

Consequences of review of the Motor Vehicle Insurance Directive for pedelec/bicycle 3rd party insurance

European Cyclists' Federation

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The issue

A recent European Court of Justice (ECJ) decision has widened the definition of vehicles that require mandatory third party insurance; this could include pedelecs and speed pedelecs. The European Commission will now move to clarify the law for Member State implementation which may mean Member States include pedelecs, and even possibly bicycles.

What has happened?

The Motor Vehicle Insurance Directive 2009/103/EC¹ 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. The Directive determines the scope of coverage – by (i) defining a "vehicle" and (ii) outlining the scope of the cover by requiring that "the use of vehicles" be covered by third party liability insurance. The scope is defined as "...any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled;" Most Member States have interpreted this to mean motorized vehicles being used in traffic. However after a claim dispute in Slovakia, a European Court of Justice Decision in 2014 interpreted 'motor vehicle' to mean a vehicle that is used that is consistent "with its normal function" would require compulsory insurance, this widens the scope of the Directive with regards to place and type of vehicle. With regards to place this would include all public and private space. With regards to vehicle type this would include any vehicle that has any motorized propulsion which would include pedelecs and eBikes of all types. The current directive does allow Member States to exempt certain vehicles² from the requirement provided that the general pool of insured vehicles also covers 3rd party liability for them³.

What is happening now?

Naturally this has caused confusion amongst the Member States who have to interpret and implement this legislation, and the Commission will set out to attempt to clarify this reading with a review of the legislation and a new proposal in 2018. Public consultations will take place during spring and summer of 2017 which ECF will contribute to.

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009L0103> These are the delegated acts <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011D0754>

² https://ec.europa.eu/info/file/37002/download_en?token=rHT0-iZL

³ So far the Netherlands has exempted pedelecs and Romania has deemed it necessary to exempt bicycles. Austria has said that "Electric powered bicycles with a maximum power of 600 Watt and a model-specific maximum speed" are exempt.



Current thinking and Commission review

The Commission published an "impact assessment" last year⁴ setting out four possible options;

1. Do nothing. This means that compulsory insurance would be required for all vehicles used in a way consistent with their normal function regardless of where the vehicles are used
2. Legislate at EU level to set up compensation funds for activities that are currently not insured but could now be in scope of the Directive (unlikely as this would interfere with subsidiarity)
3. Change the Directive so that vehicles used only in traffic and exclude private land activities
4. Exclude certain types of vehicle from the requirements of the directive

On speaking with the Commission ECF finds that the Commission is currently favoring the third option. This would mean that pedelecs and eBikes would need to have mandatory third party insurance unless otherwise exempted by each member state. Indeed the impact assessment states "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". There could even be the threat of including bicycles if the wording of 'mechanical power' is used.

Conclusion

On speaking to the European Commission it is their opinion that as the law currently stands pedelecs and electric powered assisted bikes do require mandatory third party insurance. They have also said in conversation with ECF that this is not their intention. However if their preferred third option goes ahead this will sweep up all pedelecs, and even possibly bicycles, into unnecessary and overburdening mandatory third party insurance. Member States have either not interpreted the law in this way or exempted pedelecs/bicycles anyway. If the Commission forces Member States to move beyond their spirit of interpretation of the law this will produce confusion and a patchwork of national legislations and exemptions. There is no need for mandatory third party insurance for pedelecs or bicycles. More generally, below are some reasons why pedelec/bicycle compulsory insurance would not work

- It would put up barriers to pedelec/bicycle use leading to more motorized vehicles on the roads that cause more third party damages
- 3rd party insurance is for the prudent cyclist who does not wish to pay too much if there is a crash. The recovery of damages is recovered regardless of insurance and damage is minimal and rare. The money to be recovered is not too high for the vast majority of crashes Motor vehicles have mandatory 3rd party coverage because the damage is often substantial
- It would lead to over-regulation of vehicle insurance, and cause even more confusion amongst the EU Member States as to how to implement the legislation
- Would give insurance companies power over how people ride, what they should wear, where they can ride etc.
- Insurance companies may set insurance costs prohibitively high for a vehicle that they have not previously risk assessed (such as a pedelec) creating a bigger barrier to uptake

Recommendations

- Commission to define what is meant by motor vehicle and to exempt pedelecs and bicycles from upcoming motor vehicle insurance Directive proposal
- Member States to exclude pedelecs and bicycles in current implementation of the Directive

⁴ http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_fisma_030_motor_insurance_en.pdf

