

**Finance Watch response to the European Commission's public consultation on REFIT
review of Directive 2009/103/EC on motor insurance**

Brussels, 20 October 2017

Finance Watch is an independent non-profit Members' association set up in 2011 to act as a public interest counterweight to the powerful financial lobby. Our mission is to strengthen the voice of society in the reform of financial regulation by conducting advocacy and presenting public interest arguments to lawmakers and citizens. Our Members are civil society organisations and expert individuals, supported by a full-time secretariat.

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*Only the questions that are relevant to Finance Watch are reproduced here.
We agree to the publication of this response.*

General remarks

Finance Watch welcomes the opportunity to provide comments on the REFIT review of the Motor Insurance Directive (MID).

The review rightly identifies motor insurance guarantee funds as a key area to address. There is clearly a need to harmonise the existing guarantee funds at EU level and ensure that motor accident victims receive full compensation. The MID should be amended and then properly enforced to ensure that this is the case.

The consultation also raises the issue of insolvent insurers in the context of motor insurance guarantee funds. This touches a broader issue that reaches far beyond motor insurance, to the need for a proper recovery and resolution framework for insurers at EU level. It is therefore an opportunity to clarify that European taxpayers should not pay for the failure of insurance companies to any degree. The only way to ensure this is to create a recovery and resolution framework for insurers in Europe, which includes ex ante and entirely industry-funded mechanisms to compensate policyholders. The European Commission should put a focus on achieving this for its work on insurance moving forward.

Finance Watch also supports the response of its member organisation BEUC to the consultation.

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

Yes, victims should be entitled to full compensation and this should be harmonised throughout the EU. The REFIT revision of the MID provides an opportunity to immediately harmonise motor insurance guarantee schemes across the EU. This will help to ensure that victims of accidents with uninsured drivers can receive full compensation in the EU, including when these accidents occur with drivers from another EU country.

There is also a clear need to put in place a sufficient system to deal with insolvent cross-border insurers. Recent public cases have outlined that this issue has impacted motor insurance guarantee funds.

This has been highlighted by the case of Maltese insurer Setanta. The Irish courts initially found that the motor insurance guarantee fund, the Motor Insurers' Bureau of Ireland, should compensate victims, but was eventually overruled by the Supreme Court¹. This case clearly shows that there is a legislative gap in the case of cross-border insolvency of insurers in general, not just those provided MTPL insurance.

A proper EU recovery and resolution framework for insurers needs to be put in place, which should include sufficient ex ante and entirely industry-funded mechanisms to ensure that policyholders and citizens will be protected in the case of the failure of an insurance company. It will particularly help to deal with the issue of insolvent cross-border motor insurers, which has had an impact on the motor insurance guarantee funds dealt with by the MID.

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

In order for the issue of cross-border insolvent insurers to be dealt with properly a separate, linked discussion must now take place on putting in place an ex ante and entirely industry-funded mechanism, such as an insurance guarantee scheme. This scheme would deal with any failure of an insurer and the related resolution process, including the normal insolvency procedure, which is associated with significant costs. The ESRB has recently highlighted² the need and importance of putting in place ex ante and entirely industry-funded mechanisms as part of an effective European insurance recovery and resolution framework. These

¹ Ruling of Irish Supreme Court on Setanta Insurance Company Ltd and the Insurance Compensation Fund
<http://www.supremecourt.ie/Judgments.nsf/60f9f366f10958d1802572ba003d3f45/2e48842d8d9241938025812b00414a11?OpenDocument&Highlight=0,setanta> & <https://www.mibi.ie/setanta-news/statement-from-the-mibi-on-today%E2%80%99s-supreme-court-judgment.1284.html>

² Recovery and resolution for the EU insurance sector: a macroprudential perspective, August 2017, Report by the ATC Expert Group on Insurance
https://www.esrb.europa.eu/pub/pdf/reports/esrb.reports170817_recoveryandresolution.en.pdf

arrangements should not, in any way, be construed in a way as to become a disincentive for insurers to be adequately capitalised or for regulators to enforce relevant requirements.

These mechanisms should be separate and serve a different purpose to motor insurance guarantee funds. Motor insurance guarantee funds should ensure that victims can be fully compensated in the case of accidents involving uninsured drivers. The issue of insolvent insurers is linked, but not exclusive to the provision of MTPL insurance.

The existing EU insurance Directive ‘Solvency II’ does not mean that insurers will not fail. Whilst the cases outlined above did not deal with systemically important insurers, there is a risk that in the future one of these larger companies could fail. The issue of insolvent insurers addressed in this consultation impacts one area of insurance, but is an example of a wider problem.

The European Commission should now make concrete steps towards putting in place a sufficient recovery and resolution framework for insurers in the EU, building on the evidence and proposal gathered in the ERSB report (see above, footnote 2).