

## Motor Vehicle Insurance Directive proposal and consequences for pedelec/bicycle use

European Cyclists' Federation

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### The issue

The European Commission, following an ECJ decision, classified all Electric Power Assisted Bicycles (EPAC/Pedelec) as a motor vehicle within the Motor Vehicle Insurance Directive. This makes it mandatory for all riders to have third party motor vehicle insurance despite the vast majority already having insurance through, household, personal liability, or transport insurance. The European Parliament overturned this and applied motor vehicle Type Approval to define a motor vehicle and exclude small vehicles like EPACs

### What is a pedelec

An EPAC/Pedelec is a bicycle with a 250 watt assisted motor which cuts out at 25 kmh and is only activated if the rider is pedaling to provide a mild boost. The average speed of a pedelec is between 2/3 kmh faster than a normal bicycle. Norwegian research has shown that assisted bicycles are not more risky than conventional bicycles<sup>1</sup>, as does ongoing research from the Netherlands<sup>2</sup>. Sales of these bicycles has climbed from a few thousand ten years ago to 1.7 million in 2016 (estimated over 2million in 2017). They are currently 10% of EU bicycle sales, and up to 40% in some countries like the Netherlands). ECF view these bicycles as a motor vehicle substitute with huge potential. It has all the benefits of a conventional bicycle (health, emissions free, congestion busting) but manages to overcome many of the barriers (hills, hot weather, old knees!)

### What has happened?

The Motor Vehicle Insurance Directive 2009/103/EC<sup>3</sup> 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 current 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 (cars, lorries, vans, etc.) being used in traffic. However, after a claim dispute in Slovenia, a European Court of Justice Decision interpreted 'motor vehicle' to mean a vehicle which is propelled by mechanical power, that is used that is consistent "with its normal function" would require compulsory insurance. 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. Given the confusion that this ECJ decision brought, the European Commission decided to review and update the Directive. Unfortunately the Commission did not take into account the effect on transport, the environment, health, social issues into their impact assessment or take

<sup>1</sup> <https://www.toi.no/publikasjoner/miniscenario-okt-omfang-av-elsykler-article34933-8.html>

<sup>2</sup> <https://www.itf-oecd.org/safety-electrically-assisted-bicycles-compared-classic-bicycles-netherlands>

<sup>3</sup> <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>



this opportunity to update the directive in line with the development of power assisted bicycles and their muscle powered propulsion and merely re-iterated the ECJ decision.

## The Commission Proposal and Parliament amendment

Released on the 24<sup>th</sup> May the Commission proposal adds a 'use of vehicle' definition to clarify what is in scope, these two sentences are the Commission's attempt to define motor vehicle in the context of the MID;

"1. 'vehicle' means 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;

1a. 'use of a vehicle' means any use of such vehicle, intended normally to serve as a means of transport, that is consistent with the normal function of that vehicle, irrespective of the vehicle's characteristics and irrespective of the terrain on which the motor vehicle is used and of whether it is stationary or in motion."

This means that any vehicle with any type of motor, active or not, on any type of ground being used as a mode of transport which is its intended use is classified as a motor vehicle and would be banned from using the roads unless they enter the Motor Insurance regime. The Commission proposal would allow Member States to exempt certain vehicles from the requirement, however, this would lead to a patchwork of European legislation across the EU, would confuse public authorities and consumers alike. Bottom line we need a clear definition of the scope for what sort of motor vehicle this legislation is aimed at.

The European Parliament overturned the Commission proposal's 'scope' and defined a motor vehicle as that falling within European Type Approval;

"This Directive shall only apply to vehicles covered by Regulation (EU) 2018/858\*, Regulation (EU) No 167/2013\*\* or Regulation (EU) No 168/2013\*\*\*."

This would exclude Power Assisted bicycles while also allowing Member States to apply mandatory insurance on vehicles falling outside of this Directive if they so desired, hence satisfying subsidiarity as well as proportionality principles.

## Conclusion

There is no need for mandatory third-party motor insurance for pedelecs or bicycles.

- It would put up barriers to pedelec/bicycle use leading to more motorized vehicles on the roads that cause more third-party damages
- Confusion for public authorities who have just spent the past 5 years clarifying themselves that a 250 Watt power assisted bicycle is not a motor vehicle!
- The recovery of damages for pedelec crashes is recovered regardless of insurance; damage is minimal and rare. Motor vehicles have mandatory 3rd party because 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 wear, where they ride
- 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
- Under the Parliament suggestion, member states can, if they wish, apply mandatory insurance nationally on any vehicle that is excluded at the EU level, thereby satisfying subsidiarity as well as proportionality

## Recommendations

ECF would urge Member States in the Council of the European Union to concord with the European Parliament position to exclude EPACs from the Directive.

