

# **ELECTRICALLY POWER-ASSISTED CYCLES (EPACs) AFTER THE EUROPEAN COMMISSION'S REFIT REVIEW AND PROPOSAL TO AMEND DIRECTIVE 2009/103/EC**

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## **Abstract**

In 21st century technological development never takes a break and progress itself is growing rapidly. The society reacts to the occurrence of new technologies, in particular while the usage of the above-stated technologies ends up in sharp conflicts. Regardless the type of technological product and the area where the latter is allocated, whenever the usage of new technologies produces a conflict it must be the case of a precise and qualitative legal regulation addressing the most accurate solution.

In 2018, after the number of changes occurred within the motor insurance sector, European Commission admitted the necessary to include electrically power assisted cycles (EPACs) within the scope of the motor third party liability regulation. The regulation of e-bikes in terms of the Motor Insurance Directive would be a wrong step at the European Union level due to the environmental, social, both human and financial resources reasons. At this stage, it is inevitably important to distinguish alternative transport, which must be accurately regulated at the European Union level from the one that shall remain untouched in terms of the legal intervention for the purposes of motor third party liability regulation.

High technologies and technological progress are not always connected with inevitable necessity to provide with the legal regulation in particular field. Instead, both human and financial resources should be concentrated on the dimension of areas where conflicts are hardly or even impossible to be solved without imperative intervention of the qualitative legal regulation.

**Keywords: Electrically power assisted cycles (EPACs), motor third party liability, Motor Insurance Directive, technological development.**

## **Introduction**

During the recent years particular outstanding changes occurred within the motor insurance sector. Some of them should be considered as the outcomes of the legal interpretation at the European Union level, others as technological progress stimulating the development of alternative transport. Besides the ultimate aim for which alternative transport was manufactured, there is a number of inevitable connections between the products put into the free circulation at the common market and instruments seeking to regulate conflicts, which might appear as a consequence of the usage of the alternative transport. There is an

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accurate example of motor third party liability regulation and challenges, which technological progress have brought:

1. Autonomous vehicles (AVs) and Connected autonomous vehicles (CAVs) as a classic example of the result of technological development and which are necessary to be regulated by law.

2. Electrically power assisted cycles (EPACs) is a one more example of technological progress, which nevertheless must remain untouched in terms of a legal intervention for the purposes of the motor third party liability regulation.

It is inevitably important to determine not only the legal area where technological development takes place, but there is also a necessity to invest in both human and financial recourses in order to provide with the legal regulation of the concerned matter. Accordingly, the sector which consists of the AVs and CAVs entering the European Union market must be considered as a new developed product, which closely interacts with the range of the legal areas, such as motor third party liability regulation, product liability regulation and data protection. The analysis of the foreseeable conflicts as well as the ones which have already taken place might occur and it leads to the conclusion that legal regulation is inevitable in terms of both AVs and CAVs entering the market.

Motor Insurance Directive (MID)<sup>2</sup> addresses the uniform regulation of the motor third party liability (MTPL) within the European Union. Despite the number of developments performed in that area, there are still particular uncertainties existing within the regulation of motor third party liability among different member states. Whenever there is a claim for an uncertain regulation under the European Union legal act, national judicial authorities might refer to the Court of Justice of the European Union (hereinafter CJEU) bringing a disputable issue for further interpretation. Following the above-stated procedure, the Court of Justice of the European Union provided with an absolutely new interpretation of a concept 'vehicle' for the purposes of the Motor Insurance Directive within its Judgment *Damijan Vnuk v Zavarovalnica Triglav d.d. (Vnuk)*<sup>3</sup>.

*Vnuk* judgment should be considered to be a breakpoint of the previous Motor Insurance Directive application. The judgment has changed the essential terms of the MID broadening the scope of the 'vehicle' and 'use of a vehicle'. Following the *Vnuk* judgment in particular, the broadened scope of a 'vehicle', European Commission provided with the Inception Impact Assessment (hereinafter REFIT review)<sup>4</sup> addressing upcoming and necessary re-consideration of the Motor Insurance Directive and also including electrically power assisted cycles (EPACs) within the scope of a 'vehicle' for the purposes of the MID. It must be admitted that EPACs do not provoke any conflicts (oppositely to the AVs and CAVs) that would address the necessity to proceed with the legal regulation of the concerned issue at a new level, such as motor third party liability regulation. Coming back to the classic laws which have been qualitatively developed within the last decades, it should be noticed that all conflicts which have already taken place and the ones foreseeable in future including the interaction with the electrically power assisted cycles are the subject to be regulated by civil tort law (in terms of a domestic law of each member state).

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<sup>2</sup> European Parliament and Council Directive (EC) 2009/103 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 [2009] OJ L 263.

<sup>3</sup> *Damijan Vnuk v Zavarovalnica Triglav d.d.*, Case C-162/13 [2014] ECLI:EU:C:2014:2146.

<sup>4</sup> European Commission Inception Impact Assessment 'REFIT review of the Motor Insurance Directive' [2017] Q4 2017 Ref. Ares/2017/3714481.

Bearing in mind a divergent view upon the technologies which are entering the market, there is a necessity (1) to provide with the outside of the scope of the Motor Insurance Directive regulatory solution with regard to the electrically power assisted cycles (EPACs) as a product of technological development. It is also essential (2) to provide with the possible outcomes which might occur as a consequence of EPACs' direct inclusion within the scope of a 'vehicle' for the purposes of the Motor Insurance Directive.

### **1. Inclusion of the EPACs into the scope of a 'vehicle'<sup>5</sup>: existing risks**

The European Cyclists' Federation (hereinafter ECF) provided with its ECF Position Paper on Motor Vehicle Insurance Directive. It<sup>6</sup> states that within the REFIT review the European Commission should exclude electrically power assisted cycles (EPACs) from the scope of the 'vehicle' for the purposes of the Motor Insurance Directive for a number of reasons, including the fact that EPACs are not motorized vehicles, since they are operated without constant power, by means of no pedal or power. Moreover, the direct inclusion of EPACs within the scope of a 'vehicle' for the purposes of the MID will provide with the sufficient impact on the decrease of the number of cyclists, whereas might affect both environmental and health issues.

In accordance with the European Cyclists' Federation Paper, the inclusion of the EPACs into the scope of the motor third party liability regulation will cause "[b]urdens on regulatory authorities, confusion amongst millions of riders, and a patchwork of regulations and rules across the EU".<sup>7</sup> Moreover, the majority of e-bikers possess either personal or travel insurance, which might arise the double-compensation cases and even fraudulent acts towards the reception of double-indemnification. The inclusion of the EPACs will require to amend not only the Motor Insurance Directive itself, but also to establish a new act guiding the member states in the concerned subject-matter. Besides, it will require from competent bodies of the member states to fully re-consider a motor insurance sector.

In May 2018, European Commission provided with the Proposal (hereinafter Proposal)<sup>8</sup> to amend Directive 2009/103/EC as a consequence of the *Vnuk* judgment along with the further *Rodrigues de Andrade C-514/16*<sup>9</sup> and *Torreiro C-334/16*<sup>10</sup> cases clarifying

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<sup>5</sup> This statement shall be considered as inclusion of the electrically power-assisted cycles into the scope of a 'vehicle' for the purposes of the Motor Insurance Directive.

<sup>6</sup> C. Woolsgrove, European Cyclists' Federation 'ECF Position Paper on Motor Vehicle Insurance Directive' [2017]. Retrieved August 19, 2018 from <[https://www.google.it/url?sa=t&rct=j7q=7esrc=s7source=web&cd=107ved=0ahUKEwiTwDetcPYAhVlKywKHRCEAW0QFghxMAk7url=https%3A52F52Fecf.com%2Fsite%2Fecf.com%2Ffiles%2FInsurance%2520Position%2520Paper\\_2017\\_final%2520draft.docx&usg=AOvVaw2Ke4K1v6kQnjS7yj6RZiai](https://www.google.it/url?sa=t&rct=j7q=7esrc=s7source=web&cd=107ved=0ahUKEwiTwDetcPYAhVlKywKHRCEAW0QFghxMAk7url=https%3A52F52Fecf.com%2Fsite%2Fecf.com%2Ffiles%2FInsurance%2520Position%2520Paper_2017_final%2520draft.docx&usg=AOvVaw2Ke4K1v6kQnjS7yj6RZiai)>.

<sup>7</sup> C. Woolsgrove, European Cyclists' Federation 'ECF Position Paper on Motor Vehicle Insurance Directive' [2017]. Retrieved August 19, 2018 from <[https://www.google.it/url?sa=t&rct=j7q=7esrc=s7source=web&cd=107ved=0ahUKEwiTwDetcPYAhVlKywKHRCEAW0QFghxMAk7url=https%3A52F52Fecf.com%2Fsite%2Fecf.com%2Ffiles%2FInsurance%2520Position%2520Paper\\_2017\\_final%2520draft.docx&usg=AOvVaw2Ke4K1v6kQnjS7yj6RZiai](https://www.google.it/url?sa=t&rct=j7q=7esrc=s7source=web&cd=107ved=0ahUKEwiTwDetcPYAhVlKywKHRCEAW0QFghxMAk7url=https%3A52F52Fecf.com%2Fsite%2Fecf.com%2Ffiles%2FInsurance%2520Position%2520Paper_2017_final%2520draft.docx&usg=AOvVaw2Ke4K1v6kQnjS7yj6RZiai)>.

<sup>8</sup> European Commission Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/103/EC of the European Parliament and the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability [2018] COM 336 final.

<sup>9</sup> Isabel Maria Pinheiro Vieira Rodrigues de Andrade, Fausto da Silva Rodrigues de Andrade v José Manuel Proença Salvador, Crédito Agrícola Seguros — Companhia de Seguros de Ramos Reais SA, Jorge Oliveira Pinto Case C-514/16 [2017] ECLI:EU:C:2017:908.

the scope of a 'vehicle' and 'use of a vehicle' for the purposes of the Directive. Analysing the Proposal, it becomes clear that the empowered institution added only Article 1a, the so-called 'use of a vehicle', leaving the shield for further uncertainties, having broadened the scope of a 'vehicle' itself.<sup>11</sup>

In case European Commission insists on the EPACs inclusion into the scope of a 'vehicle' for the purposes of the Motor Insurance Directive in the light of the CJEU practice in future, all e-bikes within the European Union territory without compulsory insurance might become illegal. ECF states that such a regulation might become a huge error having its effect on a healthy, naturally friendly class of transport, even though European Commission stated that there will be no effect in respect to the environmental and health consequences. Therefore, ECF is seeking to keep EPACs out of scope of the 'vehicle' for the purposes of the Motor Insurance Directive having a maximum continuous rated power of less than or 250 W in accordance with the Regulation 168/2013<sup>12</sup>.

For instance, in the light of the broadened scope of a 'vehicle' in the *Vnuk* judgment, the UK government, within the REFIT review<sup>13</sup> of the Motor Insurance Directive, has insisted on the omission of the electric bicycle as a class of vehicles, since in no way an electric motor device in the absence of an engine and without being mechanically propelled can be treated as a vehicle. Naturally, the necessity of obliging cyclists to pay *premium* in terms of compulsory motor third party liability insurance would break a domestic policy which promotes the development of this class of alternative transport instead of a classic vehicle (passenger car).

The ECF pointed out that since the EPACs had already been excluded from the European Community Motor Vehicle Type Approval in accordance with the Directive 2007/46/EC<sup>14</sup>, thus, it is another reason why it is imperative to keep the one out of the scope of the 'vehicle' for the purposes of motor third party liability regulation. E-bike is a subject included into the bicycle classification in the majority of the European Union member states, whereas such an alternative transport is named as 'a pedal cycle' instead of 'a vehicle', and the rider is called 'a cyclist', but not 'a driver'.

It has to be said that in order to make a firm decision whether to include EPACs into the scope of the motor third party liability regulation or to keep the previous status of e-bikes (as a class of alternative transport out of scope of a 'vehicle'), the consequences of road collisions must be analysed at first. As an outcome of the regular collision involving a vehicle and an e-bike, a rider will be seriously injured in nine cases out of ten, while the driver of a passenger car might suffer light injuries or none at all. In case an e-bike is involved into a

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<sup>10</sup> José Luís Núñez Torreiro v AIG Europe Limited, Sucursal en España and Unión Española de Entidades Aseguradoras y Reaseguradoras (Unespa) Case C-334/16 [2017] ECLI:EU:C:2017:455.

<sup>11</sup> This statement shall be considered strictly within the frames of the European Commission Proposal without prejudice to further frameworks established after the Proposal.

<sup>12</sup> European Parliament and Council Regulation (EU) 168/2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles [2013] OJ L 60.

<sup>13</sup> Road Safety, Standards & Services Director B. Rimmington, 'REFIT review of the Motor Insurance Directive' [2017] (ARES 2017) 3714481, Retrieved September 15, 2018 from <[https://www.google.it/url?sa=t&rct=j&q=7esrc=s7source=wev7cd=27ved=0ahUKEwjRyuHOiL\\_YAhUC66QKHqHBAgQFggvMAE&url=http%3A%2F%2Fec.europa.eu%2Finfo%2Fflaw%2Fbetter-regulati on%2Ffeedback%2F6729%2Fattachment%2F090166e5b48b83b1\\_cs&usg=AOvVaw0EZAiOOp4Nx\\_CVZH1fcJ](https://www.google.it/url?sa=t&rct=j&q=7esrc=s7source=wev7cd=27ved=0ahUKEwjRyuHOiL_YAhUC66QKHqHBAgQFggvMAE&url=http%3A%2F%2Fec.europa.eu%2Finfo%2Fflaw%2Fbetter-regulati on%2Ffeedback%2F6729%2Fattachment%2F090166e5b48b83b1_cs&usg=AOvVaw0EZAiOOp4Nx_CVZH1fcJ)>

<sup>14</sup> European Parliament and Council Directive (EC) 2007/46 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) [2007] OJ L 263.

collision with a heavy truck, the former might have injuries incompatible with life, while a truck's driver, perhaps, will not have any personal injuries at all. For instance, in accordance with the statistics data published on the UK governmental database portal, per billion vehicle miles, 1,160 pedal cyclists are killed or seriously injured, in comparison to 25 car drivers.<sup>15</sup> Bearing in mind the above-stated statistics and the data addressing the accidents with the participating of classical cyclists, it has to be said that the collisions involving e-bikes might cause even harder injuries due to the higher speed EPACs operate. It appears that an e-bike rider shall be the subject of additional safeguard coverage rather than a policyholder that must not just keep themselves safe, but to monetary disbenefit from the established policy. Additional safeguard measures minimizing the number of fatal crashes including riders should be established. While it is an easier aspect with the classic cycles in terms of the establishing of additional side roads suitable for riders, the e-bikes roads should be considered as the ones, which are more complicated to achieve. Side roads for EPACs must be free of pedestrians at any time in order to avoid possible injuries which might occur in case an e-bike rider collides with a pedestrian. Bearing in mind the speed limits integrated into the e-bikes technology, roads illuminating possible contacts with either pedestrians or classic cyclists shall be constructed.

Technological development inquires additional supervision and decisions in particular cases. EPACs and their inclusion into a free circulation on the common market must be considered as a new duty to be put on each member state in order to ensure a safety level of riding. Direct inclusion of the electrically power assisted cycles into the scope of a 'vehicle' for the purposes of the Motor Insurance Directive will not solve initial danger to riders' health and life.

## **2. Foreseeable consequences**

Electrically power assisted cycles, as a class of alternative transport, are not included into the scope of a 'vehicle' for the purposes of the Directive 2006/126/EC<sup>16</sup> on driver licenses. For the purposes of the Directive 2006/126/EC the 'power-driven vehicle' is "[a]ny self-propelled vehicle running on a road under its own power, other than a rail-borne vehicle"<sup>17</sup>, which is create to some extent a threshold for particular classes of alternative transport (such as EPACs that are not self-propelled under their own power), which cannot be covered for the purposes of the above-mentioned Directive. It should be emphasized that EPACs have maximum of 250 W of power limitation, that is, as a matter of fact, might be achieved by riders operating a classic bicycle without any additional assistance. The European Committee for Standardization (CEN)<sup>18</sup> confirmed that an electrically power assisted cycle is a class of alternative transport with the pedal assist that is accelerating up to 25 km/h and it must be considered as a bicycle. At the same time bicycles were never considered as a vehicle neither within the REFIT review nor in the light of the CJEU jurisprudence. Oppositely, bicycles as a type of transport and cyclists themselves are

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<sup>15</sup> United Kingdom Department for Transport statistical data on casualties involved reported road accident (RAS30) 'RAS30070: Relative risk of different forms of transport' [2016]. Retrieved February 10, 2019 from <[www.gov.uk/government/statistical-data-sets/ras30-reported-casualties-in-road-accidents](http://www.gov.uk/government/statistical-data-sets/ras30-reported-casualties-in-road-accidents)>

<sup>16</sup> European Parliament and Council Directive (EC) 2006/126 on driver licenses [2006] OJ L 403.

<sup>17</sup> European Parliament and Council Directive <...>.

<sup>18</sup> European Committee for Standardization, Cycles – Electrically power assisted cycles – EPAC Bicycles [2017] EN 15194:2017, 00333036. Retrieved September 20, 2018 from <[https://standards.cen.eu/dyn/www/f?p=204:110:0:::FSP\\_PROJECT:39396&cs=16DF8E47F41EAC1DBC86BEAA129F6C67C](https://standards.cen.eu/dyn/www/f?p=204:110:0:::FSP_PROJECT:39396&cs=16DF8E47F41EAC1DBC86BEAA129F6C67C)>

considered as highly protected subjects under both valid motor third party liability law and jurisprudence addressing road traffic collisions.

In the majority<sup>19</sup> of the European Union member states cyclists are considered as a special category of victims (or privileged)<sup>20</sup>, hence entitled to a higher protection level (in some cases unless the gross negligence is proved). For instance, in accordance with the strict liability rules in France, in case a road traffic collision involves a cyclist, the latter will be always entitled to receive a full compensation with regard to the non-pecuniary losses only. Even though cyclist's liability might be proved, the latter will be still a subject who receives a full compensation with regard to the personal injuries claim. However, in case the third party was able to prove that a cyclist intended to commit a suicide (or has committed suicide), the first party shall be exempt from any liability at all. It has to be said that a French example provides with one of the stickiest rules with regard to the motorised transport involved into the road traffic collision with a cyclist. At the same time in Germany, in case a cyclist found liable for causing a traffic accident, the former is still entitled to claim for a compensation. However, the amount might also vary with regard to the negligence/gross negligence level, e.g. overtaking manoeuvre (1/3) performed by cyclist during the left turn manoeuvre (2/3) performed by a car driver.<sup>21</sup> It has to be said that within the above-mentioned example of the German court practice, the District Court (Landgericht Saarbrücken) has also confirmed that e-bikes must be considered as bicycles in a legal sense and in no way to be classified as motor vehicles.

In the Netherlands, strict liability is integrated within the Article 185<sup>22</sup> of the *Wegenverkeerswet*, where it has to be said that 'strict liability' as the term does not apply; instead it is more likely to be interpreted as a 'duty to cover losses sustained by cyclist'. The mechanism does not automatically put the motorised driver 100% liable, as a threshold procedure applies. In case a cyclist made no mistake, the liability will pass to a motorised driver in full. However if the first party proves that a cyclist made a mistake, the liability might be 50% split. In case the driver of a vehicle did not commit any mistake, the liability is still can be 50% split if a cyclist is over the age of 14. Otherwise, (when a cyclist is under the age of 14) the driver of a vehicle will be held 100% liable for the accident, unless the former is able to prove that a cyclist under the age of 14 caused the collision on purpose. Naturally, appears the issue whether the cyclist of the electrically power assisted cycle will be equalized to the driver of a vehicle; and in this case whether it shall be considered as annulment of the previously existed privileges to cyclists (French, German and Dutch

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<sup>19</sup> Such member states as France, the Netherlands, Belgium, Germany, Denmark, Sweden and Norway has introduced strict liability system along with the privileges to both cyclists and pedestrians at the high level. The rest of the European Union member states have also integrated particular strict liability rules within the domestic law, however at the lower level. The only Romania, Cyprus, Malta, Ireland and United Kingdom have not integrated strict liability system with regard to the incidents involving cyclists into the domestic law.

<sup>20</sup> 'Special categories of victim' also indicated within the Motor Insurance Directive in its Article 12 with the same title 'special categories of victim'. In accordance with the Article 12 (3) "[T]he insurance referred to in Article 3 shall cover personal injuries and damages to property suffered by pedestrians, cyclists and other non-motorised users of the roads who, as a consequence of an accident in which a motor vehicle is involved, are entitled to compensation in accordance with national civil law". Accordingly, cyclists are granted the status of special category of victims in the light of both Motor Insurance Directive and domestic motor third party liability law of the majority of the EU member states.

<sup>21</sup> Keine Einstufung von E-Bikes als Kraftfahrzeug, Das Landgericht Saarbrücken, Urteil vom 15.11.2013 - 13 S 107/13.

<sup>22</sup> Artikel 185, Hoofdstuk XII. Civiele aansprakelijkheid. Wet van 21 april 1994, houdende vervanging van de Wegenverkeerswet (Wegenverkeerswet 1994 WVV). BWBR0006622.

examples) or we shall consider e-bikes cyclists totally divergent from the cyclists of the classic bicycles. In terms of the first case scenario, cyclists will be removed from the provisions with regard to the special victims' category. In such a case, it shall be considered as a worsen regulation with regard to the sensitive category of victims. In the light of the second case scenario, where cyclists of the electrically power assisted cycles are strictly distinguished from the cyclists of the classical bicycles, it shall be considered as a discriminatory measurement.

The ECF has provided with the statement that European Commission is now challenging the natural choice of the individuals to travel with a cycle instead of a classic vehicle (passenger car). European Commission's position in this matter shall be considered as a will to establish imperative *premium* to be paid for the compulsory motor third party liability insurance. Bearing in mind that there are millions of EPACs, which have already been sold throughout the European Union, it might also result in a significant non-compliance causing a huge range of incidents involving uninsured transport. In general, the imposition of an obligation to purchase an insurance policy for such classes of alternative transport as e-bikes in the nearest future will lead to the decision to insure also classic bicycles.

Naturally, people are favouring bicycles instead of vehicles while travelling short distances. Accordingly, individuals will prefer a classic vehicle (passenger car) instead of an e-bike for a long distance trip. In case European Commission (or any other empowered European Union institution) ever again in future will insist on the imposition of compulsory insurance for classes of alternative transport such as e-bikes, individuals would probably prefer a vehicle to a bicycle in order to avoid double charges for insurance. Despite the fact that insurance *premium* for an e-bike is hardly to be as much expensive as for the rest of the vehicles, individuals will be willing to avoid paying twice. In case individuals changed alternative transport, such as an e-bike to a vehicle, the number of vehicles on roads would obviously increase bringing new numbers into the road traffic collisions' statistics.

Only two member states such as Malta and Northern Ireland have put strict restrictions on the usage of the electrically power assisted cycles so far providing for the burden to purchase compulsory insurance. Thus, we can observe the outcome, namely a huge decrease in the EPACs sales from 84% in 2012 down to 15% in 2015.<sup>23</sup> That can be foreseen as a future of the rest of the European Union member states in case a class of alternative transport (EPACs) will be included into the scope of a 'vehicle' for the purposes of the Motor Insurance Directive.

Inclusion of e-bikes into the scope of a motor third party liability regulation at the European Union level might invoke the burden of additional administrative actions to be taken at the domestic level, as well as increase in bureaucracy. Here, Germany is in the possession of approximately 3,6 million of the electrically power assisted cycles. In accordance with the statistics data<sup>24</sup> that was 40 % of EU e-bikes up to 2015 while 2016

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<sup>23</sup> C. Woolsgrove, European Cyclists' Federation 'ECF Position Paper on Motor Vehicle Insurance Directive' [2017]. Retrieved August 19, 2018 from <<https://www.google.it/url?sa=t&rct=j7q=7esrc=s7source=web&cd=107ved=0ahUKEwiTwDetcPYAhVlKYw>

KHRCEAW0QFghxMAk7url=https%3A52F52Fecf.com%2Fsite%2Fecf.com%2Ffiles%2FInsurance%2520Position%2520Paper\_2017\_final%2520draft.docx&usg=AOvVaw2Ke4K1v6kQnjS7yj6RZiai>

<sup>24</sup> Bicycle industry in Europe, Vehicles & Road Traffic, Figure 'Distribution of electrically powered assisted cycle (EPAC) sales in the European Union (EU-28) in 2015 by country' [2015] Retrieved October 3, 2018 from <<https://www.statista.com/statistics/561566/epac-sales-in-the-european-union-eu-28-by-country/>>

sales data<sup>25</sup> shows that 605 000 EPACs were sold up to July 2017 keeping Germany on the first position with the total 36%. The inclusion of electrically power assisted cycles into the scope of a 'vehicle' would mean the necessity to register and license all cycles circulating within the state, which might lead to the burden of an additional huge amount of both material and human resources.

Each step at the European Union level requires a particular number of both human and financial resources within each member state must reflect its high justification (for instance, proofs that particular legal requirements might decrease the number of further undercompensated victims of road traffic collisions). Analysing the case with regard to the inclusion of the electrically power assisted cycles into the scope of a 'vehicle' for the purposes of the motor third party liability regulation, it has to be said that no justification has been found.

In the light of the feedbacks<sup>26</sup> published within the official European Commission's website it became clear that the majority of the member states through particular representatives have expressed their negative position and firm disagreement with regard to the inclusion of e-bikes into the scope of a 'vehicle' for the purposes of the Motor Insurance Directive. Until this day, in particular 14 October 2018, there are 530<sup>27</sup> feedbacks available within the field addressing REFIT review in general, where 82 feedbacks do not concern electrically power assisted cycles, 3 respondents provided with the consent position, other 2 (respondents from Belgium and Finland) agreed upon the *status quo* approach to develop further regulation and the rest 443 respondents<sup>28</sup> are strongly against the inclusion of the e-bikes into the scope of the motor third party liability regulation at the European Union level.

For instance, French Insurance Federation provided with its consent with regard to the inclusion of all new electric classes of alternative transport into the scope of a 'vehicle', hence within the motor third party liability regulation in terms of the Motor Insurance Directive. However, the one has reminded European Commission that a particular class of transport, such as 'pedelecs'<sup>29</sup> cannot be considered as a vehicle for the purposes of the Motor Insurance Directive. Here, French Insurance Federation has called to a strict necessity to distinguish 'pedelecs' from the electric class of alternative transport.

On the other hand, Association of Mutual Insurers and Insurance Cooperatives in Europe (AMICE) Belgium provided with the recommendation addressing European Commission to follow *status quo* approach with regard to all electrically assisted transport, including electrically power assisted cycles. Here, such an approach might be the case when it does not concern a victim's right to compensation. Since motor insurance liability aimed to

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<sup>25</sup> Confederation of the European Bicycle Industry (CONEBI), 'European Bicycle Market. 2017 Edition. Industry & Market Profile (2016 statistics)' [2017]. Retrieved October 10, 2018 from <<http://asociacionambe.es/wp-content/uploads/2014/12/European-Bicycle-Industry-and-Market-Profiles-2017-with-2016-data.pdf>>

<sup>26</sup> European Commission's website-Feedbacks: 'REFIT review of the Motor Insurance Directive' [2018]. Retrieved October 14, 2018 <from [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3714481/feedback\\_en?p\\_id=237387](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3714481/feedback_en?p_id=237387)>

<sup>27</sup> Chart of feedbacks sorted by topic and expressing either "for" or "against" position of respondents. Feedbacks are taken from European Commission's website – Feedback received on: REFIT review of the Motor Insurance Directive.

<sup>28</sup> Respondents from the EU member states: France, Germany, United Kingdom, The Netherlands, Sweden, Czech Republic, Bulgaria, Hungary, Spain, Italy, Portugal, Belgium, Luxembourg, Greece, Croatia, Malta, Switzerland, Finland, Slovakia, Slovenia, Poland, Austria, Ireland, Lithuania, Latvia, Estonia, Romania.

<sup>29</sup> French Insurance Federation 'Position Paper referring to REFIT Review of the Motor Insurance Directive' [2018] EU Transparency Register No. 5149794935-37.



ensure the right to compensation itself, *status quo* approach might only worsen victims' status provoking huge delays while awaiting for a particular solution. Bearing in mind that power cycles belong to the same class of vehicles as motorcycles, the Motor Insurers' Centre of Finland together with the Finance Finland believe that power cycles shall be included into the scope of a 'vehicle' for the purposes of the Motor Insurance Directive, however, power cycles<sup>30</sup> should be strictly distinguished from the pedal assisted cycles<sup>31</sup>.

### 3. E-bikes regulation at the European Union level

After precise evaluation of the European Commission's Proposal, on 28<sup>th</sup> January (2019) European Parliament has provided with the Report (hereinafter Report)<sup>32</sup> on the proposal amending Directive 2009/103/EC. In accordance with the Amendment 23<sup>33</sup> of the Report, electrically power assisted cycles (or e-bikes), as well as other classes of alternative transport should be considered as outside the scope of a 'vehicle' for the purposes of the Motor Insurance Directive as long as those remain outside the scope of the Regulation (EU) 2018/858<sup>34</sup>, Regulation (EU) No 167/2013<sup>35</sup> or Regulation (EU) No 168/2013. European Parliament justifies the decision taken with regard to the electrically power assisted cycles as a class of alternative transport which serves for the purposes of better environmental conditions. It has to be said that European Parliament also justified the decision, as e-bikes are hardly to cause significant losses in terms of both material damages and personal injuries. In the light of the drafted Recital 3 (a)<sup>36</sup> it shall be considered disproportionate to impose additional monetary burden on e-bikes riders. However, it has to be noticed that European Parliament keeps identifying electrically power assisted cycles as "some motor vehicles".

It should be mentioned that electrically power assisted cycles shall be ultimately finalized as a subject which can not be related to the motor third party liability regulation. Despite the fact European Parliament considered the previous researches in the concerned

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<sup>30</sup> Power cycles that are equal or less power rated than 250 W with the speed that does not exceed 25 km/h.

<sup>31</sup> Motor Insurers' Centre of Finland 'Joint statement of Finnish Motor Insurers' Centre and Finance Finland regarding Proposal for a Directive amending Directive 2009/103/EC' Feedback reference F13288 [2018] Transparency register number 7328496842-09.

<sup>32</sup> European Parliament Report on the proposal for a directive of the European Parliament and of the Council amending Directive 2009/103/EC of the European Parliament and the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability [2018] COM/2018/0336.

<sup>33</sup> European Parliament Report <...>, Article 2 1(a) "[T]his Directive shall only apply to the vehicles covered by Regulation (EU) 2018/858, Regulation (EU) No 167/2013 or Regulation (EU) No 168/2013. This Directive shall not apply to vehicles that are intended exclusively for use in the context of participation in a competitive sport activity, or in related sport activities, within a closed area".

<sup>34</sup> European Parliament and the Council Regulation (EU) 2018/858 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC [2018] OJ L 151.

<sup>35</sup> European Parliament and the Council Regulation (EU) No 167/2013 on the approval and market surveillance of agricultural and forestry vehicles [2013] OJ L 60.

<sup>36</sup> European Parliament Report on the proposal for a directive of the European Parliament and of the Council amending Directive 2009/103/EC of the European Parliament and the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability [2018] COM/2018/0336. Recital 3 (a) "[S]ome motor vehicles such as electric bicycles and segways are smaller and are therefore less likely to cause significant damage to persons or property than others...".

subject matter, hence placed the e-bikes outside the scope of the Motor Insurance Directive, it does not necessarily mean that this issue will never appear again. Accordingly, this Contribution serves for the purposes to put a strict border between the motor third party liability and electrically power assisted cycles, especially in terms of new developments such as AVs and CAVs requiring all attention of the law-making power at motor insurance sector have been placed in the common market.

While confirming that an e-bike shall not be treated as a 'vehicle' for the purposes of the Motor Insurance Directive, European Parliament has left the unsolved issue with regard to the further safeguard measures in that concern. It is not enough just to keep the alternative transport outside the scope of the motor third party liability coverage. Instead, it is the case where particular supplementary actions, not necessarily directly connected to the regulatory measures, have to be taken. The inclusion of electrically power assisted cycles within free market circulation should be treated as a technological development, which must be assisted along with the supplementary actions. Those steps shall ensure a safe usage of e-bikes for all riders, drivers and pedestrians. Seeking to minimize both pecuniary and non-pecuniary losses sustained by riders, drivers or pedestrians, it is important to keep regular traffic away from e-bikes (such as construction of a separate tracks including particular upgrades for the ones which have already been constructed for classic bicycles). Having been analysed in the previous sections for the purposes of this contribution, e-bikes shall be granted not just separate status of a class of alternative transport that falls outside the scope of a 'vehicle' for the purposes of motor third party liability regulation, but shall be supported by integrated safeguard measures, which might prevent traffic collisions.

Keeping EPACs away from both traffic roads and sidewalks does not solve the issue with regard to the particular accidents, which might take a place when other classes of alternative transport intersect. For instance, the rapid growth in electric scooters sales in the common market has already changed the traffic in the majority of the European Union member states. Electric scooters are fast enough and it also makes them a class of transport difficult to brake on time, which finally might cause losses. At the same time, electric scooters are small enough and it becomes rather difficult to notice them on time in order to prevent a collision. It must be admitted that Lithuania is one of the examples of the countries where sales in an electric scooters sector have grown significantly during the last years. As a result, the particular social interrogations have been made in order to find out whether cyclists consider electric scooters to be an obstacle or not. In accordance with the statements prepared by the respondents, electric scooters shall be considered as a class of alternative transport challenging a current situation between public traffic and side walks. Electric scooters have a negative effect on the cyclists usage of tracks as they are operated on high speeds (scale addressing tracks for classes of alternative transport only), hence in case of a collision the losses are usually more significant in comparison to the ones caused by an accident between two cyclists. Taking into account the size of electric scooters it is usual that cyclists are unlikely to notice them in order to avoid a collision. Accordingly, keeping electrically power assisted cycles in the right place (simply away from both drivers and pedestrians) cannot be considered as a safety measures solution, instead it is necessary to ensure safety usage of all classes of alternative transport in order to prevent collisions while such means of transport intersect. Due to the above-mentioned reason new tracks which are wider and which will serve a larger number of users, for classes of alternative transport shall be either constructed or upgraded.

It has to be said that years ago people could hardly imagine separated tracks serving for the purposes of cyclists' safety rides. It might be a case that current developments have led to the same necessity to introduce new actions with regard to the safety measures.

Technological progress does not necessarily mean an absence of additional actions to serve for the purposes of that particular progress. Hence, in case the particular product of technological progress enters the market, the society must be ensured that all safety measures are also guaranteed. Otherwise, it might be a claim that the particular product of technological development is not worth entering into a free circulation in the common market. Taking into account the overall progress we have reached in 21 century, legal intervention cannot remain as classic as it used to be. It is imperative to integrate non-standard decisions of regulation for the purposes of non-standard developments. Accordingly, considering its status as a class of alternative transport, EPAC requires alternative actions for the purposes of a qualitative maintenance of technological progress.

## **Conclusions**

High technologies and technological progress itself do not always mean inevitable necessity to provide with the legal regulation in a particular field. Instead, both human and financial resources should be concentrated on the dimension where conflicts are hardly or even impossible to be solved without the necessary intervention of the qualitative legal regulation.

Oppositely to both European Commission's REFIT review and Proposal, electrically power assisted cycles (EPACs or e-bikes) must remain outside the scope of a 'vehicle' for the purposes of the Motor Insurance Directive seeking to avoid further member states losses of both material and human resources, commercial insurance collapse as well as social, environmental, bureaucratic outcomes.

The tracks which serve the classes of alternative transport shall be either constructed or upgraded illuminating possible intersects with either pedestrians or vehicles. Once neither public traffic roads nor sidewalks are suitable for electrically power assisted cycles (as well as for other classes of alternative transport), there is a top agenda to proceed with the construction of additional tracks that shall ensure safety measures and minimize the number of injuries and fatal collisions.

Technological development inquires additional supervision and decisions in particular cases. EPACs and the inclusion of such a class of alternative transport into a free circulation must be considered as a new duty to be put on each member state in order to ensure a safe level of riding. Although the inclusion of e-bikes into the scope of a 'vehicle' for the purposes of the Motor Insurance Directive will not decrease initial danger to riders' health and life, the maintenance of particular safety measures will do.

Taking into account the overall progress we have reached in 21 century, legal intervention cannot remain as classic as it used to be. It is imperative to integrate non-standard decisions of regulation for the purposes of non-standard developments. Electrically power assisted cycles, as a class of alternative transport, requires alternative actions for the purposes of a qualitative maintenance of technological progress.

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