



Confederation of the European
Bicycle Industry
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ECF and CONEBI document for EU Council Members on the scope of the Motor Insurance Directive

European Cyclists' Federation represents the European national cycling associations in all 28 European member states speaking for more than 50 million daily cyclists EU wide. CONEBI represents the Bicycle, Pedal-Assist E-Bike and Parts & Accessories Industries before the EU Institutions, which amount to more than 800 companies and 90.000 direct/indirect jobs.

You can find ECF and CONEBI original position papers here

https://ecf.com/sites/ecf.com/files/ECF_Motor_Vehicle_Insurance_Position%20Paper_2019.pdf and

<http://www.conebi.eu/position-papers>

However, this document lays out some of the concerns and interests from Member States officials, Parliamentarians, and others and attempts to provide some answers/positions

We would be more than happy to talk to any Member State official concerning this issue

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We conclude that;

Speaking as consumers and industry we urge Member States of the European Council not to include electric power assisted bicycles (EPACs/pedelecs) within the scope of the Motor Insurance Directive

What is a pedelec?

An EPAC/Pedelec is a bicycle with a 250-watt *assisted* motor which cuts out at 25 km/h and is *only activated if the rider is pedalling* to provide a mild boost. The average speed of a pedelec is between 1 - 3 km/h faster than a normal bicycle¹. Norwegian² and Dutch³ research has shown that these bicycles are not more risky than conventional bicycles. Sales of these bicycles has climbed from a few thousand ten years ago to more than 2 million in 2017 (estimated around 2.5 million in 2018). They are currently 20% of EU bicycle sales, and up to 50% in some countries. ECF view these bicycles as bike with huge potential to substitute

¹ <https://www.itf-oecd.org/safety-e-bikes-netherlands>

² <https://www.toi.no/publikasjoner/miniscenario-okt-omfang-av-elsykler-article34933-8.html>

³ <https://www.itf-oecd.org/safety-electrically-assisted-bicycles-compared-classic-bicycles-netherlands>

motor vehicle use over short journeys. It has all the benefits of a conventional bicycle (health, emissions and CO2 free, congestion busting) but manages to overcome many of the barriers to traditional bicycle use (hills, hot weather, old knees!).

Why exclude these bicycles from the scope?

- Inclusion in the scope would act as a barrier to the continued growth and uptake of these environmentally friendly, safe, and healthy mode of transport. Cities and urban mobility practitioners around the EU are promoting these bicycles as a key ingredient to overcome the major urban mobility challenges of our time⁴
- An EPAC's motor assists the cyclist but will not work without pedalling; no pedal, no power
- The EPAC is designed to also be ridden without the motor assistance and so when the motor is not in use the bike is literally a bicycle.
- The maximum speed is 25 km/h before the motor cuts out, this is the speed of a fit cyclist
 - However, in reality the average speed an EPAC being ridden is only around 1-3 km/h faster than a conventional bicycle⁵
- The maximum continuous power output is 250 Watt (rarely always used), this is the power output of a fit cyclist
- Their technical requirements come through the standardization body CEN bicycle working group TC333 and not through EU Motor Vehicle Type Approval⁶,
- We must avoid confusion for public authorities who have just spent the past 5 years clarifying in their legislation that a 250 Watt power assisted bicycle is not a motor vehicle but a bicycle! EU member states that are dealing with these vehicles all view them as bicycles in their road/highway codes and not motor vehicles
- 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
- This goes against subsidiarity principle; this is an urban mode of transport not a cross border mode of transport
- It is estimated that around 85 – 90% of Germans already have a private third-party insurance⁷. 90% of Belgians have insurance⁸ covering liability. We should not penalize these users and force them into another more expensive and administrative burdensome motor insurance regime
- This goes against proportionality; EPACs do not cause major damages. In Germany in 2016 there were zero pedestrian fatalities and 12 serious injuries in crashes with EPACs (Germany has around 3 million EPACs the most of any EU MS so is a good

⁴ See annex to https://ecf.com/sites/ecf.com/files/ECF_Motor_Vehicle_Insurance_Position%20Paper_2019.pdf

⁵ <https://www.itf-oecd.org/safety-e-bikes-netherlands>

⁶ https://standards.cen.eu/dyn/www/f?p=204:32:0:::FSP_ORG_ID,FSP_LANG_ID:6314,25&cs=15471628D918031F2386C2FB70BED679

We do not include so-called 'speed EPACs' in this document

⁷ <https://www.gdv.de/de/themen/news/15-prozent-aller-haushalte-verzichten-auf-die-privathaftpflichtversicherung-16912> 85% is the average coverage but 90% coverage on those earning a joint net income of more than 1.100 Euro. EPACs are expensive bicycles and will be used by more affluent, therefore higher coverage

⁸ <https://www.kbcbrussels.be/retail/en/products/insurance/family/family-insurance.html> and here is an example of Belgian family insurance <https://www.ing.be/static/legacy/SiteCollectionDocuments/general-conditions-family-insurance-EN.pdf>

example to use). Given that around 90% of riders are already insured we think including EPACs in the scope of the legislation is not proportionate.

- We do not claim that EPACs will never be involved in a crash with major damages, but 1) major irreparable damages are extremely rare (less than bicycles) 2) most riders are insured anyway through private insurance 3) every vehicle/pedestrian road user sharing the road can also be involved and be liable for damages we still need to define the scope of which of them to include in the legislation
- The European Commission quotes the VNUK/Andrade/Torreiro European Court judgements that they claim interprets the legislation to include EPACs within the scope. However, the most recent judgment in the Automóvel/Juliana case⁹ explicitly states that the three previous judgements only concern “...*the situations in which use of the insured vehicle falls within the scope of the insurance cover*”, not the *obligation to insure*. The recent Automóvel/Juliana case states explicitly that with regards to the *obligation to insure* (the scope of MID) “...insurance against civil liability relating to the use of a motor vehicle is obligatory when the vehicle concerned is still *registered* in a Member State”
- The current Motor Insurance Directive dates to 2009. In 2009 there were not many power-assisted bicycles consequently the legislation and definition of scope does not deal with these bicycles. The EU now needs to update the legislation to take into account these bicycles.

Article 5?

Why not include EPACs in the legislation but allow member states to exclude any vehicle it wishes?

- A mandatory third-party liability insurance for EPAC riders would lead to an increase in fraudulent claims; any scratches, dings, or even larger damage could be claimed through the national fund as a crash with an EPAC rider that then rode off. Whether Member States do or do not invoke an Article 5 type exemption there would still be the need to link riders and their EPACs to an expensive and overburdensome user/vehicle registration system in order to tackle fraudulent claims. This has not yet happened since no one really believes EPACs are included in the scope of the legislation and therefore with no link to the national fund
- The Automóvel/Juliana¹⁰ ECJ judgement stated that “...the payment of compensation by such a [national fund] body was designed to be a measure of last resort, envisaged only for situations referred to in that provision, and cannot be regarded as the implementation of a guarantee scheme”. It would be dangerous and risky to use the National Fund as a guarantee fund for EPAC 3rd party insurance when the current system of private family/transport/personal liability insurance works well. It would encourage less people to obtain 3rd party liability insurance for their EPACs, or to stop when there is an incident (as well as encourage fraud as explained previous)
- Most Member States do not view these bicycles as motor vehicles. For Member States to insist on including EPACs within the Motor Insurance Directive, and then for every Member State to insist on excluding them at the national level through an Article 5

⁹ <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-80/17>

¹⁰ <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-80/17>

exemption would be the sort of incomprehensible behaviour that damages the reputation of the EU

- If some member states do not act to trigger Article 5 then the power assisted bicycles in those countries would have a huge barrier to their use and uptake. The companies in countries that produce large numbers of EPACs and EPAC parts¹¹, would find it difficult to expand their markets into these potentially huge markets. A patchwork of countries excluding or including these bicycles would not be good for the European cross border sales of this booming sector of the economy. Thousands of jobs would be at stake
- The EU should define what vehicles need to be included in the scope of the directive and allow Member States to mandate certain vehicles that they consider worthy of mandatory insurance at the national level. The EU should not impose an all-encompassing definition of any vehicle as a motor vehicle that is clearly at odds with Member States road rules and definitions of how a motor vehicle should be defined

Conclusion

ECF and CONEBI urge Council Member States to exclude specifically EPACs from this legislation. European Union legislation should make clear which vehicles should be exempt and which included.

Here are two proposals;

- To follow the European Parliament¹² in using Type Approval would be our preferred method. The European Union has worked hard over the years to get a clear definition of what constitutes a motor vehicle. It has explicitly exempted Power Assisted Bicycles through the Type Approval of L-category Two- and Three-wheel Vehicles in regulation 168/2013. The legislation could exempt all non-type approved vehicle by pointing to all Type Approval Regulation 2018/858, 167/2013, and 168/2013, or by pointing to the clear exemption in article 2.2.h) of regulation (EU) 168/2013. By using this method the regulation of these vehicles is neatly contained within EU legislation that has already spent a lot of time carefully thinking about the definition of a motorised vehicle
- To exclude vehicles from the scope of the legislation that do not require registration as a motor vehicle within national Member State territories. This would follow the ruling of the Automóvel/Juliana case as laid out by the ECJ

May 2019

¹¹ You can view the EPAC sales and production details here <http://www.conebi.eu/wp-content/uploads/2018/09/European-Bicycle-Industry-and-Market-Profile-2017-with-2016-data-update-September-2018.pdf>

¹² http://www.europarl.europa.eu/doceo/document/TA-8-2019-0110_EN.html?redirect