

Public consultation on REFIT Review of Directive 2009/103/EC on motor insurance

B. Questions to Businesses, Business and Consumer Associations

B.1. GENERAL EVALUATION OF THE FUNCTIONING OF MID

Question 1: 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?

AMICE welcomes the opportunity to provide feedback on the European Commission's public consultation on the REFIT review of the Motor Insurance Directive (MID). As a general comment, we are of the view that the current systems as set out in MID are functioning well.

Although the obligation to have MTPL is a core principle of the Motor Insurance Directive we believe that uninsured driving is a pressing issue in several Member States.

There are several reasons for uninsured driving:

- The lack of sufficient enforcement and insufficient insurance checks.
- The lack of awareness and knowledge of vehicle owners with regards to their legal obligations
- The lack of financial ability to purchase a MTPL.

Question 2: Do you consider that measures are needed at European level to reduce the levels of uninsured driving? If yes, what could those measures be?

Since uninsured driving has an impact on the level of MTPL claims and therefore on the premiums paid by policyholders, we believe that there is certainly a need to reduce the levels of uninsured driving.

Some kind of a more severe control from national authorities could be a possible measure. The respective authorities should closely monitor the failure of vehicle owners to have a MTPL.

At national level, Member States should put in place measures to ensure compliance with the MTPL insurance obligation. At EU level, there seems to be limited possibilities to reduce the levels of uninsured driving.

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

B.2.1. PORTABILITY OF CLAIMS HISTORY STATEMENTS

Question 3: 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?

AMICE is of the view that the five-year period of claims history statements as set out in the Directive is sufficient.

Any change to the period for such statements would be disproportional given the complexity of implementation.

Question 4: Should the format of claims history statements be standardised in the EU?

It is important for insurance companies to retain discretion to determine how information on claims history is incorporated in their bonus/malus activities. Otherwise, it would make the system more costly for insurers and therefore, for insured persons and result in increased premiums.

We are not in favour of standardisation of the format of claims history statements in the EU because bonus/malus systems vary significantly across Member States. To facilitate the circulation of information on claims history and assessment of bonus/malus by insurers operating on two distinct national markets, insurers can helpfully refer, since 2014, to the Insurance Europe's voluntary guidelines detailing the specific elements (see <http://www.insuranceurope.eu/guidelines-information-motor-insurance-claims-history-declaration-cross-border-use>).

Question 5: 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?

Insurance companies in most Member States already take into account the insured person's claims history statement from a previous insurer, including from other Member States for the purposes of premium calculation.

Bonus/malus systems in MTPL insurance are in place in different Member States using different methodologies. The systems can vary from one EU country to another. There are systems which only use bonuses and systems which apply both bonuses and penalties. In some countries the system is common to all insurance companies, while in other countries each company fixes the bonus/malus system it considers the most appropriate. Bearing this in mind, we are not in favour of any questioning of bonus/malus system as this is an efficient system. Any attempt to remove this system, to make it more complicated and expensive or less efficient is not welcome.

AMICE supports measures to improve the sharing of claims history statements between insurers, including from another Member State. However, we believe that it is not appropriate to regulate in detail the methodology for factoring these statements in calculations of premiums. It is important for insurers to retain the ability to use their own criteria to decide on the level of discount offered and the freedom to set the premium rates for the cover they offer.

Question 6: Do you (if you are an insurer) take into account claims history statements from other insurers and how? If not, please explain why.

To our knowledge, most AMICE members take into account claims history statements from other insurers, including from other Member States, when they calculate their premiums, but methodologies may differ according to national insurance regulations and practices.

Question 7: 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?

AMICE supports that the Directive remains unchanged on that point.

Question 8: Do you have other comments related to the portability of claims history statements?

No.

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

Question 9: 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?

- 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)
- 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
- 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
- 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
- An EU-wide fund with separate contributions
- Another treatment

Question 10: Should injured parties seek compensation from the competent body in the Member State of:

- 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 where the insurers has its head office
- If EU law were to introduce a requirement to compensate victims of traffic accidents in case of insolvency of the insurer, the question would arise whether compensation should be partial or full, as if it were provided by the insurer itself.

There is currently no guarantee at EU level that victims get full compensation in such cases and Member States are free to limit it.

Question 11: Should EU law provide that in the case of insolvency of the insurer, compensation to the victim must be provided in full?

In the case of insolvency of the insurer, compensation to the victim must be provided in full. We believe that the level of protection of victims should be the same both in case of uninsured or untraceable driver as well as insolvency of an insurer. Any absence of compensation would not be acceptable and any difference in compensation regimes would be difficult to understand for the victim.

Moreover, in case of third party liability insurance, the victim has no influence on the insurance chosen by the driver and cannot be deemed responsible for the insolvency of the insurer.

Question 12: Do you have other comments related to protection of victims where a cross-border motor insurer is insolvent?

We believe that the issue insolvency is due to insufficient supervision. Therefore, the national supervisory authorities of the home country of the insurer should ensure an efficient supervision. This is why the guarantee fund or compensation scheme in the home Member State of the insurer should bear the final burden of the compensation.

We favour the option in which the national guarantee fund – where the accident occurs – should compensate the injured parties in accordance with local liability rules. This would facilitate the procedure for the victims. After settling the claim, the national guarantee fund can take recourse to the guarantee fund in the member state where the insurer is supervised. This would encourage national authorities to

monitor all activities of an insurer, including outside of the domestic market.

In any case, we do not support the establishment of an EU-wide insurance guarantee fund. Following the extensive enhancements of the insurance regulation in recent years, policyholder protection is now at the heart of the regulatory infrastructure, in the shape of Solvency II. This new system of regulation protects through a system of two capital requirements which ensures the early detection of financial difficulties. Therefore, it is important to focus on efficient supervision rather than introducing new regulatory requirements.

B.2.3. MINIMUM AMOUNTS OF COVER

Question 13: Should the minimum amounts of cover continue to be the same in all EU Member States?

Yes, but depending on the level of the minimum amount, meaning that the minimum levels must be picked from the countries with the highest minimum levels.

The main objective should be to protect victims from insufficient compensation. Minimum level of protection should be granted in all Member States. Nevertheless, we believe that Member States should still have the option to set higher amounts of cover than the Directive.

Question 14: Should the minimum amounts of cover be lower, higher or remain the same compared to what they currently are under MID?

See our response to the question above.

Question 15: Should MID differentiate between types of vehicles (such as electric bicycles, lorries, tractors, etc.) for the determination of the minimum amounts of cover?

We believe that MID should not differentiate between types of vehicles for the determination of the minimum amounts of cover as the main objective should be to provide victims with a minimum protection regardless of the vehicle. For example, the amounts should not be reduced for vehicles considered as being less dangerous. The amount of the contribution takes account of the level of dangerousness of the vehicle, even if the ceiling was considered high.

A differentiation among categories of vehicles should take into account the number of passengers carried by coaches.

Question 16: If so, what should be the minimum amounts of cover for those different types of vehicles? Please specify:

AMICE members believe that there should be no difference as regards the type of vehicles involved. Even a small vehicle can cause a big damage.

Question 17: Do you have other comments related to minimum amounts of cover?

No.

B.2.4. DEEMED INSURANCE COVER AND INSURANCE CHECKS

Question 18: Should MID permit systematic checks on insurance by electronic means without physically stopping the vehicle?

We believe that systemic checks on insurance by electronic means should be permitted. Setting up such checks should be optional for both host and home Member States.

Question 19: Should the cross-border exchange of information on number plates and linked insurance policies be improved and/or streamlined between Member States?

We believe that the current system works correctly and we would not recommend any changes.

Question 20: Does the current system of determining the Member State where the vehicle is based capture adequately all conceivable situations? If not, please state why.

AMICE members believe that the current system is functioning well and there is no need to introduce any changes.

Question 21: Do you have other comments related to insurance checks?

No.

B.2.5. PROTECTION OF VISITORS

Question 22: Is the protection of visiting victims provided under MID sufficient? Is there a level playing field with the Green Card protection?

We believe that the protection of visiting victims provided under MID is sufficient and there is a level playing field with the Green Card protection.

Question 23: Does the functioning of the claims representatives, information centers and compensation bodies need to be improved? If so, how?

There is no need to improve the functioning of the claims representatives, information centres and compensation bodies.

Question 24: Do you have other comments related to claims concerning visiting victims?

No.

B.2.6. TERMINOLOGY AND DEFINITIONS

Question 25: Are there any terminology or definition issues in MID that undermine its effective functioning?

No.

Question 26: 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

B.2.7. SCOPE

Question 27: Should the protection provided under MID include liability for accidents irrespective where they occur, thus both on public roads and private property?

Given the national particularities, established practices, rules and liability regimes across the EU, AMICE is of the opinion that the protection provided under MID should as a *de minimis* rule include the liability for accidents where they occur on public roads. Member States could be given the option to extend this liability for accidents occurring on private properties, but this would lead to disharmonisation in the EU, ultimately to the detriment of victims.

Question 28: 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?

AMICE members consider that Member States should continue to be free to exempt certain persons or types of vehicles.

Question 29: What types of vehicles, if any, should be excluded from the scope of MID at EU level?

Question 30: Should compulsory MTPL insurance cover accidents resulting from agricultural, construction, industrial, motor sports or fairground activities?

As mentioned in our response to question 27, AMICE is of the view that the protection provided under MID should include the liability for accidents when they occur on public roads even if they result from agricultural, construction, industrial, motor sports or fairground activities if the activity is not covered by operational civil liability.

Question 31: Should compulsory MTPL insurance cover accidents that occur on areas that the public are not allowed (legally) to access?

It could be left for Member States to decide whether to introduce a compulsory MTPL insurance cover accidents that occur on areas not legally accessible to the public.

Question 32: Do you have other comments related to the scope of MID?

No.

B.2.8. TECHNOLOGICAL EVOLUTION – AUTONOMOUS VEHICLES

Question 33: Should autonomous vehicles continue be insured for liability to victims of accidents the same way as vehicles with drivers?

Yes, we believe that autonomous vehicles should continue to be insured for liability to victims of accidents the same way as vehicles with drivers.

There should be a clear line between motor insurance and product liability insurance. It should be also clear with driverless vehicles which insurance scheme (motor or liability) should be applied in case of an accident.

It should be noted that the issue of driverless cars have been discussed in the context of the GEAR 2030 project. Stakeholders agree that the legislation should not be revised. Nevertheless, as automated vehicles gain market share, issues concerning liability and defects may need to be monitored to ensure that existing legislation is working correctly to protect consumers.

Question 34: Should MID be clarified in any way to reflect the development of autonomous vehicles? If so, please substantiate your answer and explain how.

AMICE members are of the opinion that there is no need to modify the existing framework as the concept of “vehicle” under MID is neutral vis-à-vis new technologies. In some Member States’ legislation, the vehicle is considered to always have a driver. The driver could be either inside or outside the vehicle. Therefore, the current system is still valid for highly autonomous vehicles.

Question 35: Do you have other comments related to technological evolution?

AMICE considers that the technological neutrality of the current legal framework should be maintained. We have noted that the Commission only refers to autonomous vehicles. Nevertheless, it is important to consider connected vehicles too. Indeed connected vehicles also provide important data for insurance companies, as for many other stakeholders, and will be helpful for the setting of premium policies. Shared access and free availability to such data should be given (in compliance with the GDPR). We believe that it is necessary to regulate at European level the obligation to equip connected and autonomous vehicles with an EDR (Event Data Recorder) device.

Finally, we support the recommendations made in the report of the European Commission’s GEAR 2030 High Level Group in relation to automated and connected vehicles. Access to data should be required in case of accident to help assign liability. Nevertheless, consumers should be able to decide who has access to their in-vehicle data and why.

B.2.9. TRANSFER OF VEHICLES

Question 36: Should the current legal framework applicable for dispatched vehicles be modified in any manner? Please specify how.

AMICE does not have any views on this matter.

Question 37: Do you have other comments related to the transfer of vehicles?

No.

B.2.10. ANY OTHER ISSUES

Question 38: 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?

AMICE represents mutual and cooperative insurers across Europe. Mutual and cooperative insurers have a market share of more than 30% of the European insurance sector, with more than €420 billion in premiums written and over 410 million policyholders across Europe. Mutual insurers reported record non-life premium volumes of EUR 235 billion in 2015, following a 3.5% premium increase from the previous year. Motor insurance accounted for just under a quarter of European mutual non-life business in 2015 (for further details see [AMICE-ICMIF European Market Insights 2015](#)).

The mutual and cooperative insurance industry is unique in that its clients have an integral role as members, who have an ownership/governance relationship with the risk carrier. Further, benefits derived by the business are shared with the member-policyholders in various ways, and there is an intrinsic commitment to values such as long-term relationships, democratic governance, social responsibility, resilience and stability.