European Commission

INCEPTION IMPACT ASSESSMENT			
TITLE OF THE INITIATIVE	Adaptation of the scope of Directive 2009/103/EC on motor insurance		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	DG FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL MARKETS UNION, FISMA D4	**DATE OF ROADMAP**	08/06/2016
LIKELY TYPE OF INITIATIVE	Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/103/EC of the European Parliament and the Council 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		
INDICATIVE PLANNING	Q3 2016		
ADDITIONAL INFORMATION	N/A		

This Inception Impact Assessment is provided for information purposes only and can be subject to change. It does not prejudge the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.

A. Context, Subsidiarity Check and Objectives

Context

The Motor Insurance Directive 2009/103/EC is an instrument that ensures a high level of protection for victims of motor accidents throughout the EU. The basis of the motor insurance legal framework dates back to 1972, when the First Motor Insurance Directive 72/166/EEC was adopted; this measure aimed at facilitating the free movement of motor vehicles throughout the EEC on the basis of the UN-based Green Card System. It determined the scope of motor third party liability coverage – by (i) defining a "vehicle" and (ii) outlining the scope of the cover by requiring that "the use of vehicles" normally based in the territories of the Member States be covered by third party liability insurance.

Today, the 2009 Directive ensures that if a vehicle is insured for third party liability in one of the Member States, this cover must apply in the territory of all Member States without need for any further administrative formalities, thus assuring the protection of victims across the EU. At the same time, the Directive allows Member States to decide to exempt certain motor vehicles from the requirement to hold third party liability insurance, provided that the general pool of insured vehicles also covers third party liability for exempted vehicles.

On 4 September 2014, the Court of Justice of the European Union ruled on a question by the Slovenian Supreme Court to interpret the scope of this Directive in the context of proceedings that concerned an accident on a private property caused by a tractor (C-162/13 Vnuk), in particular whether the obligation of third party liability cover extended to private properties. The Court ruled that the concept of 'use of vehicles' covers any use of a motor vehicle that is consistent with the normal function of that vehicle. It was implied in the ruling that there was no difference between private or public properties as regards the obligation of cover.

The effect of the ruling is that vehicles used in certain locations and/or certain activities by vehicles which may not have been initially understood to be regulated under the Directive by some Member States are covered by the obligation of insurance cover in the Directive, and that also some non-road-traffic motoring activities must be covered by third party liability insurance. Consequently, accidents that are result of purely agricultural, construction, industrial, motor sports or fairground activities, in Member States which exempt these vehicles from the requirement to hold third party liability coverage, may be compensated from motor third party liability policies.

These differing interpretations, prior to the ruling, were possible due to varying wording in different language versions of the Directive. While the French (and several other) versions of the Directive imposed the obligation to insure the vehicles "in traffic", the English (and several other) version required that "the use" of vehicles was subject to that obligation.

Since the Court's ruling on the obligations laid down in the Directive in the Vnuk judgment risks having a significant impact on ordinary motor vehicle insurance policyholders, the insurance industry and Member States, maintaining the high level of protection for victims intended by the Directive requires urgently addressing these consequences in a consistent manner throughout the EU. Whilst the primary aim of this initiative is to address the immediate consequences of these different applications of the Directive, the Commission intends to launch a wider REFIT review of all aspects of the Directive in the third quarter of 2016 in which it will engage with all interested parties, to evaluate the functioning of all aspects of the Directive in the Member States and propose further changes if warranted.

Issue

While Member States are authorised to exempt types of motor vehicles from the insurance obligation, accidents caused by such vehicles must still be covered by guarantee funds that compensate victims of accidents caused by uninsured or untraced vehicles, towards which all policyholders automatically contribute through their premiums (the levy by the guarantee fund is charged on insurers, but this is necessarily factored into premiums paid by policyholders). As a consequence of the Court ruling, potential compensations extend beyond the context of traffic-related motoring; purely agricultural, construction, industrial, motor sports or fairground activities could be required to be either insured or exempted from insurance but covered by compensation funds, to which the only contributors are motorists. This could lead to increases in premiums for all policyholders in Member States that would exempt these activities from insurance.

While it is certain that the Vnuk ruling will have significant impact, at this stage it is difficult to quantify the consequences precisely in terms of policyholders' premiums. The impact will also vary depending on the applicable legal regime for damages of the Member State concerned.

In Member States with high or no ceilings for compensation for personal injuries, but lower ceilings for material damage (e.g. UK, Ireland), the most significant impact is likely to be related to motor sports, for which there is currently no cover required for third party liability between the racing drivers. Compensation in these jurisdictions might reach, in case of life changing injuries, as much as 12 million EUR for a single accident (covering costs of permanent care, future loss of income, etc.) Also, it is likely that insurers will not be willing to provide cover for motor sports or will do so with prohibitively high premiums which could make some motor sports events unviable. It should also be stressed that any racers who are injured or die in uninsured motor sports activities would be by default compensated by guarantee funds.

On the other hand, there are Member States with high ceilings for material damage (e.g. 100 million EUR in Belgium, Luxembourg, and Netherlands) where the main risk will stem from purely agricultural, construction, and industrial activities. For example the cost of a construction accident in a hospital that occurred in 2015 in Amsterdam was in the region of 50 million EUR. In the absence of another insurance policy taken by the entrepreneur, following the Vnuk ruling, such an accident would have to be compensated from the guarantee fund.

Moreover, since the Directive, following the Court's ruling, leaves no room for Member States to make geographical exclusions such as private property without public access, it will be easier to carry out insurance fraud, because accidents in such places are much more difficult to investigate by insurers and/or enforcement authorities.

Finally, even though it is likely that in many cases purely agricultural, construction, industrial motor sports and fairground activities would be covered by other liability policies (such as employment or public liability policy), these policies might not be, legally speaking, compliant with the Directive as regards some of the specific features imposed on motor third party liability policies, such as minimum amounts of cover, a single premium for the whole of the EU or appointment of claims representatives in other Member States.

Subsidiarity check

The legal basis of the amendment is the same as that of the original Directive, Article 114(1) TFEU.

The principle of regulating compulsory motor third party liability insurance at EU level is long established. Leaving this matter to Member States would hinder the free movement of motor vehicles across the EU. Given this, the Motor Insurance Directive must have a clear scope and coverage. The clarification of the scope would exclude certain activities from the EU-level requirement for third party liability cover, in particular where these activities tend not to be cross-border in nature and do not therefore raise issues of the free movement of vehicles within the EU. In the absence of specific EU legislation on liability policies covering purely agricultural, construction, industrial, motor sports or fairground activities, Member States would be free to set necessary arrangements regulating these areas, while setting a high level of protection of victims and policyholders involved in international traffic at EU level. This would be in line with the principle of subsidiarity.

Main policy objectives

The objective of the proposal is to maintain a high degree of protection for victims of motor vehicle accidents while respecting the right of Member States to set up arrangements at national level to protect victims of accidents that are result of agricultural, construction, industrial, motor sports or fairground activities. Member States would remain free to decide whether victims of traffic accidents should be pooled together, through guarantee funds, with victims of activities unrelated to traffic. For the sake of legal certainty, the use of vehicles

in traffic could be defined as the use of a motorised vehicle for the transport of persons or goods, whether stationary or in motion, in areas where the public has access in accordance with national law.

Rather than exempting some types of vehicles (e.g. cranes, forklifts, tractors, etc), in order to maintain the high level of the protection of victims, the proposed approach seeks to effectively exclude the activities listed above from the scope of the Motor Insurance Directive. In the absence of compulsory policies covering these activities at EU level, the scope of the Motor Insurance Directive should be limited to the use of vehicles in the context of traffic.

B. Option Mapping

Baseline scenario – no EU policy change

If no action is taken, either (a) in some Member States agricultural, construction, industrial, motor sports or fairground activities could be subjected to higher costs of motor third party liability insurance, or b) the victims of agricultural, construction, industrial, motor sports or fairground activities would benefit, in the absence of other insurance, from compensation from guarantee funds that collect contributions only from motorists, which would mean that motorists would be exposed to higher premiums.

Options of improving implementation and enforcement of existing legislation or doing less/simplifying existing legislation

Enforcement of the Directive as interpreted by the Court means it is applicable to purely agricultural, construction, industrial, motor sports or fairground activities.

This would result in unforeseen negative impacts on (i) vehicles that are not in used in traffic which now have to take motor third party liability insurance and (ii) guarantee funds for motorists which would have to compensate victims and damage from accidents that happen in activities that are unrelated to traffic when the vehicles that were involved in them are uninsured.

Since it is likely that in some jurisdictions motor third party liability insurance premiums might rise, a swift response at EU level is warranted. This will also offer the opportunity to address the divergences in interpretation at Member State level arising from different language versions of the current Directive.

This exercise does not prejudge the forthcoming REFIT exercise which will fully evaluate the efficiency and effectiveness of the Motor Insurance Directive, including the scope of the definition of vehicle.

Alternative policy approaches

Option 1 - Do nothing. This would mean that the Member States would be obliged to require motor third party liability insurance for vehicles involved in activities outside traffic, or choose to exempt certain types of vehicles from the insurance obligation or in case of uninsured or untraced vehicles in which case it would be the motor guarantee fund that would have to compensate consequences of accidents involving these vehicles. However since some activities are unlikely to be able to be insured at a viable cost, these activities risk becoming unviable.

Option 2 - enact at EU level legislation that obliges Member States to set up guarantee schemes to specifically cover purely agricultural, construction, industrial, motor sports or fairground activities if uninsured. This would require that the EU defines and regulates the scope of compulsory liability insurance covering these activities at EU level. Given the divergences and/or lack of such compulsory schemes at Member States level, this would raise significant subsidiarity concerns.

Option 3 - The scope of the Directive would relate only to accidents caused by motor vehicles in the context of traffic. This would be done by defining locations and types of activities that are to be understood to fall within that definition. The use in traffic could mean where the use of a vehicle is for the transport of persons or goods, whether stationary or in motion, in areas where the public has access in accordance with national law. Activities that would fall outside of this definition would be regulated at Member State level and it would be for them to decide whether they wish to pool them with other activities by regulatory means. The guarantee funds would not be obliged, under EU law, to compensate consequences of traffic accidents unrelated to use in traffic. No changes in premiums or guarantee funds would be needed to absorb the potential need to compensate victims

of accidents occurring in the context of purely agricultural, construction, industrial, motor sports or fairground activities involving vehicles where these occur outside of the sphere of use in traffic.

Option 4 – exclude some types vehicles from the scope of the Directive (e.g. tractors, cranes, forklifts, motor sports vehicles in regular traffic, or vehicles with a maximum speed below a defined limit) – this would lead to some types of vehicles being potentially uninsured even if they are on a road or other public places. This option would not ensure the necessary level of protection of victims.

Alternative policy instruments

No soft law instrument, guidelines, recommendation or self-regulation can provide for adaptations to the scope of a Directive.

Alternative/differentiated scope

It could be envisaged that the scope of the Directive be extended to cover accidents that are result of agricultural, industrial, construction, motor sports activities with the necessary requirements covering these activities. This would however clearly go beyond the initial purpose of the Directive which was to promote the free movement of persons across the EU.

Options that take account of new technological developments

It is not envisaged to change the definition of motor vehicle, because the existing definition is technology-neutral and will in the future capture all types of vehicle with a driver intended for travel on land and propelled by mechanical power (including e.g. automated vehicles).

Preliminary proportionality check

The approach takes into consideration that no action is envisaged to be taken beyond what is necessary to fulfil the objectives of the proposed initiative; i.e. to ensure the high level of protection of victims of traffic related accidents while leaving it for the Member States to legislate, where they see fit, outside of this coordinated field. The use in traffic could mean where the use of a vehicle is for the transport of persons or goods, whether stationary or in motion, in areas where the public has access in accordance with national law.

C. Data Collection and Better Regulation Instruments

Data collection

Data demonstrating the impact on insurers, guarantee funds and policyholders will be sought.

Consultation approach

Insurance companies and guarantee funds will be consulted in a targeted manner on the impact that the Vnuk judgment risks having on policyholders and on possible options to ensure compliance with the obligations laid down in EU law. A public consultation on the Directive will be carried out as part of the REFIT exercise to be launched in the third quarter of 2016.

Will an Implementation plan be established?

☑ **Yes** ☐ **No**

D. Information on the Impact Assessment Process

An impact assessment proportionate to the scope of this initiative (addressing the consequences of the Vnuk judgment) is to be carried out.

Work on in the impact assessment will start immediately. The Interservice Steering Group will be set up immediately. The following DGs will be invited to participate:

Agriculture and rural development

Budget

Climate action

Communications networks, Content and Technology

Competition

Economic and Financial Affairs

Employment, Social Affairs and Inclusion

Environment

Health and Food Safety

Internal Market, Industry, Entrepreneurship and SMEs

Joint Research Centre

Justice and Consumers

Mobility and Transport

Research and Innovation

Secretariat-General

E. Preliminary Assessment of Expected Impacts

Likely economic impacts

Limiting exposure of motor guarantee funds as concerns claims that are result of purely agricultural, construction, industrial, motor sports or fairground activities.

Likely social impacts

Limiting overall costs of motor insurance for motorists in traffic.

Likely environmental impacts

The proposal is not expected to change the levels of traffic; therefore no environmental impact is expected.

Likely impacts on simplification and/or administrative burden

Guarantee funds will not be required to deal with accidents that are unrelated to traffic. A reduction of litigation is expected.

Likely impacts on SMEs

SMEs using vehicles outside of traffic will not need motor third party liability insurance cover (for example golf courses using buggies in enclosed areas, fairground operators).

Likely impacts on competitiveness and innovation

The proposal will protect the viability of the motor sports sector. The definition of motor vehicle will remain technology-neutral and will continue to cover novel self-propelled vehicles.

Likely impacts on public administrations

The proposal will, by clarifying the scope of the Directive, limit state liability cases.

Likely impacts on third countries, international trade or investment

None expected.