

European harmonised rules on motor vehicles liability insurance reviewed

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Abstract

The European Union Directive 2009/103/EC 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 has been amended by Directive (EU) 2021/2118 of the European Parliament and of the Council of 24 November 2021. Member States have to adopt and publish the measures necessary to comply with this amended Directive by 23 December 2023, with the exception of some measures to be taken by 23 June 2023. This paper points out the underlying objectives of the EU harmonised rules related to motor vehicles liability insurance and focuses on the most important amendments: (1) the definition of motor vehicle, (2) the scope of the insurance obligation and the harmonised rules relating to motor vehicle liability insurance, (3) checks on insurance of vehicles, (4) minimum amounts of cover for personal injuries, (5) insolvency of the insurer, (6) claims history statement, and (7) price comparison tools.

Key words: EU Directive 2009/103/EC on motor vehicle liability insurance, EU Directive 2021/2118, vehicle, insurance obligation, minimum amounts of cover, checks on insurance, insolvent insurance company, price comparison tools

1. Introduction

The European Union Directive 2009/103/EC 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 has been amended by Directive (EU) 2021/2118 of the European Parliament and of the Council of 24 November 2021. Member States have to adopt and publish the measures necessary to comply with this Directive by 23 December 2023, with the exception of measures related to some amendments to be taken by 23 June 2023 (Directive (EU) 2021/2118, 2021, art. 2(1)). The REFIT review of the Directive 2009/103/EC began in 2016 with an evaluation by the European Commission. The Proposal launched by the EC Commission in 2018

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(hereafter: Proposal for a Directive, 2018) underwent a lengthy review process, including public consultations in 2017 and 2018 (see e.g. the two Commission Staff Working Document Impact assessments), before a compromise was found between widely differing views.

This Amended Directive 2009/103/EC, 2009 applies in the Member States of the European Economic Area (EEA), currently consisting of the 27 Member States of the European Union, plus Iceland, Liechtenstein and Norway.

It is well known that this Directive 2009/103/EC, 2009 consolidates five previous Directives (see e.g. C. Van Schoubroeck 2015). As the Court of Justice of the European Union (CJEU) phrased it: “Those directives progressively defined the obligations of Member States with respect to compulsory insurance. While the aim of those directives was to ensure the free movement of vehicles normally based on European Union territory and of persons travelling in those vehicles, they also had the objective of guaranteeing that the victims of accidents caused by those vehicles receive comparable treatment irrespective of where in the European Union the accident occurred (see, to that effect judgments Marques Almeida, C-300/10, of 23 October 2012, EU:C:2012:656, par.26; Vnuk, C-162/13, of 4 September 2014, EU:C:2014:2146, para.50 and Rodrigues de Andrade, C-514/16, of 28 November 2017, EU:C:2017:908, para.32). It is stated, in essence, in recitals 2 and 20 of Directive 2009/103, that that directive pursues the same objectives. In addition, it is clear from the development of the EU legislation concerning compulsory insurance that the objective of protecting the victims of accidents caused by those vehicles has continuously been pursued and reinforced by the EU legislature (see, to that effect, judgments Vnuk, C-162/13 of 4 September 2014, EU:C:2014:2146, para. 52 to 55 and Rodrigues de Andrade, C-514/16 of 28 November 2017, EU:C:2017:908, para. 33, , C-Torreiro, C-334/16 of 20 December 2017, para. 25-27; BTA Baltic, C-648/17 of 15 November 2018, para 32-33; Powiat Ostranski v Ubezpieczeniowy Fundusz Gwarancyjny, C-383/19 of 29 April 2021, para 56). Those objectives underlying the EU harmonized rules on motor vehicle liability insurance are expressed in recitals 2 and 20 of Directive 2009/103/EC, 2009 and have been confirmed by the Amending Directive (EU) 2021/2118, 2021 stating: “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 could become injured parties as a result of an accident. It is also a major concern for insurance undertakings, as it constitutes an important segment of the ‘non-life’ insurance market 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. Reinforcing and consolidating the internal market for motor insurance should therefore be a key objective of Union action in the field of financial services” (recitals 1, 39 and 40).

This paper focuses on the most important amendments of Directive 2009/103/EC, 2009: (1) the definition of motor vehicle, (2) the scope of the insurance obligation and the harmonised rules relating to motor vehicle liability insurance, (3) checks on insurance of vehicles, (4) minimum amounts of cover for personal injuries, (5) insolvency of the insurer, (6) claims history statement and (7) price comparison tools.

2. Definition of “vehicle”

The first major, if not the most crucial, amendment concerns the definition of “vehicle” and consequently the scope of the EU harmonised rules on motor vehicle liability insurance.

The original version of Directive 2009/103/EC, 2009 defines a “vehicle” as: “any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled”(art. 1(1)). As confirmed by the European Commission, this definition also encompasses (new) types of lighter and lower speed motor-powered vehicles, which means that those have always been within the scope of this Directive (Proposal for a Directive, 2018, 8; Commission Staff Working Document, 2018a, 8, 18, 135; Opinion of the Committee, 2018; Report on the proposal for a directive, 2019, 56). It can be noted that the same goes for autonomous and semi-autonomous vehicles (Proposal for a Directive, 2018, 7). Member States have the option granted in Article 5, 2 Directive 2009/103/EC, 2009 to exempt certain motor vehicles from the compulsory motor vehicle liability insurance obligation, however only on the condition that the national guarantee fund of the Member State of the accident compensates the injured party of accidents caused by those exempt vehicles in the same way as the injured party of accidents caused by vehicles for which the insurance obligation has not been satisfied. The compensating guarantee fund has a right to obtain reimbursement from the guarantee fund of the Member State where the vehicle is normally based (for the List of exempt vehicles according to Article 5, 2 EU MID, which has not been updated¹). Essential is that although the original Directive 2009/103/EC, 2009 provides an opt-out system as to the insurance obligation, those exempt vehicles nonetheless remain under the scope of this Directive and in particular the protection it grants to the injured party.

This legal situation will change drastically with the new definition of “vehicle”, as amended in 2021. The new Article 1, 1 Directive 2009/103/EC, 2009 (replaced by Directive (EU) 2021/2118, 2021, art. 1(1)(a)) provides that:

“vehicle’ means:

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

(i) a maximum design speed of more than 25 km/h; or

(ii) 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 uncoupled. 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.”

According to this new definition of vehicle, certain lighter and/or lower speed motor-powered vehicles are not just exempted from the insurance obligation but

¹ Available at: https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/motor-insurance-list-exempt-5th-dir_en.pdf, 17.1.2022.

also excluded from the scope of Directive 2009/103/EC, 2009. Indeed, based on an *a contrario* reading of the above definition, the following vehicles are excluded from the scope of the amended directive:

“a) those motor vehicles not exclusively propelled by a mechanical power on land but not running on rails;

b) those motor vehicles propelled exclusively by a mechanical power on land but not running on rails with:

(i) a maximum design speed of not more than 25 km/h; or

(ii) a maximum net weight of not more than 25 kg, and a maximum design speed of not more than 14 km/h.;

(c) wheelchair vehicles exclusively intended for use by persons with physical disabilities, irrespective of their weight or speed.”

The EU Commission’s Proposal for a Directive, 2018 did not modify or replace the definition of “vehicle”. In the course of the review proceedings, however, there was strong lobbying, in particular from the eBike industry (see e.g. Commission Staff Working Document, 2018, 63, 69, 135), which argued that some lighter or smaller motor vehicles such as electric bicycles and segways should be totally excluded from the definition of vehicle. The main arguments were picked up by the European Parliament (Amendments adopted by the European Parliament on 13 February 2019, EP 2014-2019) and ended up in the recitals 3, 4 and 6 of Directive (EU) 2021/2118, 2021. The discussion regarding those underlying and not particularly convincing arguments, though interesting, falls outside the scope of this paper (Van Schoubroeck, n/a).

In particular in view of the above cited aim of the EU harmonised rules on motor vehicles liability insurance, the practical implications of this new definition of “vehicle” are considerable. First, one has to know the design speed as well as the net weight of each and every specific motor-powered vehicle in order to assess whether there exists an insurance obligation. However, a quick search on the internet shows that this information is not always readily available and that within one and the same type, the maximum design speed and net weight can differ significantly.

Second, the outcome of the assessment is crucial. Indeed, those motor-powered vehicles excluded from the definition of “vehicle” no longer fall under the scope of the EU harmonised rules on motor vehicle liability insurance. Consequently, as of 23 December 2023 the tortfeasor as well as the injured party will be excluded from the protection they have enjoyed until now under Directive 2009/103/EU, 2009. According to the new rules, those excluded vehicles are considered “ordinary bicycles” or “non-motor-powered vehicles” for which the protection of the tortfeasor and of the injured party will then depend on the applicable national law. The liability resulting from accidents caused by “ordinary bicycles” and other “non-motor-powered vehicles” could be covered by general liability insurance contracts (for private persons or businesses) governed by national insurance contract law to be determined by Article 7 of the Regulation EU No 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I). Commonly, those liability insurance contracts are not compulsory, or regulated by specific mandatory rules, and the injured party has no right to claim compensation from a guarantee fund in case of non-insurance or insolvency of the insurer. Moreover,

a general liability insurance contract covers only those who have the capacity of insured in that contract, while under the scope of Directive 2009/103/EC, 2009 the motor vehicle liability insurance contract must cover “the civil liability in respect of the use of the vehicle” (art. 3, first para) irrespective of the person who causes the accident. In addition, while Directive 2009/103/EC, 2009 explicitly focuses on the protection of cross-border traffic accidents, the territorial scope of general liability insurance contracts requires specific attention when travelling abroad.

It is rather ironic that the EU legislator is aware of this drawback and explicitly reminds the Member States of their competence to regulate the compensation of traffic accidents caused by those excluded vehicles in their own way, while also pointing out the importance of protecting the injured party in cross-border accidents (Directive (EU) 2021/2118, 2021, recital 4; Directive 2009/103/EC, 2009, art. 28 as amended by Directive (EU) 2021/2118, 2021, art. 1(21)).

Assuming that some EEA Member States will provide a specific compensation system one way or another, hopefully taking into account cross-border accidents, the regulation for the same electric scooter, for example, regarding the insurance obligation and the compensation of accidents will be different when travelling to as well as through various EEA countries, as it depends on the applicable national law. At first sight the system of exclusion from the definition of vehicle seems to have the benefit of simplicity, as it seems to prevent the emergence of a disparate landscape of different opt-out decisions of various Member States in a system of exemptions as provided under Article 5, 2 Directive 2009/103/EC, 2009. However, this is a false perception because the landscape will actually be more disparate and the risk of legal uncertainty and disputes will increase.

Third, the international traffic compensation system of Bureaux, known as the Green card system, is impacted. It makes no difference whether one has to show the green card or whether the motor vehicle is presumed to be insured because it is normally based in the territory of an EEA Member State, Andorra, Bosnia and Herzegovina, Montenegro, Serbia, Switzerland or the United Kingdom (Agreement between the National Insurers' Bureaux of the Member States of the EEA and other Associate States (Multilateral Agreement²). The Internal Regulations governing the relations between the National Insurers' Bureaux, define in Article 2, 5 that: “vehicle”: means any motor vehicle intended for travel on land and propelled by mechanical power but not running on rails as well as any trailer whether or not coupled but only where the motor vehicle or trailer is made subject to compulsory insurance in the country in which it is being used.” The term “compulsory insurance” has to be interpreted as meaning compulsory motor vehicle liability insurance (Internal Regulation, art. 2, 9; COB, Explanatory Memorandum to the Internal Regulations, 9). Consequently, the victim of a traffic accident caused by a motor vehicle normally based in another member country of the green card system will be refused compensation by the National Bureau of the country of the accident which does not make that vehicle subject to compulsory motor vehicle liability insurance, even in case this liable vehicle is covered by a motor vehicle liability insurance contract.

² Available at: <https://www.cobx.org/article/39/green-card>, 10.1.2022.

3. Scope of the insurance obligation and Directive

Motor vehicle liability insurance has been compulsory since 1972 and must provide cover, on the basis of the payment of one single premium, for the civil liability “in respect of the use of motor vehicles” normally based in the territory of a Member State, and relating to accidents on the whole territory of the EEA (Directive 2009/103/EC, 2009, art. 3 and 14(a)). Although Directive (EU) 2021/2118, 2021, art. 1(2)(a) replaced Directive 2009/103/EC, 2009, art. 3, first paragraph, the only change was that “the use of a vehicle” replaced “the use of vehicles”.

However, there remained legal uncertainty as to the specific scope of this insurance obligation and the application of the motor vehicle liability insurance. The preliminary ruling of the CJEU in the so-called *Vnuk* case did not bring the desired clearness regarding the twofold question: (i) does it include accidents that occurred when the vehicle was being used as a machine for carrying out work, and (ii) is the territorial scope limited to accidents on a public road or in an area accessible to the public, or does it include all types of terrains including private property (CJEU 4 September 2014, C-162/13, *Damijan Vnuk*)? Since the *Vnuk*-case, the CJEU has expressed its view clearly in many cases (e.g. CJEU 28 November 2017, C-514/16, *Isabel Maria Pinheiro Vieira Rodrigues de Andrade*; CJEU 20 December 2017, C-334/16, *José Luis Núñez Torreiro*; CJEU 4 September 2018, C-80/17 *Fundo de Garantia Automóvel*; CJEU 15 November 2018, C-648/17, *AAS BTA Baltic*; CJEU 20 June 2019, C-100/18 *Línea Directa Aseguradora*; CJEU 29 April 2021, C-383/19, *Powiat Ostrowski*; CJEU Order 29 October 2021, C-688/20, *HG and TC v Ubezpieczeniowy Fundusz Gwarancyjny*).

Consolidating the case law of the CJEU, the European legislator has inserted the following definition of the “use of a vehicle”: “ ‘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” (Directive 2009/103/EC, 2009, art. 1(1)(a) as inserted by Directive (EU) 2021/2118, 2021, art. 1(1)(b), recital 5). This makes clear that the insurance obligation and cover are compulsory (i) when the motor vehicle is used at the time of the accident as a means of transport in the broad sense, and (ii) irrespective of the terrain on which the vehicle is used, including private property (Proposal for a Directive, 2018, 4, 10).

However, the insurance obligation and the Directive shall not apply to the use of a vehicle in motorsport events and activities in the broad sense taking place in a restricted and demarcated area, on the condition that the Member State ensures that the organiser of the activity or any other party has taken out an alternative insurance or guarantees policy covering, as close as possible to the compensation under the Directive, the damage to any third party (including spectators and other bystanders but not necessarily participating drivers and their vehicles) (Directive 2009/103/EC, 2009, art. 3, new para 2 as inserted by Directive (EU) 2021/2118, 2021, art. 1(2)(b), recitals 11-12).

In view of the various and different situations in the Member States, the option of the Member States to exempt vehicles from the insurance obligation has been expanded,

however still on the condition that the national guarantee fund of the Member State of the accident compensates the injured party of accidents caused by those exempt vehicles in the same way as the injured party of accidents caused by vehicles for which the insurance obligation has not been satisfied. The expanded limited list of allowed exemptions includes vehicles that are in accordance with national law: (i) under specific conditions temporarily or permanently withdrawn and prohibited from use, (ii) used exclusively in specific areas with restricted access, or (iii) not admitted for use on public roads (Directive 2009/103/EU, 2009, art. 5(3) – 5(7) as inserted by Directive (EU) 2021/2118, 2021, art. 1(4), recitals 7-15). For the latter vehicles, Member States may also derogate from the obligation of compensation by the guarantee fund 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 (Directive 2009/103/EU, 2009, art. 5(5) and 5(6) as inserted by Directive (EU) 2021/2118, 2021, art. 1(4)). Those exemptions seems to reflect the different policy views in the Member States on imposing an insurance obligation and motor vehicle liability coverage for vehicles not allowed on public roads or driven on certain private and other terrains (see Directive (EU) 2021/2118, 2021, recitals 7-15; Mandate for negotiations with the European Parliament, 2018, 6–8).

4. Checks on insurance of vehicles normally based in another Member State

As mentioned, currently 34 countries participating in the Green card system have replaced the green card by the notion of “territory in which a vehicle is normally based” which in general refers to the registration plate the vehicle is bearing, irrespective of whether the plate is permanent or temporary (Directive 2009/103/EC, 2009, art. 1(4) and 8). Valid registration plates from those countries substitute the green card as sufficient proof of at least the minimum compulsory motor liability insurance cover required by the law of the participating country where the accident occurred. The National Insurance Bureau of that country shall handle the claims even if the vehicle is not actually insured (Internal Regulations³; De Baere, Bles, 2019).

So far, only non-systematic checks of insurance of vehicles normally based in another Member State are allowed, on the condition that they are non-discriminatory and are not checks intended solely to verify such insurance. All systematic checks of insurance are prohibited, including those not requiring the vehicle to be stopped. To tackle the problem of uninsured driving and in light of new technological developments, such as technology allowing automatic number plate recognition, the amended Directive 2009/103/EC, 2009 also authorises insurance checks of vehicles normally based in the territory of another Member State as part of a general system of checks on the national territory which are also carried out in respect of vehicles normally based in that Member State, if they are non-discriminatory, necessary and proportionate and do not require the vehicle to stop for the purpose of such a check (Directive 2009/103/EC, 2009, art. 4(1) as amended by Directive (EU) 2021/2128, 2021, art. 1(3), recitals 16-17; Proposal for a Directive, 2018, 2-3, 10, 13, 15-16). Rather superfluously, it is provided that the

³ Available at: <https://www.cobx.org/article/3/green-card-system>, 10.12.2021.

processing of the personal data necessary for the purpose of combatting uninsured driving of vehicles normally based in the territory of another Member State must be in accordance with the Regulation 2016/679 (GDPR) of which specific requirements are also mentioned (Directive 2009/103/EC, 2009, art. 4(2) as amended by Directive (EU) 2021/2128, 2021, art. 1(3), recitals 17-18).

5. Minimum amounts of cover for personal injuries

With a view to guaranteeing a minimum of protection throughout the EEA, the scope of loss and injury includes both damage to property and personal injuries (Directive 2009/103/EC, 2009, art. 3, para 4). The notion of “personal injuries” covers any type of damage insofar as compensation for such damage is provided for under the national liability law applicable to the dispute and results from an injury to physical integrity, including physical and psychological suffering (CJEU, 23 January 2014, C-371/12, *Petillo v. Unipol*, para 34).

It can be noted that the term “victim” has been replaced by the term “injured party” or “party injured” (Directive 2009/103/EC, 2009 art. 1(2) as amended by Directive (EU) 2021/2118, 2021, art. 1(1c)) for the exclusive objective of harmonising the terminology and that this does not constitute a change in substance (Directive (EU) 2021/2118, 2021, recital 2).

Due to different transition periods and reference dates for the periodic recalculation, the minimum amounts of cover differ depending on the Member State. To ensure equal minimum protection of injured parties across the EEA (Directive (EU) 2021/2118, 2021, recital 19; Proposal for a Directive, 2018, 3), those minimum amounts were harmonised, and a uniform review clause and procedural rules have been introduced (Directive 2009/103/EC, 2009, art. 9(2) as replaced by Directive (EU) 2021/2118, 2021, art. 1(5); Directive 2009/103/EC, 2009, art. 28bas inserted by Directive (EU) 2021/2118, 2021, art. 1(22)). The amounts of cover were harmonised to the highest obligatory minimum level currently applying in the Member States (Proposal for a Directive, 2018, 8, 11, 13-14; Notice regarding the adaptation, 2021).

The new uniform minimum amounts of cover imposed are: (i) for personal injuries, a minimum amount of 1,300,000 EUR per injured party or 6,450,000 EUR per accident, whatever the number of injured parties, and (ii) for damage to property, 1,300,000 EUR per occurrence, whatever the number of injured parties (Directive 2009/103/EC, 2009, art. 9 as replaced by Directive (EU) 2021/2118, 2021, art. 1(5)). Since these are minimum amounts, some Member States have been imposing higher amounts (see Minimum amounts of insurance coverage reported by Council of Bureaux dd. 30/01/2020).

6. Insolvency of the insurer

Directive 2009/103/EC currently provides that in case of an accident caused by an unidentified vehicle or a vehicle for which the insurance obligation has not been satisfied, the injured party can obtain damage compensation from the guarantee fund of the Member State of the accident (Directive 2009/103/EC, 2009, art. 10). The CJEU had

ruled that the Directive does not require guarantee Funds to cover cases of insolvency of insurance undertakings (CJEU, 11 July 2013, C-409/11, Csonka and others). There exists only a convention between the guarantee funds and the compensation body of certain EEA Member States (Convention entre organismes d'indemnisation et fonds de garantie en cas d'insolvabilité d'un assureur RC automobile opérant dans le marché unique, 6 November 2008). This was considered as one of the major shortcomings of Directive 2009/103/EC, 2009 (Proposal for a Directive, 2018, 2, 6, 14).

In view of enhancing the protection of all injured parties, an extensively regulated new system has been set up to rapidly and fully compensate them when the insurance company of the vehicle liable for the accident is insolvent, under bankruptcy or winding up proceedings. Member States should therefore set up or authorise a body to provide compensation for injured parties residing within their territory for accidents which occurred in their Member State of residence. This body will have the right to reclaim the compensation from the body set up or authorised for this purpose in the home Member State of the insolvent insurance company which issued the motor vehicle liability insurance policy (Directive 2009/103/EC, 2009, art. 10a as inserted by Directive (EU) 2021/2118, 2021, art. 1(8), recital 20-26). Because one can also become the victim of an accident that happened in a Member State other than the Member State of residence and is caused by a vehicle covered by an insolvent insurer, the Member States also have to set up or authorise a body in the Member State of residence of the injured party to compensate this party in case of insolvency of the motor vehicle liability insurer. In this case as well the body has a right to reclaim compensation from the body set up for this purpose in the home Member State of the insolvent insurance company (Directive 2009/103/EC, 2009, art. 25a as inserted by Directive (EU) 2021/2118, 2021, art. 1(18), recital 27). Those bodies have to indemnify the injured party according to the motor vehicle liability insurance law of the Member State of the accident (Directive 2009/103/EC, 2009, art. 25(1), 10a(7), 25a(7); Agreement between compensation bodies, 2002).

The injured party may submit the claim directly to the body and should receive a reasoned offer of compensation or a reasoned reply within three months of the date of the claim. Where compensation is due, the body should pay the compensation to the injured party at the latest three months after acceptance of the offer of compensation.

The Member State has to ensure sufficient funds for those bodies, but financial contributions can only be imposed on insurance companies that have been authorised by that Member State. These compensation tasks can be entrusted to the already existing guarantee fund (Directive 2009/103/EC, 2009, art. 10) and/or the claims compensation body (Directive 2009/103/EC, 2009, art. 24). If a Member State sets up more than one compensation body, it should provide injured parties the essential information to identify the body competent to handle their claim (Directive 2009/103/EC, 2009, art. 26a as inserted by Directive (EU) 2021/2118, 2021, art. 1(20), recital 28).

In order for this system to be operational, an agreement has to be concluded between the bodies concerned, concerning their functions, obligations, and the procedures for reimbursement. If this agreement has not been concluded by 23 December 2023, the European Commission is empowered to adopt delegated acts thereto (Directive 2009/103/EC, 2009, art. 10a(13) para 4, 25a(13) para 4 and 28b; regarding the evaluation

and review of this new compensation system, see Directive 2009/103/EC, 2009, art. 28c as inserted by Directive (EU) 2021/2118, 2021, art. 1(22)).

7. Claims history statement

The policyholders already have a right to request at any time a claims history statement of at least the preceding five years, and have to receive it within 15 days of the request. What is new is that the European Commission shall adopt by 23 July 2023 implementing acts specifying, by means of a standardised template, the form and the content of the claims history statement (Directive 2009/103/EC, 2009, art. 16 as replaced by Directive (EU) 2021/2118, 2021, art. 1(15), recital 31, 34). This should facilitate the authentication of claims history statements by insurers, in particular those issued by an insurer in another Member State. Moreover, an elaborated regulation has been inserted to prohibit discrimination on the basis of nationality or residence of the policyholder in case the insurer takes the claims history into account in calculating the premium and applying bonus/malus discounts (Proposal for a Directive, 2018, 2, 6, 8).

8. Price comparison tools

Newly introduced is the right of the Member States to choose to certify tools enabling consumers to compare free of charge prices, tariffs and coverage of products of motor vehicle liability insurers, on the condition that those comply with the harmonised conditions. If those conditions are met, such a tool could be denominated as “motor insurance independent price comparison tool” (Directive 2009/103/EC, 2009, art. 16a as inserted by Directive (EU) 2021/2118, 2021, art. 1(16), recital 33).

9. Conclusion

The above discussed new rules contribute to the objectives of protecting injured parties and ensuring free movement of persons, goods and cross-border traffic which underly the EU harmonised rules on motor vehicle liability insurance. One may wonder whether it is not excessive to also impose the insurance obligation for motor vehicles driving on strictly private property, in view of the increased risk of collusion. This obligation may explain the expanded limited list of allowed exemptions of vehicles under specific conditions.

However, this conclusion only applies to those vehicles that fall under the new definition of vehicle. Where until now it was easy to determine what a motor vehicle was, it has become necessary to assess in each specific case the criteria of speed and weight of a motor vehicle exclusively propelled by mechanical power. Once this has been determined, the protection of the liable party and of the injured party will be completely dependent on the national legislation of the country of the accident, and/or the national law applicable to the insurance contract.

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