

COMMON RESPONSE OF INSURANCE EUROPE AND THE COUNCIL OF BUREAUX TO THE EC INCEPTION IMPACT ASSESSMENT (IIA) ON THE REFIT REVIEW OF THE MOTOR INSURANCE DIRECTIVE (MID)

■ General remarks

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.

The Council of Bureaux is the managing organisation of the Green Card system, the protection mechanism for victims of cross-border road traffic accidents created under the aegis of the United Nations. The Council of Bureaux also provides secretarial services for the bodies created by the Motor Insurance Directive (Compensation Bodies, Guarantee Funds and Information Centres).

Insurance Europe and the Council of Bureaux welcome the chance to give feedback on the European Commission's Inception Impact Assessment (IIA) on the REFIT review of the Motor Insurance Directive (MID). The MID is the key component in the European regulatory framework for the protection of road users. As such, Insurance Europe and the Council of Bureaux encourage any initiative which ensures the MID achieves this goal as effectively as possible, whilst avoiding unnecessary disruptions to the MTPL markets through which this mission is carried out. Insurance Europe and the Council of Bureaux will also respond to the public consultation on the MID REFIT, which was recently launched.

As a general comment, Insurance Europe and the Council of Bureaux wish to stress that the systems put in place through the MID for ensuring compulsory third party liability insurance and the protection of road users is a system which works well. This will continue to be the case with on-going technological developments such as connected and autonomous vehicles.

Insurance Europe and the Council of Bureaux note that, in addition to evaluating the MID's functioning (notably in light of current and future technological developments), this exercise will involve an impact assessment focused on four areas: portability of claims history statements, guarantee funds and insolvencies, minimum amounts of cover and scope of the MID. Insurance Europe's and the Council of Bureaux's preliminary comments on some of these elements are presented below.

■ 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 not only highly disrupting but of limited added value. In a liberalised European Single Market, insurers must remain free to decide to which extent claims history affects the cover they offer.

Insurance Europe is keen to better understand the basis for the concerns presented in the IIA on this topic, and to discuss solutions accordingly, as previously shown with the guidelines which Insurance Europe [published](#) in 2014 to facilitate the circulation of information about claims history and the assessment of bonus/malus by insurers operating in two distinct national markets.

Not being directly concerned by this topic, the Council of Bureaux does not pronounce itself on this issue.

- Guarantee funds and insolvencies

It is essential for the Commission to have a correct and full understanding of the issues at hand, and their scale, before any action is taken in this area. Insurance Europe and the Council of Bureaux note that in most member states, the guarantee of financial compensation in the event of the insolvency of an MTPL insurer does not raise difficulties, while there have been issues in others. For this reason, and because this issue is related to questions which are dealt with at national level, there is no need for an EU-wide guarantee scheme. There is however room for improvement as regards the situation of a victim of a cross-border road traffic accident in case the liable vehicle is insured with an insolvent MTPL insurer, this includes MTPL insurers operating exclusively in their home markets as well those operating cross-border via the freedom to provide services (FOS) or the freedom of establishment (FOE) (including some operating exclusively via FOS/FOE). Where the MTPL insurer operates cross-border by way of FOS or FOE, this also raises the question of which market should bear the financial burden of the insolvency (market of the home member state on the basis of the home country control principle or of the host member state on the basis that the insurer operating there will have paid into the fund of that country).

Insurance Europe and the Council of Bureaux are keen to continue engaging with the Commission to gain a common understanding of the issue and find solutions for those problems that have been identified.

- Scope of the MID

Insurance Europe and the Council of Bureaux previously expressed their agreement with the main findings of the Commission's IIA on the adaptation of the scope of the MID, which was published in June 2016. We note that the Commission has now decided to address this topic as part of the REFIT review rather than separately, as originally envisaged.

The "Vnuk judgement" of 4th September 2014 (C-162/13) has caused significant concerns and uncertainty for insurers in some markets. To address these concerns, Insurance Europe and the Council of Bureaux support the proposal set out in that IIA's 'option 3': the scope of the MID should relate only to accidents caused by motor vehicles in the context of traffic. Damage caused as a result of a vehicle being used for such things as purely agricultural, construction, industrial, motor sports or fairground activities should not be included in the MID's mandatory cover. This is a reasonable approach which allows for the domestic particularities of the different European markets to be maintained by focusing on vehicles being used in traffic, whilst allowing those member states who decided to opt for a more extensive cover to maintain it. (*)

(*) The French Insurance Federation (*Fédération Française de l'Assurance*) and Insurance Sweden (*Svensk Försäkring*) do not support the position expressed on the scope of the MID.

- Minimum amounts of cover

Insurance Europe and the Council of Bureaux are eager to engage on any discussion around the procedure and periodicity of adaptations of the minimum amounts of cover as provided for in the MID.