". However,

this will lead to significant discrepancies from one Member State to another as the exact definition of (third party liability) claim can vary from one Member State to another. In some Member States, all claims will be counted, while in others claims that have been paid out may no longer appear on a statement if the insurer recovered its outlay (through a recovery action for example, or an agreement with the other party's insurer). It should also be noted that the value of claims can vary significantly between Member States as a result of higher medical and legal costs (amongst other costs). Including this information could therefore disadvantage policyholders moving from those Member States with higher value claims to other member States. Furthermore, there are Member States where information about the value of a claim cannot legally be disclosed if it relates to personal injuries. Finally, there are also Member States which opted for an approach based on first party liability.

In any event, should this aspect of the proposal be maintained, Insurance Europe would suggest referring to the guidelines it developed on the information for motor insurance claims history statements for cross-border use [[link](#)], which provide an idea of the information European insurers are able to share. The following points should also be considered:

- Define only strict minimum data (as per Insurance Europe's guidelines) and allow insurers to include additional information based on their needs;
- Allow the use of specific national claims history statements for domestic purposes, concurrently with the standardised statement for cross-border purposes; and
- Ensure the standardised statements for cross-border use are issued on request in at least two languages including English.

- Obligation for insurers to publish their policies regarding the use of these statements in the calculation of premiums

This obligation amounts to a potentially burdensome interference with the market's normal functioning, which is not justified in a sector as competitive as MTPL insurance. There is already a high degree of publicity surrounding insurers' no claims bonuses and bonus/malus discounts policies, through the advertisement of their products on offer. Insurers with the more advantageous policies will naturally promote themselves as such, and consumers will choose their insurer accordingly. In any event, this aspect of the proposal should be clarified to ensure insurers are not made to publish commercially sensitive information such as pricing criteria and processes, and to ensure its compliance with Directive (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets), which gives pricing as an example of trade secret.

#### ■ Transposition deadline

Insurance Europe believes that the changes to be implemented by Member States following the adoption of this proposal are significant and therefore warrant a transposition period longer than 12 months. A minimum of 24 months would be warranted, given the potentially extensive changes to be made to national arrangements for compulsory MTPL insurance, compensation schemes, minimum amounts of cover and the various legal instruments relating to them. It is also important to allow insurers to have enough time to implement those changes which will be enacted by the EC through delegated regulation. This should be reflected in the transposition deadline.

*Insurance Europe is the European insurance and reinsurance federation. Through its 35 member bodies — the national insurance associations — Insurance Europe represents all types of insurance and reinsurance undertakings, eg pan-European companies, monoliners, mutuals and SMEs. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers generate premium income of €1 200bn, directly employ over 940 000 people and invest over €10 100bn in the economy.*