

The Consumer Voice in Europe

REVISION OF THE EU'S MOTOR INSURANCE DIRECTIVE



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Why it matters to consumers

Consumers need to have access to affordable, fair and transparent motor insurance policies. The current review of the Motor Insurance Directive should deliver positive reforms for consumers, making insurance policies more transparent, and enhancing the capacity for consumers to switch between insurance contracts. Consumers across the EU should benefit from more affordable insurance premiums based on their driving history.

Summary

In May, the European Commission proposed new rules amending the Motor Insurance Directive. The changes proposed by the European Commission will enhance consumer protections for motor insurance policyholders and potential victims of motor vehicle incidents. Measures to allow drivers who have a previous claims history in another EU country to benefit from better insurance conditions when purchasing insurance abroad, and proposals to ensure more adequate compensation for the victims of motor vehicle incidents will benefit EU consumers. However, further revisions are needed in order to ensure further transparency and fairness for consumers:

- In several EU Member States, there are mandatory rules (otherwise known as 'mandatory bonus-malus schemes') to require insurance firms to take into account an individual's claims history statement when assessing premium levels. Under these schemes, firms are required to provide automatic premium reductions (or increases) based on the claims history of the individual, frequently to the benefit of the policyholder. However, in other EU Member States, there are no specific obligations for insurance firms to take into account claims history statements, and insurers are free to determine the levels at which they set their premiums. Member States should be required to implement **mandatory bonus-malus schemes** to enhance transparency and consumer fairness.
- Consumers continue to find it difficult to compare offers between different insurance firms when purchasing motor insurance. To enhance the comparability of motor insurance policies, **insurance firms should be required to present their bonus-malus policies according to a standardised template.**
- Finally, **legislation must be forward-looking.** The increased automation of vehicles will change the fundamentals of motor insurance, and the **Commission must commit to re-assessing the suitability of these rules as semi-autonomous and autonomous vehicles become available.**

1. European Commission proposal to amend the Motor Insurance Directive: Welcome improvements to the current rules

In May, the European Commission announced several revisions to the Motor Insurance Directive following a public consultation that took place in 2017. The revised rules proposed by the European Commission will strengthen current consumer protections under the Motor Insurance Directive and ensure more adequate compensation for the victims of motor vehicle accidents and improve the rights of insurance policyholders:

➤ **Claims history statements to be standardised, and insurers required to treat history statements the same across the EU**

A new requirement for insurers to treat claims history statements issued by an insurer in a different Member State equally to statements that are issued domestically will allow citizens purchasing insurance abroad to benefit from more advantageous premiums based on their previous claims history statement from another EU country. To facilitate the authentication of claims history statements, the proposal harmonises the format of these statements across the EU and also requires insurers to publish their policies with regards to how they use claims history statements when calculating their premiums. The five-year period proposed by the European Commission is sufficient for assessing the consumer's driving history.

➤ **Increased protection for consumers in cases of the insolvency of the insurer**

New rules to ensure that victims receive adequate compensation in cases where the insurer is insolvent will ensure that victims of road accidents receive swift compensation. Compensation bodies set up in each EU Member State are currently not required to meet the costs arising from claims where the motor insurer of the liable party is insolvent, meaning that potential victims could in certain cases be left without compensation or delayed compensation. New rules to ensure that victims are rapidly compensated by compensation bodies in their Member State of residence will increase protection for potential victims. In cross-border cases, the compensation body in the Member State of residence should cover the claim of the victim, and subsequently be reimbursed by the insurer's home Member State's compensation body.

➤ **Harmonisation of minimum amounts of cover**

It is essential to ensure that victims receive adequate protection when they are involved in an accident with a motorised vehicle. Levels of minimum coverage across the EU should be harmonised as set out in the European Commission's proposal, and Member States should not be impeded from setting higher amounts of minimum cover.

2. How to address shortcomings of the proposed review

➤ **A legal obligation for insurance companies to take into account no-claims histories when assessing premiums**

To facilitate switching by consumers, the Motor Insurance Directive stipulates that Member States must ensure that policyholders have the right to request a claims history statement from their insurer. Such information from the claims history statement can allow policyholders to obtain a 'no claims bonus' or a better 'bonus-malus' rating with a new insurer, allowing the consumer to benefit from a potentially reduced premium. A bonus is

a discount that is awarded if no claims have been made in the previous year, and a malus is an increase in the premium if there has been a certain number of claims made in the previous year.

However, under current rules, national systems on how insurers calculate their 'no claims bonus' or their 'bonus-malus' rating are very different between EU Member States. For instance, in certain Member States (including Luxembourg and France), there are mandatory bonus-malus schemes that require insurers to take into account the claims history statements of drivers when calculating the premium that they offer. These mandatory bonus-malus schemes generally benefit consumers. For instance, in France, in a market of 40 million insured motorists, 95% of insured policyholders have a bonus, with 70% the maximum bonus that they can obtain, and only less than 1% have a so-called malus.¹

However, in other EU Member States, such as the United Kingdom, Spain, and Germany there are no specific regulatory schemes in place to calculate no claims discounts.² According to the European Commission's impact assessment, there are certain Member states in which there are "regulatory schemes to calculate no claims discounts, others have industry standards, or insurers are fully free to determine the methodology to calculate premiums. Some insurers do not use this type of discount at all."³ In countries where there are no mandatory bonus-malus systems, insurers are free to determine their own methodology for calculating premiums, and to determine if and what type of bonus-malus system that they apply.

For instance, in the Czech Republic, the MTPL law was introduced with Act No. 168/1999 Coll. on Motor Third Party Liability insurance. According to the law, "the insurer is obliged to consider the loss history and discount the premium in case of a claim-free history or add a surcharge in case of payment of an indemnity. The rules, however, are not mandated by law. The Czech bonus malus system is not strict as insurers can decide on the rules concerning premium rebates."⁴

All EU Member States should be required to set up **mandatory bonus-malus schemes that would require insurance undertakings in their country to integrate in their motor insurance contracts a system whereby policyholders are placed on a premium scale based on the information available in their claims history statement.** Requirements to provide a mandatory bonus would give consumers a strong incentive to adopt better driving behaviour and ensure fairer premiums for consumers.

➤ **Standardised bonus-malus presentation for no-claims discounts**

A new requirement for insurers to publish their policies in respect of how they intend to use claims history statements when calculating their premiums will enhance transparency, improve switching levels and increase consumer trust.

¹ 'Position Paper – Inception Impact Assessment on the REFIT review of the Motor Insurance Directive', *French Insurance Federation*, 21 August 2017, https://ec.europa.eu/info/law/better-regulation/feedback/6735/attachment/090166e5b48c2fa3_en, (accessed 13 September 2018).

² 'Final Report of the Commission Expert Group on European Insurance Contract Law', *European Commission*, 2014, https://www.uibk.ac.at/zivilrecht/forschung/evip/restatement/final_report.pdf, (accessed 17 September 2019), p. 77.

³ 'Impact Assessment accompanying the proposal amending the Motor Insurance Directive', *European Commission*, 24 May 2018, https://ec.europa.eu/info/law/better-regulation/initiative/1407/publication/237387/attachment/090166e5baec10b5_en, (accessed 13 September 2018).

⁴ 'Comparative analysis of bonus malus systems in Italy and Central and Eastern Europe', *Milliman*, 2 November 2017, <http://www.milliman.com/insight/2017/Comparative-analysis-of-bonus-malus-systems-in-Italy-and-Central-and-Eastern-Europe/>, (accessed 13 September 2018).

However, further steps are needed in order to ensure that consumers can effectively compare offers between insurance firms. At the moment, in several EU countries, insurers already provide descriptions of their bonus-malus policies when offering motor insurance contracts. However, it is often the case that this information can be difficult for consumers to interpret and compare, in turn impeding switching by consumers. To further assist consumers with understanding the 'bonus-malus' policies of individual insurance firms, **a standardised template should be developed for insurance undertakings to present their 'bonus-malus' policies.**

For instance, in Portugal, each insurance company defines its own 'malus-bonus' table, with premium reductions or increases awarded according to a policyholder's claims history statement. While these tables are included in the insurance contracts, the lack of a common template means that it is often very difficult for the consumer to interpret and compare information between insurance offers. The creation of a standardised presentation could help consumers to compare the offers available on the market.

➤ **Motor insurance rules must be adapted to consider technological evolution and the rise of autonomous vehicles**

Unfortunately, the European Commission has not taken this opportunity to make the Motor Insurance Directive future-proof and consider changes related to autonomous vehicles. When the Motor Insurance Directive was first adopted, motor vehicles were always driven by a person, with little automatic facilities. However, the automotive industry is witnessing the increased automation of vehicles, possibly leading to fully autonomous vehicles on the roads in the near future. The availability of connected, semi-autonomous and autonomous cars will change the fundamentals of motor insurance. Current policy-making must prepare for these changes, which will progressively be introduced within the next decade.

Currently, the insurance system for motorised vehicles is based on the liability of the driver. However, this liability is due to decrease over time and might disappear. In the future, with automated cars leading to higher overall road safety, accidents that can cause harm or damage are those that will be due to failures with the software and/or hardware of the vehicle. Overall, the need for insurance of the driver against his or her liability will phase out over time, and the whole concept of motor insurance should develop from driver insurance to a system of product liability insurance to compensate victims where semi-automated or fully-automated cars have caused injury.⁵ The 'driver' can be a potential victim too in traffic accidents involving autonomous vehicles, however he or she would not be covered under current motor insurance rules.

Given evolving changes in the automotive industry, motor insurance needs to be forward-looking. The revision of the Motor Insurance Directive should include a short-term review clause, for the rules to be re-assessed upon the introduction and generalisation of automated driving. The GEAR report projects that by 2025, autonomous vehicles could represent 20 per cent of vehicles sold on a global basis.⁶ Four years after the transposition of the Motor Insurance Directive, the European Commission should **commit to assessing the suitability of the Directive in light of technological developments related to autonomous and semi-autonomous vehicles** and on whether the liability system it provides will suit future needs.

⁵ For more information about how autonomous vehicles and technological evolution will change the fundamentals of motor insurance, see BEUC's consultation response to the Motor Insurance Directive (p. 6-10): https://www.beuc.eu/publications/beuc-x-2017-149_review_of_the_motor_insurance_directive.pdf.

⁶ 'Communication on the road to automated mobility: An EU strategy for mobility of the future', *European Commission*, 17 May 2018, https://ec.europa.eu/transport/sites/transport/files/3rd-mobility-pack/com20180283_en.pdf (accessed 17 September 2018) p. 1.

➤ **Stronger sanctions regime for companies breaching consumer protection rules**

A stronger sanctions regime for companies breaching victim/consumer protection rules is required. All too often, consumers are served badly when seeking compensation in case of an accident. Consumer organisations are witness to many cases where compensation is either insufficient to cover the insured losses or are not paid out in timely fashion. In general, consumer complaints regarding claims management constitute almost half of all consumer complaints in the area of insurance.⁷ Compensation should be sufficient and paid in a timely fashion (within three months according to the rules of the Directive). Effective and proportionate sanctions should be required for insurance firms that fail to comply with these provisions.

⁷ 'Fourth Consumer Trends Report', *EIOPA*, 18 November 2015, https://eiopa.europa.eu/publications/reports/eiopa-bos-15-233%20-%20eiopa_fourth_consumer_trends_report.pdf, (accessed 13 September 2018), p.14.



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