Position Paper

Insurance Europe response to the consultation on the REFIT review of the Motor Insurance Directive (MID)

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B.1 GENERAL EVALUATION OF THE FUNCTIONING OF MID

Q1: Do you consider that the number of uninsured vehicles is problematic in your Member State? What are in your view the reasons for uninsured driving?

Insurance Europe sees uninsured driving as a problem which continues to be pressing in many parts of Europe, with a possible impact for victims of road traffic accidents. However, it is important to note there are wide differences between countries and regions in the rate of uninsured driving, and the reasons for uninsured driving may therefore also vary from one market to another.

Regarding the reasons for uninsured driving, they can include:

- Temporary negligence in fulfilling this legal obligation;
- Intentional breach of the law, motivated by factors including the perceived lack of enforcement, proof of insurance not being required for registration, financial difficulties and/or unawareness of the usefulness of insurance (notably in light of the true costs involved in a road traffic accident: repairs, injuries, damage to road infrastructure etc.), driving without licence.

Uninsured driving is one of the many factors which affect insurance costs and therefore premium levels. The guarantee funds set up under the MID aim to ensure compensation for damage to property or personal injuries caused by uninsured vehicles, amongst other things. Guarantee funds are financed through levies applied to the motor insurers and policyholders and these levies are directly related to the number and severity of uninsured motor vehicle accidents, as well as other factors. This is in turn reflected in motor premiums: markets with high rates of uninsured driving inevitably involve higher costs.

Q2: Do you consider that measures are needed at European level to reduce the levels of uninsured driving? If yes, what could those measures be?

Insurance Europe believes that the issue of uninsured driving should remain a priority for public authorities. It is however essential to note that uninsured driving is best addressed at national level, given the variations

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from one country to another in both levels of uninsured driving, and reasons for it. European initiatives should complement these efforts at national level.

Having said this, experience shows that there is a strong relation between the issue of uninsured driving and the requirements surrounding registration. It is therefore important to preserve existing (national) registration systems designed to combat uninsured driving. For example, several EU member states operate registration systems that require proof of valid MTPL insurance as a pre-requisite for vehicle registration – this has proven to be a very efficient system to avoid uninsured driving.

The wider use of information and communication technologies (including telematics) both at national and European level could assist in the fight against uninsured driving, notably through the creation/reinforcement of databases on the MTPL coverage of motor vehicles. In this context, systematic checks on insurance by electronic means without physically stopping the vehicle should indeed be permitted under the MID (see section B.2.4).

The cross-referencing of relevant databases should be encouraged at national level (ie database of vehicles requiring registration and vehicles actually insured). Penalties (both administrative and financial) for the failure to register vehicles should be better enforced and the level of such penalties should be significant enough to deter individuals from failing to get insurance.

At European level, the automatic exchange of information relating to registration of vehicles, for example through the EUCARIS system, should be encouraged as it would help registration authorities take action against vehicle owners that fail to comply with obligations such as insurance cover, but also registration/circulation taxes and roadworthiness tests. More generally speaking, the cross-border exchange of information on number plates and linked insurance policies should also be improved and/or streamlined between Member States (see section B.2.4).

The risk of uninsured driving is also particularly high in the context of re-registration. In this respect, there are specific measures which could be particularly useful:

- Reinforcement/Better enforcement of insurance preconditions to re-registration:
  - Registration authorities should be able to refuse requests for re-registration where there is no proof of insurance, so long as this is the practice for national registrations.
  - Lack of insurance should be listed as one of the grounds for refusal of an application for re-registration following expiry of a temporary registration certificate.
- The legal timeframe for re-registration of vehicles should not exceed 3 months (as a longer period would risk permitting uninsured vehicles to be used on public roads) and vehicles should not be used on the public roads pending appeal of refusal.
- Penalties for failure to re-register a vehicle within the regulatory timeframe should be better enforced and the level of such penalties should be significant enough to deter individuals from failing to get insurance.

B.2. EVALUATION OF SPECIFIC ELEMENTS OF MID, POSSIBLE OPTIONS FOR AMENDMENTS AND THEIR IMPACTS

1.1. B.2.1 PORTABILITY OF CLAIMS HISTORY STATEMENTS

Q3: Do you consider that the five-year period of the claims history statements is sufficient? If not, what should be the period for such statements: seven, ten, fifteen years?

Insurance Europe considers that the five-year period of the claims history statements under the MID is sufficient and should not be extended at European level. Changing this period would most likely involve

significant adaptation efforts in those markets where five years was the norm and records do not go further. Any extension of the mandatory time period to cover would obviously need to also involve a significant transitional period, as the records would not necessarily be available for claims history beyond those five years in those markets where this was the norm.

Q4: Should the format of claims history statements be standardised in the EU?

In 2014 Insurance Europe published a set of voluntary and non-binding guidelines on information for motor insurance claims history declarations for cross-border use. These guidelines aim to facilitate the circulation of information about claims history and assessment of bonus/malus by insurers operating in two distinct national markets. However, the guidelines note that national requirements, including any national regulations, must be considered and, as a result, the guidelines may need to be adapted in order to accommodate them.

Insurance Europe does not see any added value in the standardisation of claims history statements at EU level and points out that this would be very difficult to achieve in practice.

Claims history statements are an integral part of a given market's bonus/malus system. These systems vary widely across Europe because they reflect the differences between markets (national *and* local):

- In some markets a bonus/malus system may only be available where the future year of MTPL cover remains with the same insurer, whereas in other markets the benefit may be accrued by the policyholder even where there is a change of insurer;
- In some markets it is only a bonus that is applied on the basis of a "no-claims" history, whereas in other markets drivers may both benefit as well as be penalised for their claims history;
- A bonus/malus system may be limited to a claims history arising from contracts terminated within a specific number of years preceding the current proposal for a contract of MTPL insurance;
- In some markets all insurers offer some form of bonus/malus to policyholders (sometimes because these systems are mandatory), while in other markets only a number of the insurers who offer MTPL insurance offer a bonus/malus system;
- What will be counted as a claim or not (and therefore be included within the scope of the bonus/malus) will also vary from one market to another.

The diversity of bonus/malus schemes across European markets therefore means that the standardisation of claims history statements at European level would in fact have little added value.

Q5: Should insurers be obliged to take into account a claims history statement from a previous insurer (including from another Member State) for the purposes of premium calculation?

It is important to note that claims history is just one many factors considered by insurers when calculating MTPL premiums. Each insurer must remain free to decide which factors it takes into account when setting the premiums.

It is Insurance Europe's strong view that interferences with the free exercise by insurers of their commercial judgement should be kept to a minimum. Obliging insurers to take into account a claims history statement from a previous insurer for the purposes of premium calculation does not only amount to interfering with *how* a given insurer takes into account a consumer' claims history statement, but whether it is taken into account at all. It is perfectly possible for an insurer 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. While this is admittedly unusual nowadays, it may become more common with the deployment of new motor technologies and the corresponding development of new innovative insurance products. This type of obligation could effectively act as a barrier to innovation in insurance products.

Q6: Do you (if you are an insurer) take into account claims history statements from other insurers and how? If not, please explain why.

N/A

Q7: Would an obligation on insurers to make public their policies regarding no claims bonuses and bonus/malus discounts policies contribute to better treatment of policyholders when switching?

Thanks to the high level of competition in the MTPL insurance, there is already a high degree of publicity surrounding insurers' no claims bonuses and bonus/malus discounts policies, most notably through the advertisement of their products on offer. Insurers with the more advantageous approaches to no claims bonuses and bonus/malus discounts policies will naturally promote themselves as such, and consumers will choose their insurer accordingly. Such an obligation would therefore amount to a significant interference with the market's normal functioning, which is not justified in a sector as competitive as MTPL insurance.

Q8: Do you have other comments related to the portability of claims history statements?

The information used by insurers to decide whether they will insure a given risk, and under which conditions, is a central part of the underwriting process and therefore at the heart of insurers' free commercial judgement. Bonus/malus systems are one example of such commercial judgement. These systems do not only vary according to (national) markets but from one insurer to another. Two consumers in the same situation will be treated the same by a given insurer, regardless of the member state they originate from, thus making any standardisation effort not only highly disruptive but also of limited added value.

A liberalised European Single Market means that insurers must remain free to decide to which extent claims history affects the cover they offer. Any measure limiting this freedom must be based on hard evidence of a significant issue across Europe. It cannot be adopted on the basis of anecdotal evidence and it is therefore essential to get a genuine understanding of the scale of the issue before any decision is taken.

Finally, the MTPL market in Europe is particularly competitive. Insurers want business and will therefore usually find ways to ensure consumers with unusual profiles fit within their assessment system and can be offered the necessary insurance cover, one way or another.

1.2. B.2.2 PROTECTION OF INJURED PARTIES WHEN A CROSS-BORDER MOTOR INSURER IS INSOLVENT

Q9: In cases where an insurer providing insurance cross-border in another Member State becomes insolvent, what is the most appropriate solution in the case of an accident caused by a policyholder of that insolvent insurer?
a) No legally required intervention by any guarantee fund in any Member State with the consequence that the victim risks not receiving any compensation from an insurer or guarantee fund and may have to seek recourse from the responsible driver in civil courts (current situation if no voluntary agreement for compensation is in place).
b) A fund or compensation scheme in the Member State of the insurer should eventually compensate the victim/reimburse intervention of guarantee scheme of the Member State of residence of the victim.
c) A fund or compensation scheme in the Member State of the insured party (responsible driver) and/or accident should intervene, regardless of whether the insurer contributed to that fund or not.
d) A fund or compensation scheme in the Member State of the insured party (responsible driver) and/or accident should intervene, only if the insurer contributed to that fund.

e) An EU-wide fund with separate contributions.
f) Another treatment (please explain which one).

Q10: Should injured parties seek compensation from the competent body in the Member State of:
a) their residence, in which case this body would have a recourse towards the body of the Member State where the insurers has its head office of the insurer
b) where the insurers has its head office.

Q11: Should EU law provide that in the case of insolvency of the insurer, compensation to the victim must be provided in full?

As a general rule, Insurance Europe does not believe it is acceptable for the victim of a road traffic accident to be without full compensation as a result of an MTPL insurer's insolvency, regardless of whether this compensation comes from the motor guarantee fund or another compensation body. This should be done based on the applicable minimum amounts of cover, and independently from the question of whether the competent body invokes the principle of subsidiarity (which does not undermine the right to full compensation).

Q12: Do you have other comments related to protection of victims where a cross-border motor insurer is insolvent?

Regarding **question 9**, a large majority of Insurance Europe members favour a solution based on option (b). However, some Insurance Europe members would prefer a solution either based on option (d) or a different option altogether (f). In any event, all Insurance Europe members oppose solutions based on options (a), (c) or (e).

Insurance Europe does not believe it is acceptable for the victim of a road traffic accident to be without compensation because of an MTPL insurer's insolvency. However, the systems currently in place across Europe make that a very unlikely scenario. 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. It is therefore important to gain a good understanding of the issues at end and gauge the scale of the problem before any potentially wide-ranging regulatory action is taken.

This issue is particularly complex in light of:

- The variety of compensation systems in place across Europe, with different funds stepping in depending on the market and different rules around the way these funds are financed;
- The voluntary agreements in place between most of these guarantee funds; and
- The fact rules on insolvency proceedings vary widely from one market to another.

Insurance Europe believes that the priority should be to prevent the occurrence of such issues in the first place, by avoiding MTPL insurers insolvencies and promoting cooperation between NSAs in relation to insurers with cross-border activities in general, and insurers operating through the freedom to provide services in particular. There are already rules at European level for this and the priority should therefore be their enforcement:

- The implementation of the Solvency II Directive (Directive 2009/138/EC), which is expected to reduce the likelihood of future insolvencies.
- The recent decision by EIOPA on the collaboration of the NSAs.

In that respect, it is important to note that the cases which brought this issue to the forefront were from a pre-Solvency II regime and, for some, also predate the implementation of the new EU supervisory architecture. Therefore, before any action is taken, careful consideration should be given to the implementation of the Solvency II regime and the update of EIOPA's guidance on the cooperation between NSAs regarding insurers with cross-border activities.

In any event, whatever the approach adopted by the EC, it is clear to Insurance Europe that an EU-wide fund is not an acceptable solution. This would be a disproportionate response to the issue, which would involve a lengthy period of implementation and significant costs. Furthermore, it could possibly act as a disincentive for National Supervisory Authorities (NSAs) to carry out their duties in relation to the cross-border activities of the companies under their jurisdiction. It would also be unfair to put the burden of these insolvencies on markets which could not oversee the insolvent insurer, and therefore could not influence the way its business was run.

Regarding question 10, Insurance Europe believes that, in line with the principles laid out in the MID, the injured parties should be able to seek compensation from the competent body in the Member State of their residence at least, or in another Member State if they so wish. This principle should be preserved regardless of the changes made to the scope/role of the bodies set up under the MID.

1.3. B.2.3 MINIMUM AMOUNTS OF COVER

Q13: Should the minimum amounts of cover continue to be the same in all EU Member States?

Yes, Insurance Europe believes the minimum amounts of cover should continue to be the same in all EU Member States.

Q14: Should the minimum amounts of cover be lower, higher or remain the same compared to what they currently are under MID?

The minimum amounts of cover should remain the same. It is important to keep in mind that there are wide differences in the costs associated with claims for personal injury and property damage across Europe. An increase in the minimum amounts of cover would be disruptive to those markets with lower average claims costs (and therefore lower applicable policy covers).

Q15: Should MID differentiate between types of vehicles (such as electric bicycles, lorries, tractors, etc.) for the determination of the minimum amounts of cover?

Such differentiation should be left at national level, rather than done through the MID. Whether minimum amounts are differentiated according to vehicle types and how they are differentiated depends on the way motor insurance markets are organised, including the costs of claims. This varies greatly across Europe and such measure could therefore prove disruptive without necessarily increasing the level of protection of road users.

Q16: If so, what should be the minimum amounts of cover for those different types of vehicles? Please specify.

N/A

Q17: Do you have other comments related to minimum amounts of cover?

Insurance Europe does not see a case for a change in the actual amounts or a differentiation at EU level between types of vehicles. However, Insurance Europe would support ending the differences between the Member States with the transition period and those without the transition period, which is found in the current procedure of adaptation of minimum amounts of cover. Insurance Europe would also support the modification of the current indexation procedure so that there is a precise reference date followed by an adaptation deadline.

1.4. B.2.4 DEEMED INSURANCE COVER AND INSURANCE CHECKS

Q18: Should MID permit systematic checks on insurance by electronic means without physically stopping the vehicle?

Yes, such systematic checks should be permitted. As explained earlier, it could be a particularly useful tool in the fight against uninsured driving.

Q19: Should the cross-border exchange of information on number plates and linked insurance policies be improved and/or streamlined between Member States?

Yes, such cross-border exchange of information should be improved and streamlined. The automatic exchange of information relating to registration of vehicles should also be encouraged, and this could be done through the EUCARIS system for example.

Q20: Does the current system of determining the Member State where the vehicle is based capture adequately all conceivable situations? If not, please state why.

The current system is adequate, provided systematic checks on insurance by electronic means are permitted (as per Q18) and the cross-border exchange of information on number plates and linked insurance policies is improved (as per Q19).

Q21: Do you have other comments related to insurance checks?

N/A

1.5. B.2.5 PROTECTION OF VISITORS

Q22: Is the protection of visiting victims provided under MID sufficient? Is there a level playing field with the Green Card protection?

N/A

Q23: Does the functioning of the claims representatives, information centers and compensation bodies need to be improved? If so, how?

N/A

Q24: Do you have other comments related to claims concerning visiting victims?

N/A

1.6. B.2.6 TERMINOLOGY AND DEFINITIONS

Q25: Are there any terminology or definition issues in MID that undermine its effective functioning?

There are currently no specific concerns for Insurance Europe regarding the MID's terminology and definitions. Generally speaking, the framework put in place through the MID for ensuring compulsory MTPL and the protection of road users is a system which works well. Any change to the terminology and definition would go to the heart of this system. It should therefore be thought out very carefully, to ensure it does not weaken the protection afforded to European road users, or disrupt the MTPL markets which contribute to ensure such a high level of protection in Europe.

Q26: If the answer to the previous question is in the affirmative, please state the issues and explain their effect on the protection of victims of traffic accidents.

N/A

1.7. B.2.7 SCOPE

Q27: Should the protection provided under MID include liability for accidents irrespective where they occur, thus both on public roads and private property?

Insurance Europe believes that the defining factor for the MID's scope should be accidents caused by motor vehicles in the context of traffic, as set out in DG FISMA's Inception Impact Assessment of 8 June 2016. Whether the accident occurs on public roads or private property should not in itself be sufficient to (dis)qualify an occurrence as being in the context of traffic (and therefore within the scope of the MID's mandatory MTPL insurance cover).

Q28: In light of the Vnuk ruling, should it be left to the discretion of individual Member States to exempt certain natural or legal persons, certain public or private vehicles, certain types of vehicles or vehicles bearing special number plates that normally fall under MID, provided that the victims are otherwise compensated? If not, why not and what action should be taken?

Insurance Europe is not aware of any reason to amend the MID's provisions regarding Member States' right to have derogations (under article 5).

Q29: What types of vehicles, if any, should be excluded from the scope of MID at EU level?

As explained earlier, Insurance Europe believes that the scope of the MID should be defined in relation to accidents caused by motor vehicles in the context of traffic. If a vehicle falls under the definition of the MID for 'vehicle', then there is no reason to exclude it at that level (notwithstanding Member States' right to have derogations under article 5).

Q30: Should compulsory MTPL insurance cover accidents resulting from agricultural, construction, industrial, motor sports or fairground activities?

In line with the view that the MID's scope should be defined by accidents caused by motor vehicles in the context of traffic, Insurance Europe does not believe it is appropriate for accidents resulting from agricultural,

construction, industrial, motor sports or fairground activities to be included within the compulsory MTPL insurance cover.

In any event, Member States remain free to provide for mandatory MTPL insurance with such wider scope, thus pooling the risks included within the MID's scope with other activities beyond traffic.

Q31: Should compulsory MTPL insurance cover accidents that occur on areas that the public are not allowed (legally) to access?

The defining criteria should once again be whether the accident was caused by motor vehicles in the context of traffic. The fact that an accident occurred in an area that the public are not allowed (legally) to access may not necessarily be sufficient to disqualify an occurrence as being in the context of traffic (although areas not accessible to the public such as airport areas should not be within the scope of the MID).

Q32: Do you have other comments related to the scope of MID?

Insurance Europe agreed with the main findings of DG FISMA's Inception Impact Assessment of 8 June 2016 and previously expressed its support for the main intentions of the proposal set out in 'option 3' – ie the scope of the MID should relate only to accidents caused by motor vehicles in the context of traffic.

Insurance Europe believes the approach set out in the aforementioned option 3 should now be the one adopted as part of the MID REFIT review to clarify the scope of compulsory motor insurance under the MID in the wake of the Vnuk ruling.

It is important to note that, as a minimum harmonisation instrument, the MID allows for variations to adapt to the realities of the various markets in which it is implemented. 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.

The French Insurance Federation (*Fédération Française de l'Assurance*) and Insurance Sweden (*Svensk Försäkring*) do not support Insurance Europe's position on question 27 and questions 29-32.

1.8. B.2.8 TECHNOLOGICAL EVOLUTION – AUTONOMOUS VEHICLES

Q33: Should autonomous vehicles continue be insured for liability to victims of accidents the same way as vehicles with drivers?

Yes, there is no reason to exclude autonomous vehicles from the scope of the MID. The effect of such an exclusion would be to undermine the protection of victims of road traffic accidents, and policyholders in general.

Autonomous vehicles fall within the MID's definition for vehicle (Article 1) which means that victims of road traffic accidents involving an autonomous vehicle are already adequately protected throughout the EU. There is no provision in the MID that would need to be amended to adapt to full automation.

In this respect, it is also important to highlight that consumers are not only protected through the provisions found in the MID itself (ie compulsory MTPL insurance, guarantee funds for accidents caused by uninsured/unidentified vehicles) but also through provisions applying to motor insurers as insurance undertaking (ie Solvency II requirements to protect policyholders through a series of tools, including stringent capital requirements). This results in a particularly high level of consumer protection which would be difficult to replicate should autonomous vehicles be excluded from the MID's scope.

Furthermore, the MID system has been in place for several decades, which means the various actors in the value chain through which it functions (insurers, intermediaries, repair stations, loss adjusters, experts) are well-established and have the combined expertise required to ensure the smooth handling of a very large number of daily vehicle-related incidents (whether accidents, thefts or other issues), without unnecessary litigation, whether at national or cross-border level.

Q34: Should MID be clarified in any way to reflect the development of autonomous vehicles? If so, please substantiate your answer and explain how.

As explained above, there is no change required to the MID as autonomous vehicles are already within its definition for vehicles.

Q35: Do you have other comments related to technological evolution?

New motor technologies (not just autonomous vehicles but connected vehicles too) do not require any change to the MID. However, some provisions will be required at EU level to ensure stakeholders with a legitimate interest can access directly inside the vehicle the (in-vehicle) data necessary to establish the factual circumstances surrounding an accident or incident (eg theft). This includes insurers when validating the circumstances surrounding a claim (including the possibility of a defect in the system). Ensuring such access will allow for much faster-claims handling and costs savings, to the benefit of consumers. Such access would also lower the risk of any tampering of accident data.

Furthermore, it is necessary to have a legal framework at EU level to ensure that consumers are in a position to decide who has access to their (in-vehicle) data and for what purposes. This can only happen if the right technology is in place, i.e. one that grants service providers direct access inside the vehicle to in-vehicle data, without having to go through vehicle manufacturers. This should be the case beyond the purpose of apportioning liability. Such an approach will allow consumers to have access to a wide range of services from a wide pool of providers. This approach is also supported by the TRL study on access to in-vehicle data and resources [link], which was commissioned by DG MOVE in the context of the C-ITS Platform.

1.9. B.2.9 TRANSFER OF VEHICLES

Q36: Should the current legal framework applicable for dispatched vehicles be modified in any manner? Please specify how.

N/A

Q37: Do you have other comments related to the transfer of vehicles?

Any measure in this area should seek to minimise the risk of uninsured driving and Insurance Europe would suggest the same type of measures as those put forward for re-registration:

- Automatic exchange of information between authorities on registration of vehicles, for example through the EUCARIS system.
- Registration authorities should be able to refuse requests for re-registration where there is no proof of insurance, so long as this is the practice for national registrations.
- Lack of insurance should be listed as one of the grounds for refusal of an application for re-registration following expiry of a temporary registration certificate.
- The legal timeframe for registration of vehicles should be as short as possible.

- Penalties for failure to register a vehicle within the regulatory timeframe should be better enforced and the level of such penalties should be a real deterrent.

B.2.10. ANY OTHER ISSUES

Q38: Are there any other issues not falling within the remit of the above questions that might require action at EU level you wish to raise? What would be your preferred solution to the identified issue?

N/A

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 985 000 people and invest nearly €9 900bn in the economy.