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AMENDMENTS IN THE LEGISLATIVE FRAMEWORK FOR MOTOR LIABILITY INSURANCE IN THE REPUBLIC OF CROATIA

Abstract

The latest amendment to the Croatian Compulsory Traffic Insurance Law from 2023 introduces significant changes regarding motor liability insurance. A substantial part of these amendments was necessary due to the incorporation into Croatian law of provisions from Directive (EU) 2021/2118 of the European Parliament and the Council of November 24, 2021, amending Directive 2009/103/EC on motor vehicle civil liability insurance and the implementation of the obligation to insure against such liability. However, some other amendments within this legislative change, which are not motivated by alignment with EU law, are also very significant. For the first time, compulsory liability insurance for damage caused by the use of automated vehicles is regulated. Changes are also evident regarding exclusions from insurance and the loss of insurance rights. Finally, the procedure for resolving the compensation claim of the injured party is more precisely regulated. All of these changes aim to improve the protection of injured parties and the policyholders themselves. After the introductory section, which explains the purpose of compulsory motor liability insurance and the legal sources governing it at the international, European, and national Croatian levels, the author systematically analyzes all significant elements of the latest legislative amendment. In conclusion, the author evaluates to what extent the goals set by this amendment have been achieved and provides predictions for the future regulation of the most important issues in this field.

Keywords: *Motor liability insurance – Directive (EU) 2021/2118 – Law on Compulsory Traffic Insurance, Amendments – Automated vehicles*

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I Introductory Considerations – The Purpose of Compulsory Motor Liability Insurance and Its Legal Framework

Liability insurance for damages caused by the use of a motor vehicle, commonly known as motor liability insurance or, simply, ML insurance, is regulated as mandatory insurance in almost all countries. This means that vehicle owners or users are legally required to enter into a contract with an insurer to cover their liability for damages caused by the use of these vehicles. The existence of such a liability insurance contract must be established for each vehicle and is a necessary condition for the vehicle's registration in the records of the competent bodies, as well as for the vehicle's legal participation in traffic. Failure to comply with this obligation results in potential civil and misdemeanor liability for the vehicle owner or user.

The very fact that any legal system mandates insurance as compulsory highlights its significant social and economic importance. In general, national and/or international legal systems prescribe certain insurance as compulsory when they consider that parties to certain legal relationships need special legal protection. In this context, motor liability insurance protects the injured parties, i.e. those who have suffered damage due to death or bodily injury, or property damage as a result of vehicle use. The injured parties have the right to seek compensation not only from the person legally identified as liable for the damage (the owner or user of the vehicle that caused the damage) but also from the insurer with whom the owner or user of that vehicle has contracted liability insurance. This makes the likelihood of compensation for the injured party more certain, even in situations where the person liable for the damage has limited financial resources. The injured party gains another entity from which they can seek compensation. This entity is the insurance company (insurer), for which, generally speaking, the risk of insufficient asset value from which the damage can be compensated (up to the maximum amount provided by law or contract) is much lower than that of the party liable for the damage, especially if that party is an individual.[2]

[2] It should be noted that the obligation of the liable party (the tortfeasor) to compensate for the damage caused to an individual due to the use of the vehicle does not have the same legal basis as the obligation of the insurer of the tortfeasor's liability to do the same. The tortfeasor is required to do so because they are liable for the occurrence of the harmful event that caused the damage, which generally results in the obligation to compensate the damage to the injured party. The insurer is not liable for the harmful event, but their obligation to compensate the damage arises from the fact that they have entered into a liability insurance contract with the liable party, committing to compensate the injured party's damage instead of the tortfeasor, within the limits set by the contract and mandatory regulations. Therefore, the insurer's obligation is based on the insurance contract.In many countries, including Croatia, the injured party is already entitled, according to relevant legal provisions, to directly seek compensation from the insurer of the tortfeasor's liability (legally, this is known as a direct claim or, within court proceedings, a direct action – *actio directa*). This means that the specific insurer's obligation, although it would not exist

On the other hand, this insurance also protects the financial interest of the person liable for the damage. Namely, their property will, generally speaking, remain unreduced despite their liability for the damage, as the insurer with whom the liable party has previously contracted motor liability insurance will, within the limits prescribed by mandatory regulations and the insurance contract, compensate the injured party for the damage they suffered, instead of the liable individual.[3]

The idea of liability insurance for damages caused by the use of vehicles emerged in the United States in the late 19th century. At that time, it was still voluntary. At the beginning of the 20th century, the introduction of the legal obligation for this type of liability insurance primarily occurred in European countries.[4]

With the development of technology and the economy of international goods and passenger transport, alongside the increase in the number of vehicles, the need arose to standardize the issue of liability insurance on a continental (European) and even international level.[5] The goal was twofold. On one hand, it aimed to provide injured parties with the same legal position regarding their ability to claim compensation for damages, regardless of whether the damage was caused by a vehicle registered in their country of usual place of residence or in another country. On the other hand, it aimed to protect the liable party (the owner or user of the vehicle) so that, after entering into a liability insurance contract, they would have coverage regardless of whether the damage was caused in their country of usual place of residence or abroad.

In legal terms, the methods used to achieve this goal, which are still being implemented, are diverse, but at the same time interconnected. In this context, the following should be highlighted:

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without a prior liability insurance contract, is not defined solely by that contract, but also by the relevant legal provision. This legal provision must be in compliance with the applicable sources of European Union law, especially when it comes to the national legislation of a member state, such as the Republic of Croatia.

[3] There are certain exceptions to the above, which limit the insurer's obligation in terms of the maximum and predetermined amount of damage they are required to compensate based on mandatory regulations and the contract. These exceptions include those that exclude the insurer's obligation due to specific circumstances stipulated by law that existed at the time the damage occurred, for example, due to the actions of the injured party in the context of the damage's occurrence, or because the injured party was the driver of the vehicle that caused the damage, etc. Additionally, certain situations involving particularly severe violations of relevant regulations by the insured tortfeasor when causing the damage must be considered. In such cases, the insurer will first have to compensate the injured party, but then will have the legal right to seek partial or full reimbursement from their insured (the tortfeasor) for the amount previously paid to the injured party. This is referred to as the complete or partial loss of the insured's (tortfeasor's) rights under the insurance, *infra,* t. 3.

[4] The first country to introduce the legal obligation for motor liability insurance was Denmark in 1912. For more details: Marijan Ćurković, *Komentar Zakona o obveznim osiguranjima u prometu*, Engineering Bureau, Zagreb, November 2013, pp. 10-11.

[5] Jelena Kočović, Tatjana Rakonjac Antić, Marija Koprivica, Kristina Bradić,„Pravci razvoja tržišta osiguranja", *Tokovi osiguranja*, br. 3/2024, str. 536-548.

a) The international motor vehicle green card insurance system

This system was established by Recommendation No. 5 of the UN Economic Commission for Europe (UNECE) Inland Transport Committee in 1949, which came into effect on January 1, 1953. This recommendation called upon governments of member states to urge insurers in their countries to enter into agreements that would allow drivers to obtain liability coverage for damages caused by their vehicles in another (visited) country. Insurers in London established a central body to manage the Green Card System - the Green Card Bureau. The Green Card System is not based on agreements between states but rather on agreements between national bureaus of individual countries, which supply their members (insurers) with insurance documents (the so-called green cards). These insurers, when entering into insurance contracts, issue these green cards to their clients - policyholders (vehicle owners/users). Such insurance is valid in all other countries whose national bureaus have become members of the Green Card System.[6]

b) The European Convention on compulsory liability insurance for damage caused by the use of motor vehicles – The Strasbourg Convention, 1959.

The Strasbourg Convention was adopted under the auspices of the Council of Europe and entered into force on September 22, 1969. The contracting states are obligated to enact national law mandating compulsory liability insurance for damage caused by the use of motor vehicles, in accordance with the Convention. Although only four countries were initially bound by it (Austria, Denmark, Germany, and Greece), the Strasbourg Convention became a model for regulating this issue, not only in the national laws of many European countries but also for the regulation of this legal issue at the European Union level.[7]

c) European Union directives on compulsory motor liability insurance

The legal framework for compulsory motor liability insurance at the European Union level has been developed over decades through a series of directives on motor liability insurance. Seven such directives have been issued to date. The

[6] Over time, the Green Card System has evolved based on further agreements between national bureaus. Today, the vehicle's license plate from a country whose national bureau is a member of the system serves as proof that the vehicle in question has the appropriate liability insurance, which will be recognized by other member countries of the system in which the vehicle operates. For a more detailed historical and legal development of the Green Card System, see: Šime Savić, *Obvezno osiguranje od automobilske odgovornosti kao sredstvo zaštite potrošača*, Vizura, Zagreb, 2022, pp. 190-200.

[7] The text of the Strasbourg Convention, as well as all related information regarding the list of contracting states, is available at https://www.coe.int/en/web/Conventions/full-list?module=treaty-detail&treatynum=029, accessed: 1.7.2024. For more details on the significance and key provisions of the Strasbourg Convention, see: Slobodan N. Ilijić, "European Convention on Compulsory Insurance against Civil Liability in Respect of Motor Vehicles and European Union Law", *Insurance Trends*, No. 2/2020, pp. 82-84.

first was adopted in 1972, but for the purposes of this work, the sixth and seventh directives are particularly noteworthy:

- Directive 2009/103/EC of the European Parliament and Council of September 16, 2009, regarding insurance for civil liability in the use of motor vehicles and the enforcement of insurance obligations related to such liability (hereinafter: Sixth Directive)[8], and
- Directive (EU) 2021/2118 of the European Parliament and Council of November 24, 2021, amending Directive 2009/103/EC regarding insurance for civil liability in the use of motor vehicles and the enforcement of insurance obligations related to such liability (hereinafter: the 2021 Directive).[9]

The Sixth Directive does not introduce any original substantive changes compared to the previous five, but essentially serves as a legal source that codifies the provisions of the earlier directives, which is why it is often referred to as the Codifying Directive. However, it formally represents a separate source of European Union law, which, from the moment it comes into force, replaces the previous five directives.

As a codifying directive, the Sixth Directive regulates all important issues related to insurance against motor vehicle liability, such as the scope and amount of coverage, the persons who fall under the category of potential "insurance beneficiaries", the definition of an insured event, the reasons for coverage exclusion etc. Fundamentally, the core obligation of member states under the Sixth Directive is to take measures ensuring that civil liability for the use of vehicles regularly present in their territory is covered by insurance as prescribed by the Directive. The insurance must cover compensation for damages due to death or bodily injury of traffic victims, as well as damage to property, in at least the minimum amount specified in the Sixth Directive.[10]

The Sixth Directive excludes the driver (but not members of the driver's family regarding their bodily injuries) who is liable for the damage from the possibility of being a beneficiary of this insurance, i.e. having the damage they suffered compensated. In addition to the driver, insurance coverage is also denied to persons who do not have explicit or implicit approval for the use of the vehicle (e.g. in the case of a stolen vehicle, when passengers who voluntarily enter a vehicle that caused the damage, knowing it was stolen, lose their insurance coverage), persons who drive a vehicle without a driver's license, and persons who violate the legal

[8] *Official Journal of the European Union* L 263, 7.10. 2009.

[9] *Official Journal of the European Union* L 430, 2 December 2021. Unofficial (consolidated) version of the Sixth Directive, which includes amendments made by the 2021 Directive. Available at *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02009L0103-20231223*, accessed: 1.7. 2024.

[10] Articles 3 and 9 of the Sixth Directive. The Sixth Directive also prescribed the procedure for the automatic adjustment of insurance coverage in accordance with the European Consumer Price Index, which is implemented by the Commission.

technical requirements regarding the condition and safety of the vehicle in question. The premium paid by the policyholder must be consistent and valid for the entire duration of the contract throughout the EU.

Each injured party can submit a direct claim to the insurer of the vehicle owner liable for the damage, seeking compensation (direct lawsuit, *actio directa*, Article 18 of the Sixth Directive).[11] The insurer must respond to the claim within a maximum of three months from the submission of the claim (member states may prescribe a shorter period). If the insurer finds that the basis and amount of the claim are not disputed, they must provide the policyholder – the injured party – with a reasoned offer. If liability and/or the amount are disputed, the insurer must provide a reasoned (full or partial) rejection of the claim. All of these provisions are of a private law nature, regulating the rights and obligations between two private law entities – the injured party as the beneficiary of the insurance and the insurer.[12]

However, even after the adoption of the Sixth Directive, there remained a significant number of issues that emerged as contentious in the practice of motor vehicle liability insurance. In 2017, the Commission conducted an evaluation of the Sixth Directive and identified important areas in which the Directive should be amended and supplemented.[13] This was done with the 2021 Directive. member states were required to align their national laws with the 2021 Directive by 23 December 2023 at the latest.

In the Republic of Croatia, compulsory insurance for motor vehicle liability is regulated at the legal level by the Law on Compulsory Traffic Insurance (hereinafter:

[11] In fact, a non-contractual relationship is created by law (directive) between the liability insurer of the owner of a motor vehicle and the person who has suffered damage. The injured party can directly approach the insurer with a claim for compensation because this right is prescribed by the directive. The same source of law also regulates the content of their right towards the insurer, including the limits of the insurer's liability towards them.

[12] Jasenko Marin, „Pravo osiguranja", *Privatno pravo Europske unije - posebni dio* (editor Tatjana Josipović), Narodne Novine, Zagreb, 2022, pp. 1007-1010.

[13] This refers to a series of issues that required an amendment, such as compensation for damages in the case of the insolvency of the insurer who should compensate the harmed individual, the establishment of equal minimum amounts of insurance coverage, vehicle insurance verification, the use of claims certificates by the policyholder from the new insurance company, and the provision of information to the harmed individuals. The Commission also took the position that the text of the new Seventh Directive should incorporate the views of the Court of Justice of the European Union expressed in rulings on some important cases, particularly regarding the definition of the term "use of a vehicle," which was not defined in the Sixth Directive and had become contentious in practice. Finally, the Commission believed that the amended Directive should take into account technological advances in traffic, the emergence of new vehicles, and determine the potential need to adjust the legal framework for liability insurance to reflect their use, as outlined in recitals 1-6 of the preamble of the Directive from 2021. For a detailed review of the changes introduced by the 2021 Directive, see: Caroline Van Schoubroek, "European Harmonised Rules on Motor Vehicles Liability Insurance Reviewed", *https://doi.fil.bg.ac.rs/pdf/eb_ser/aida/2022/aida-2022-23-ch11.pdf*, accessed: 1.7.2024.

ZOOP).[14] It was first adopted in 2005.[15] Even at the time of adopting the original text of ZOOP, as well as when passing following amendments, the primary task of the legislator in the segment of compulsory motor vehicle liability insurance was to continuously align with the legal acquis of the European Union in this area. This also applies to the latest amendment of ZOOP in 2023, which, among other things, incorporated the 2021 Directive into Croatian domestic law. However, the fact that it was necessary to amend ZOOP for alignment with the 2021 Directive was also used as an opportunity for additional changes and amendments that addressed other important issues related to this type of insurance, which will be discussed further in the text.

II Amendment to the Law on Compulsory Traffic Insurance from 2023 - Key Changes and Additions

There are four main subjects of the amendments to Croatian legal regulation of compulsory motor liability insurance, carried out through the adoption and entry into force of the Law on Amendments to the Law on Compulsory Traffic Insurance (ZOOP) in 2023.[16] These are:

a) Transposition of the 2021 Directive into Croatian national law;
b) Regulation of liability insurance for damage caused by automated vehicles;
c) Amendment of the provisions on exclusions from insurance and the loss of insurance rights; d) More detailed regulation of the procedure for handling compensation claims submitted by injured parties to insurers.

[14] *Narodne novine, the Official Gazette of the Republic of Croatia*, No. 151/05, 36/09, 75/09, 76/13, 152/14, 155/23. In addition to the insurance of the owner or user of a vehicle for liability for damages caused to third parties (motor vehicle liability insurance), ZOOP in Article 2, paragraph 1, also establishes other compulsory insurance policies in the transportation sector: passenger insurance in public transport against the consequences of accidents, liability insurance for air carriers or aircraft operators for damages caused to third parties and passengers, and liability insurance for owners or users of motor-powered boats or yachts for damages caused to third parties. Of course, many issues are also addressed by secondary regulations issued by the relevant national supervisory body – the Croatian Financial Services Supervisory Agency (HANFA). Finally, the terms of motor vehicle liability insurance provided by insurers are an integral part of every contract for compulsory motor vehicle liability insurance and, therefore, an important source of law.

[15] In the period when the Republic of Croatia was part of the Socialist Federal Republic of Yugoslavia, as well as after Croatia's independence until 2005, the issue of compulsory traffic insurance was regulated as part of the regulations governing the insurance activity in general. For more details: M. Ćurković, p. 12-13.

[16] The Law on Amendments to the Law on Compulsory Traffic Insurance, *Narodne novine*, *Official Gazette of the Republic of Croatia*, No. 155/2023, from 22.12.2023. This law entered into force on December 30, 2023. In this paper, where necessary, references to the content of specific provisions of the ZOOP after their latest amendment/addition in 2023 will be made using the term "amended ZOOP" in the appropriate case. In this context, for easier and clearer reading of the following text, the reader is referred to the Unofficial (consolidated) text of the amended ZOOP available at: *https://www.zakon.hr/z/370/Zakon-o--obveznim-osiguranjima-u-promet*, accessed: 1.7. 2024.

Further details on the most important provisions of the amendment regarding these key subjects will be discussed in the following text.

1. Transposition of the 2021 Directive into Croatian National Law

In the context of the amendment to the ZOOP, it is important to highlight the key issues where the 2021 Directive significantly alters the Sixth Directive, which logically leads to changes or amendments in the regulation of these issues compared to the previous solutions in ZOOP before the 2023 amendment. These include (re) defining key terms important for the legal regulation of compulsory motor vehicle liability insurance, changes to the minimum amounts of insurance coverage, assumptions and procedures for verifying the validity of insurance for a vehicle in a member state the vehicle "visits," and protecting injured parties in the case of insolvency of the insurer that provided the insurance coverage for the damage caused by the vehicle.

1.1. (Re)definition of Key Terms

Given that this concerns the legal regulation of compulsory liability insurance for damage caused by the use of motor vehicles, the existence of precise definitions for key terms such as "vehicle" and "use of a vehicle" is of great importance.

On the one hand, technological progress, which we encounter daily, leads to the emergence of new motor vehicles with smaller dimensions and/or less powerful engines and lower maximum speeds, but still capable of causing damage. Therefore, the question arises about the need for liability insurance for damage caused (and) by the use of these vehicles.

Even before the 2023 amendment, ZOOP had a different definition of a vehicle subject to liability insurance than the original text of the Sixth Directive (i.e. the text before the 2021 Directive came into force). The key difference was that the previous ZOOP definition considered any motor vehicle intended for land traffic that moves by its own engine power but does not move on rails, and any attached vehicle (whether attached or not) *that is subject to registration and must have a traffic permit as per the registration regulations* (emphasized by J.M). In contrast, the text of the Sixth Directive (both before and after the 2021 Directive) did not include compulsory registration or traffic permit elements as relevant for defining a vehicle for the purposes of applying the Directive.[17]

[17] Compare Article 3, Paragraph 1, Item 9 of the ZOOP (text prior to the 2023 amendment) and Article 1, Item 1 of the Sixth Directive. The literature expresses the view that the previous definition in the ZOOP was more precise because it removed ambiguity and prevented the expansion of liability insurance obligations to cover every motor vehicle, such as electric wheelchairs, M. Ćurković, p. 26. It is clear that the Croatian legislator's solution was also motivated by the fact that it is very difficult to carry out a prior

The fact that the definition of the term "vehicle" was amended in the 2021 Directive presented an opportunity to incorporate the new definition into ZOOP, thereby eliminating any discrepancies between the definition of this term in EU law and Croatian domestic law.[18] In accordance with this, after the 2023 amendment, Article 3, paragraph 1, item 35 of ZOOP defines a vehicle as:

a) any motor vehicle that is powered exclusively by mechanical force on land, but not moving on rails, with a maximum design speed greater than 25 km/h, or with a maximum net weight greater than 25 kg and a maximum design speed greater than 14 km/h; and

b) any trailer used with the vehicle defined under a), whether attached or not.

ZOOP now explicitly states that wheelchairs intended exclusively for persons with physical disabilities are not considered vehicles.

This definition in the amended ZOOP mirrors the definition in Article 1, item 1 of the Sixth Directive, as amended by the 2021 Directive.

As for defining the term "use of a vehicle", it is important to note that this term was not defined in the Sixth Directive. In practice, however, it proved to be extremely important because the Sixth Directive in Article 3, paragraph 1 stipulates that each member state must take all appropriate measures to ensure that civil liability for the *use of vehicles* (emphasized by J.M.) commonly present in its territory is covered by insurance.

Therefore, while the term "use of a vehicle" is included in the Sixth Directive (and the preceding directives), it was never defined. At the same time, practice showed that this term is crucial for the application of national regulations transposing the Sixth Directive into the laws of member states. This is understandable because liability insurance must cover damages caused by the use of vehicles. One could argue that there was a legal gap in the text of the Sixth Directive, but also a necessity to interpret this term. The only authorized body to do so is the Court of Justice of the European Union. Several cases have been brought before the Court, initiated by national courts, where the Court of Justice had to decide on the question of whether, in a particular case, the damage was caused by the use of a vehicle. Based on this,

check (before the use of such vehicles in traffic) for mandatory insurance existence in relation to vehicles that are not subject to registration or issuance of a traffic permit (e.g., electric scooters). However, it remains questionable whether it was permissible under the national law of the Member State to narrow the definition contained in the Sixth Directive as a source of European Union law or whether some other legislative solution should have been found to achieve the same or similar purpose.

[18] The change in the definition of the term "vehicle" in the 2021 Directive was implemented precisely because the European legislator deemed that including the obligation for liability insurance for damage caused by the use of certain motor vehicles with lower power and less likelihood of causing significant damage would be disproportionate and unsustainable in the future. Moreover, this would undermine the acceptance of newer vehicles, such as electric bicycles, which are not exclusively powered by mechanical propulsion, thus discouraging innovation, as stated in recital 6 of the preamble to the 2021 Directive.

the national court can decide on the insurer's obligation, as insurance coverage includes damage caused precisely by the use of the vehicle.

The most important rulings of the Court of Justice of the European Union, in which it specifically decided on the scope of the term "use of the vehicle," are those in the cases of *Vnuk*[19], *Rodrigues de Andrade*[20], and *Torreiro*[21]. Their significance is

[19] Judgment of the Court of the European Union of December 4, 2014, *Vnuk*, C-162/13, ECLI:EU:C:2014:2146. In this case, the damage occurred when Mr. Vnuk was injured while a tractor with a trailer was being used in the yard of a farm during the storage of hay bales in a warehouse, at a time when the tractor was reversing to park in the same warehouse. The question arose regarding the application of Article 3(1) of the First Directive on motor vehicle liability insurance, specifically whether the term "use of the vehicle" in that provision includes situations like the one in this case, where the defendant's insured, while driving a tractor with a trailer, hit the plaintiff who was on a ladder performing the task of storing hay, even though this was not in the context of road traffic. This was a preliminary question referred to the Court by the Supreme Court of Slovenia. After determining that Slovenia had not excluded any type of vehicle from the scope of the obligation to provide insurance, and after concluding that the specific tractor was customarily found on Slovenian territory, the Court reached the final conclusion that the accident resulted from the use of a vehicle carrying out its normal function — the function of moving backwards within the described area with the intent of parking. The Court concluded that the provisions of Article 3(1) of the First Directive apply to the circumstances of the specific case, meaning that compulsory liability insurance, and thus the insurer's obligation, also applies in such cases. It is important to highlight that in paragraph 91 of the reasoning of the judgment, the Court of the European Union emphasized that the interpretation of the term "use of the vehicle" in the context of the specific case cannot be left to the discretion of each individual member state. In this way, the Court clearly indicated that only it has the authority to ensure the uniform application and interpretation of Union law in the area of motor vehicle liability insurance law. For more details regarding the implications of the Court's decision in the Vnuk case on case law in Slovenia, see: Danijela Šaban, "Pojam uporabe motornog vozila u pravu osiguranja od automobilske odgovornost", *Annals of the Faculty of Law in Zenica,* No. 17, pp. 277-298. For further analysis related to the consequences of the Court's ruling in Slovenia's judicial practice, see: Miloš Radovanović, "Pojam upotrebe motornog vozila u slovenačkoj sudskoj praksi", *Foreign Legal Life*, 2018, No. 1, pp. 101-120.

[20] Judgment of the Court of the European Union of November 28, 2017, *Rodrigues de Andrade*, C-514/16, ECLI:EU:C:2017:908. In this case, the facts were as follows: Mrs. Alves was applying herbicide in a vineyard owned by Mr. and Mrs. Rodrigues. The herbicide was being sprayed from a device located on the rear part of a tractor. The tractor was stationary, but its engine was running to provide power and enable the device to spray the herbicide. During this process, the tractor, which was in mud, overturned and injured Mrs. Alves, who later died from the consequences of the accident. In response to a question from the Supreme Court of Portugal, the Court of the European Union held that the term "use of the vehicle" in Article 3(1) must be interpreted in such a way that it does not cover a situation where an agricultural tractor is involved in an accident, and its primary function was not to serve as a means of transport but as a power unit, a machine for carrying out tasks that could not be performed without it.

[21] Judgment of the Court of the European Union of December 20, 2017, *Torreiro*, C-334/16, ECLI:EU-:C:2017:1007. In this case, a Spanish military vehicle, for which liability insurance existed, overturned during a nighttime military exercise, injuring a passenger in the vehicle (the plaintiff in the case before the Spanish court). The military vehicle was not operating on roads designated for wheeled vehicles, but rather on terrain meant for tracked vehicles. The defendant insurer opposed the insurance payout, arguing that the accident did not occur during the "use of the vehicle" as defined by the Sixth Directive, and therefore should not be covered under the Spanish law implementing that directive. The Spanish law allowed for exclusion from coverage for damages caused while operating motor vehicles on roads or terrains that were not "suitable for traffic," with an exception for those that, although not suitable for

pointed out by the fact that the preamble of the 2021 Directive states that, in the interest of legal certainty, a definition of the term "use of the vehicle" should be introduced that reflects the aforementioned case law.[22]This has indeed been done in the 2021 Directive, and the Croatian legislator has incorporated this definition into national law, specifically in Article 1, paragraph 1, item 33 of the amended ZOOP. According to this definition*, the use of a vehicle is understood as any use of the vehicle in accordance with its function as a means of transport at the time of the traffic accident, regardless of the vehicle's characteristics, the terrain on which the motor vehicle is used, or whether it is stationary or in motion.*[23]

For clarity, the 2023 amendment to the ZOOP clearly stipulates that damages resulting from the use of vehicles that, at the time of the accident, were not functioning as means of transport, but rather in an industrial, agricultural, or other function, are excluded from insurance coverage.[24]

This (re)definition of the terms "vehicle" and "use of a vehicle" necessarily led to the removal of Article 22, paragraph 3, from the previous version of the ZOOP. This provision previously stated that damages caused by vehicles moving on public roads or other surfaces where traffic occurs and which are subject to registration requirements (and must have a traffic permit) were covered by automobile liability insurance. The removal of this provision was part of a broader legislative effort to clarify and redefine cases when automobile liability insurance is required, including

such purposes, were "frequently used." In response to the question referred by the Supreme Court of Spain, the Court of the European Union ruled that the relevant provision of the Sixth Directive should be interpreted as being opposed to a national regulation that allows the exclusion from insurance coverage for damages caused by operating motor vehicles on roads or terrains that are not "suitable for traffic," with the exception of those that, despite being unsuitable for that purpose, are "frequently used". This ruling clarifies that the scope of insurance coverage under the Sixth Directive should not be restricted based on the suitability of the terrain for vehicular traffic, as long as the vehicle is being used as intended.

[22] Recital 5 of the preamble of the Directive from 2021. However, other judgments of the Court of Justice of the European Union are also important for the interpretation of the term "use of a vehicle", for example, in the case of *Linea Directa*, judgment of 20 June 2019, C-100/18, ECLI:EU:C:2019:517. In this case, the vehicle's electrical installations spontaneously caught fire after being parked for more than 24 hours in a private garage. As a result of the fire, the garage (which was owned by a person other than the vehicle's owner and driver) was damaged. The Supreme Court of Spain referred a preliminary question to the CJEU asking whether the term "use of a vehicle" in Article 3(1) of the Sixth Directive should be interpreted to include the situation in which a vehicle, parked for more than 24 hours, catches fire (due to the necessary mechanisms of the vehicle) and causes damage to the garage (real property). The CJEU answered affirmatively, emphasizing that parking and the period of inactivity of the vehicle are natural and necessary phases that are part of the use of the vehicle as a means of transport. Therefore, the vehicle was used in accordance with its function as a means of transport. This position of the CJEU will have a significant impact on the content of the definition of the term "use of a vehicle" in the Directive from 2021, and consequently, in the amended Croatian ZOOP.

[23] This definition of the term "use of a vehicle" is substantively identical to the definition of this term in Article 1, paragraph 1(a) of the Sixth Directive, as amended by the Directive from 2021.

[24] Article 23, para. 1, item 6, third indent of the amended ZOOP, *infra.* Chapter 3.

the exceptions to that obligation. It is essential that the corresponding provisions of the 2021 Directive are properly transposed into national law.[25]

In accordance with this, the amended Article 22 of the ZOOP now stipulates that vehicle owners are required to take out insurance for damages caused by the use of their vehicles that may harm third parties, resulting in death, injury, health impairment, or damage to property. This insurance requirement applies in accordance with the provisions of the law, except in the case of vehicles that do not fall into any category under special regulations, lack seats, and are not subject to mandatory technical inspection or registration. These include vehicles that can balance themselves, monocycles with motorized or electric propulsion, and electric or motorized scooters.[26]

However, individuals who suffer damage from the use of these specific vehicles, for which the owner is not required to have compulsory liability insurance, still have another "target" from whom they can claim compensation. In the case of damage caused by these vehicles, victims can seek compensation from the Guarantee Fund at the Croatian Insurance Bureau.[27]

[25] It should be emphasized that the amended ZOOP, in Articles 22, paragraphs 8-14, prescribes the insurer's obligation to issue a certificate to the policyholder, upon their request, regarding any compensation claims made by third parties based on the policyholder's motor vehicle liability insurance, or a certificate stating that no such claims exist. The certificate must cover a period of at least the last five years of the insurance coverage's existence, and the insurance company is required to issue it within 15 days from the date of the request. The form of the certificate is provided by the European Commission. These certificates may be important when an individual enters into a new motor vehicle liability insurance contract with an insurer different from the one with whom they had such a contract for the previous period. Specifically, the number of compensation claims, or the absence thereof, can be one of the insurer's criteria for determining the insurance premium. If a particular insurer takes this into account, it must be stated on their website. Prior to the last amendment, the ZOOP in Articles 22, paragraphs 7 and 8, required insurers to issue a certificate upon the policyholder's request regarding any compensation claims, but there was no explicit mention that a certificate must be issued confirming the absence of such claims. The amended provisions more precisely regulate this issue, following the provisions in Article 16 of the Sixth Directive as amended by the Directive of 2021.

[26] Regarding the aforementioned vehicles, it is important to emphasize that they are actually means of transportation which, due to their power or maximum speed, do not fall under the definition of "vehicle" contained in the 2021 Directive, nor in the amended ZOOP. However, as explicitly stated in recital 4 of the preamble to the 2021 Directive, member states are free to impose a liability insurance requirement for damage caused by such means of transport, even if they are not included in the definition of "vehicle" in that Directive, through their national laws. The Republic of Croatia has not opted for this option, but some other countries, such as Germany and France, have. A practical overview of the regulations regarding the use of electric scooters (electric kick scooters) in various countries can be found at *https://www.evz.de/en/reisen-verkehr/e-mobilitaet/zweiraeder/e-scooter-regulations-in-europe.html,* accessed: 1.7. 2024.

[27] Article 44, paragraph 1, item 12 of the amended ZOOP. This provision reflects the requirement of the 2021 Directive for member states to establish an equally effective method of compensating injured persons whenever certain vehicles are excluded from the mandatory liability insurance regime. For this reason, damage caused during sporting events (races, training sessions, etc.) is compensated from the funds of the Guarantee Fund. Specifically, the amended ZOOP, within the framework allowed by the 2021

Therefore, the (re)definition of the terms "vehicle" and "use of a vehicle" in the amended ZOOP, in accordance with the 2021 Directive, expands the range of cases where insurance coverage is required. At the same time, it specifies the exclusions for certain categories of vehicles. Importantly, it ensures that victims of damage caused (and) by such vehicles still have some form of substitute guarantee that their losses will be compensated. The role of the Guarantee Fund in this context is crucial.

1.2. Minimum insurance coverage amount

With the latest amendment, the ZOOP has been fully harmonized with the provisions of the 2021 Directive regarding the minimum amounts of coverage in motor liability insurance contracts (minimum amounts of insurance coverage).[28]

The amended ZOOP specifies the minimum insured amounts as follows:

a) in the case of damage due to death, bodily injury, and health impairment – the amount of €6.450.000,00 per accident, regardless of the number of injured parties, or €1.300.000,00 per injured party;
b) in the case of destruction or damage to property – the amount of €1.300.000,00 per accident, regardless of the number of injured parties.[29]

Essentially, it could be said that the amended ZOOP does not increase the minimum amounts of insurance coverage that were previously established under

Directive, exempts the owners/users of such vehicles from the obligation to conclude liability insurance for vehicles if the organizer of the event has concluded liability insurance for damages incurred during the event. However, if it is found that neither the event organizer nor the owner/user of the vehicle involved in the event had liability insurance, the injured party will be compensated from the Guarantee Fund (with, of course, the right of recourse for the Croatian Insurance Bureau against those who failed to fulfill their insurance obligations). Cf. the provisions of Article 2, paragraph 5, Article 22, paragraph 4, and Article 44, paragraph 1, item 13 of the amended ZOOP.

[28] Cf. Article 9, paragraph 1 of the Sixth Directive as amended by the 2021 Directive and Article 26, paragraph 8, items 1 and 2 of the amended ZOOP. The 2021 Directive harmonized the minimum amounts across the European Union and established a unified methodology for the periodic increase of these amounts. Specifically, the Sixth Directive set different reference dates for the periodic recalculation of the minimum coverage amounts in different member states, which resulted in variations in the minimum coverage amounts depending on the member state, cf. recital 19 of the preamble to the 2021 Directive. Regarding the transfer of these minimum coverage amounts prescribed by the amendment to the ZOOP, it is important to note that this legal provision authorizes the Government of the Republic of Croatia to issue decisions on changes to these minimum insured amounts, in accordance with the amounts established in delegated acts of the European Commission concerning the alignment of the minimum insured amounts with the harmonized consumer price index (HICP), which is determined based on Regulation (EU) 2016/792 of the European Parliament and the Council of May 11, 2016, on harmonized indices of consumer prices and the house price index, and repealing Council Regulation (EC) No 2494/98 (*Official Journal of the European Union* L 135, May 24, 2016).

[29] The term "injured party" refers to any individual who is entitled to compensation for damage (whether it is damage to property or damage resulting from death or bodily injury) caused by the use of a vehicle.

Croatian law. Specifically, the minimum insured amount for damages due to death, bodily injury, and health impairment of €6,450,000.00 per accident was already applicable based on the Croatian Government's Decision from 2022 regarding the increase of the minimum insured amount under motor liability insurance contracts.[30] However, this Decision did not, for unknown reasons, prescribe an alternative minimum coverage for these types of damages as specified in the 2021 Directive (€1,300,000.00 per injured party). The amended ZOOP provides for such an alternative. As for the minimum insured amount for property damage, the amended ZOOP is identical to the aforementioned Decision of the Croatian Government (as well as to the 2021 Directive).

1.3. Check on Insurance

Just as before the most recent amendment, the amended ZOOP respects the principle that existed in the Sixth Directive, as well as in the Directive from 2021, which stipulates that member states refrain from making checks on insurance against civil liability for vehicles that are typically found in the territory of another member state, as well as for vehicles that are typically found in the territory of a third country and enter the territory of a member state from another member state.[31]

However, considering that the Directive from 2021, compared to the Sixth Directive, significantly more precisely regulates the powers of member states to deviate from the described principle, it was necessary to amend ZOOP in this segment as well.[32]

The police still have the authority to carry out checks to ensure that every foreign vehicle entering the territory of the Republic of Croatia has valid proof of compulsory motor insurance.

However, when it comes to vehicles that are usually found in the territory of another member state or vehicles typically found in a third country and entering the

[30] *Narodne novine, Official Gazette of the Republic of Croatia*, No. 45/2022 of April 13, 2022.

[31] Article 4 of the Sixth Directive, or Article 4, paragraph 1 of the 2021 Directive.

[32] Article 4 of the Sixth Directive originally had only one paragraph, which granted member states the authority to depart from the described principle of refraining from controls, through so-called non-systematic checks of insurance, but under the condition that these checks are not discriminatory and are carried out as part of supervision not specifically aimed at verifying insurance. However, after the adoption of the Sixth Directive, there was extensive and precise regulation of issues concerning the protection of individuals' rights related to the processing of personal data, increased illegal migration (where vehicles are often used as transportation means for committing such acts), the need for stronger measures against the use of uninsured vehicles in traffic, etc. All of this pointed to the fact that the issue of regulating justified cases, conditions, and procedures under which Member States can still carry out insurance checks had to be more thoroughly addressed. This was done in the 2021 Directive by introducing a completely new, much more extensive and precise version of Article 4. This article of the 2021 Directive was incorporated into Croatian law as part of the amendment to the ZOOP by modifying Article 32, paragraph 3, and adding new paragraphs 4 and 5.

territory of the Republic of Croatia from the territory of another member state, the police's broad powers are narrowed to a certain degree. The police are authorized to conduct non-systematic checks if they are not specifically aimed at verifying insurance as stated in paragraph 1 of this article, but are necessary, non-discriminatory, and proportionate to the objective sought, and:

a) conducted as part of monitoring not specifically focused on verifying insurance or
b) part of a general system of checks that also applies to vehicles usually found in the territory of the Republic of Croatia, and for which stopping the vehicle is not necessary.

Under the two conditions described, checks must be conducted based on regulations regarding the protection of personal data, and personal data can be processed if necessary for the purpose of combating driving uninsured vehicles that are not from the member state where they are usually found. The mentioned regulation must comply with the so-called General Data Protection Regulation (GDPR)[33] and must include appropriate measures to protect the rights and freedoms, as well as the legitimate interests of the data subjects.[34]

1.4. Protection of Injured Parties in the Event of Insolvency of the Insurance Company

The matter of the rights of injured parties in the event of the opening of liquidation or bankruptcy proceedings, [35] i.e. insolvency of the insurer who, based on the concluded motor liability insurance contract, would be obligated to compensate the damage to that party, has been significantly more detailed after the entry into

[33] Regulation (EU) 2016/679 of the European Parliament and Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (*Official Journal of the European Union* L 119, 4 May 2016). In the Croatian legal system, the GDPR was incorporated through the Act on the Implementation of the General Data Protection Regulation, *Narodne novine, Official Gazette of the Republic of Croatia*, No. 42/18. Another important piece of legislation, in certain circumstances, could be the Law on the Protection of Natural Persons Regarding the Processing and Exchange of Personal Data for the Purposes of Preventing, Investigating, Detecting, or Prosecuting Criminal Offenses or Enforcing Criminal Sanctions, *Narodne novine, Official Gazette of the Republic of Croatia*, No. 68/18. Both regulations are relevant for the actions of the police in the context of personal data protection.

[34] These measures must be such that they specify the exact purpose of the data processing, refer to the relevant legal basis, and must comply with relevant security requirements as well as the principles of necessity, proportionality, and purpose limitation, while establishing a proportional period for data retention. When the data collected during the inspection is no longer needed for the purpose for which it was collected, it must be immediately erased. If it is determined that the controlled vehicle is insured, the data is immediately deleted. If it is not possible to determine whether the controlled vehicle has valid insurance, the data is retained only for a limited period, as short as possible. If it is determined that there is no proof of valid insurance for the controlled vehicle, the data is retained until the relevant administrative or judicial procedures are completed and until the vehicle is covered by a valid insurance policy.

[35] More about pecularities of the insolvency procedure of insurance companies: Jelena Lepetić, „Poseban režim stečaja društava za osiguranje", *Tokovi osiguranja*, br. 3/2024, str. 595-613.

force of the amended ZOOP. This is a logical consequence of the fact that the 2021 Directive has considerably changed the provisions of the Sixth Directive in relation to this issue.[36]

The amendment to the ZOOP (following the example of the 2021 Directive) separately regulates two possible situations:

a) The rights of the injured party in the event of the opening of liquidation or bankruptcy proceedings against the liable
b) insurer headquartered in the Republic of Croatia,[37] and
c) The protection of injured parties residing in the Republic of Croatia when the liable insurer is an insolvent insurance company from another member state, regardless of whether the damage was caused by a vehicle for which the liability insurance contract was concluded in Croatia and regardless of whether the vehicle is typically located in the Republic of Croatia or another country.[38]

Therefore, the only distinguishing criterion between cases a) and b), which are regulated by separate articles in the amended ZOOP, is the country in which the insurer, who entered into a liability insurance contract with the injured party, is headquartered, and against which bankruptcy or liquidation proceedings have been initiated (whether it is the Republic of Croatia or another member state).

In the situation described under a) the damage (due to property damage or death or bodily injury) is caused by a vehicle for which liability insurance for the damage was provided by an insurer headquartered in the Republic of Croatia. The injured party can submit a claim for compensation to the Croatian Insurance Bureau from the moment bankruptcy or liquidation proceedings are opened against the insurer obligated to pay compensation:

- in the case of bankruptcy (by a court decision published in the Official Gazette of the Republic of Croatia), or

[36] In this part, the amendment to the ZOOP incorporates into Croatian national law the provisions of the 2021 Directive, which introduce new, substantively extensive Articles 10.a (Protection of injured parties in relation to damage resulting from accidents that occurred in their member state of residence in the case of the insolvency of the insurance company, see Article 1, point 8 of the 2021 Directive) and 25.a (Protection of injured parties in relation to damage resulting from accidents that occurred in a member state other than their member state of residence in the case of the insolvency of the insurance company, see Article 1, point 18 of the 2021 Directive).

[37] Article 31 of the amended ZOOP. Even before the 2023 amendment, the ZOOP regulated the issue of compensation in case of the reasons for the termination of the insurance company or bankruptcy. However, after the amendment, this matter has been regulated much more precisely, as is the case at the European Union level.

[38] Article 61.a of the amended ZOOP. This is a completely new article that did not exist in the ZOOP before the 2023 amendment.

- in the case of liquidation (by a decision of the Croatian Financial Services Supervisory Agency, as the national supervisory body, also published in the Official Gazette of the Republic of Croatia).

Additionally, regardless of the public announcement of decisions on the initiation of bankruptcy or liquidation proceedings, the Croatian Insurance Bureau notifies all equivalent bodies in other member states, which are authorized and obligated to compensate injured parties in such situations.

Upon receiving the compensation claim, the Croatian Insurance Bureau immediately informs the insurer in bankruptcy or liquidation, as well as the bankruptcy trustee or liquidator. Throughout the entire process, the Croatian Insurance Bureau is authorized and obliged to cooperate with bodies established or authorized to compensate injured parties in cases of bankruptcy or liquidation, as well as with the insurer in respect to whom such proceedings have been initiated, with the aim of making the most efficient decision regarding the validity of the compensation claim. The bodies in these proceedings must also cooperate with the Croatian Insurance Bureau.[39]

Regarding the compensation claim, within three months of its receipt, the Croatian Insurance Bureau must provide the injured party with:

- a reasoned offer for compensation (if it determines that it is obligated due to the circumstances of the opening of bankruptcy or liquidation proceedings against the motor liability insurer of the injuring party, the claim is uncontested, and the amount of the damage has been partially or fully assessed), or
- a reasoned response to specific points of the compensation claim (if it determines that it is not obligated due to the lack of the described circumstances of the opening of bankruptcy or liquidation proceedings, if liability is disputed or not clearly established, or if the amount of damage has not been fully assessed).[40]

If the Croatian Insurance Bureau determines its obligation to compensate for the damage, the payment must be made without delay, and no later than three months from the date the injured party accepts the reasoned offer in writing.[41]

[39] The Croatian Insurance Bureau has the right to recover the amount of compensation paid, along with interest and costs, from those liable for the traffic accident, from other insurers, or from social security bodies that are liable to compensate the injured party in connection with the same traffic accident. If the payment is made during the liquidation process, the Bureau has the right to recover the amount from the insurer undergoing that process. In the case of bankruptcy proceedings against the insurer, the Croatian Insurance Bureau has the right to recover these amounts from the bankruptcy estate.

[40] In the reasoned offer or substantiated objection, the Croatian Insurance Bureau must inform the injured party about the possibility of filing an objection to the decision made. If an objection is submitted, the Croatian Insurance Bureau is required to respond within 30 days from its receipt. Additionally, the Bureau must inform the injured party about the possibility of extrajudicial dispute resolution and the right to file a lawsuit.

[41] Within the same period, the Croatian Insurance Bureau must pay the undisputed part of the damage if it determines that it has an obligation to compensate for the damage, but only the amount of the requested

In the case described in paragraph b), the amended ZOOP stipulates that, from the moment a bankruptcy or liquidation procedure is initiated against the insurer liable for compensating the damage, the injured party residing in the Republic of Croatia may submit a compensation claim to the Croatian Insurance Bureau. Upon receiving the compensation claim, the Croatian Insurance Bureau informs the equivalent body in the home member state of the insurer undergoing the bankruptcy or liquidation procedure, the insurer itself, and its bankruptcy trustee/liquidator.

Since it is possible for the same compensation claim to be submitted both to the Croatian Insurance Bureau and to the insurer undergoing the bankruptcy or liquidation procedure, the insurer, its bankruptcy trustee, or liquidator must inform the Croatian Insurance Bureau about the receipt of the claim and the decision made regarding it (whether the claim is accepted and compensation is paid, or the claim is rejected). On the other hand, the Croatian Insurance Bureau must actively cooperate throughout the entire process, particularly regarding the exchange of information, with all competent bodies involved in the liquidation or bankruptcy procedure of the insurer in the other member state, as well as with the insurer itself.

The rights and obligations of the Croatian Insurance Bureau in many respects are prescribed analogously to the situation described in paragraph a), that is, analogously to the situation when a bankruptcy or liquidation procedure is initiated against an insurer based in the Republic of Croatia. This applies especially to the same timeframes for making decisions and potential payments for the compensation claim, informing the injured party about the possibility of submitting an objection to the Croatian Insurance Bureau, informing the injured parties about the possibilities of extrajudicial and judicial dispute resolution, the right of the Croatian Insurance Bureau to recover the paid amounts from the parties liable for the traffic accident, other insurers, or social security bodies obligated to compensate the injured party for the same accident, etc.

The specificity of the situation described in paragraph b) is that, after paying the compensation, the Croatian Insurance Bureau has the right to request full reimbursement of the paid amount from the equivalent body (the bureau of the other member state where the insolvent insurer is based).[42]

compensation is disputed. After payment, the Croatian Insurance Bureau is entitled to recover the paid amount of compensation, interest, and costs from the person or persons liable for the traffic accident, as well as from other insurers or social security bodies obligated to compensate the injured party for the same accident. If the payment is made during a liquidation process, the Bureau has the right to recover from the insurer undergoing that process, up to the amount of the paid damage, interest, and costs. If the insurer is under bankruptcy, the Croatian Insurance Bureau has the right to recover the paid amount from the bankruptcy estate. After making the payment, and if it has not yet received the reimbursement, all the rights of the injured party toward the liable party and their liable insurer are transferred to the Croatian Insurance Bureau. However, the rights of the injured party toward the insurance policyholder or another insured person who caused the accident are not transferred to the Croatian Insurance Bureau if the liability of the policyholder or the insured person would be covered by the liable insurer under the regulations applicable to the bankruptcy or liquidation procedure of the insurance company.

[42] The equivalent body must reimburse the Croatian Insurance Bureau within a reasonable time after receiving the reimbursement request, but no later than six months, unless these bodies have agreed

2. Liability Insurance for Damage Caused by the Use of Automated Vehicles

The very dynamic technological advancement, which has led to the emergence of automated vehicles in traffic, raises numerous questions, such as those related to road safety, the development of traffic infrastructure adapted to such vehicles, interaction between automated and non-automated vehicles, economic feasibility, ethics, and so on. Naturally, it is inevitable that the introduction of such technology, which partially or completely eliminates the need for a driver as the person who has been essential in the context of vehicle operation until now, brings about numerous legal challenges. These are continuously discussed (and) in the professional public.[43] It should also be considered that the use of even fully automated (autonomous) vehicles is beginning to change functionally. These vehicles are no longer used exclusively in the testing phase – we are also seeing the first cases of autonomous vehicle transportation services offered in everyday traffic.[44]

A systematic analysis of all the legal issues related to the use of automated vehicles goes beyond the scope of this work and the purpose it aims to achieve.[45]

This chapter will analyze the part of the amended ZOOP that deals with liability insurance in cases where damage is caused by an automated vehicle.[46]

otherwise in writing. Once the equivalent body has paid the reimbursement to the Croatian Insurance Bureau, all rights of the injured party against the person liable for the accident or their insurance company are transferred to that body, except in the case of the policyholder or another insured person who caused the accident, if the liability of the policyholder or insured person would have been covered by the insolvent insurance company in accordance with the applicable national law. It should also be noted that the Croatian Insurance Bureau would have the same obligation in the situation where bankruptcy/liquidation proceedings were initiated against the insurer of the at-fault party's motor vehicle insurance with its headquarters in the Republic of Croatia, and the equivalent body from another member state would seek reimbursement under the described conditions.

[43] Mihael Mudrić, „Polu-automatizirana motorna vozila i predstojeća regulacija (1. dio)", *https://www.bug.hr/zakonodavstvo/polu-automatizirana-motorna-vozila-i-predstojeca-regulacija-1-dio-37727*, accessed: 1.7.2024.

[44] „Povijesni trenutak za robotaksije: Waymo usluge, nakon testne faze, sada dostupne svima", *https://www.bug.hr/transport/povijesni-trenutak-za-robotaksije-waymo-usluge-nakon-testne-faze-sada-41845*, accessed: 1.7.2024.

[45] For a detailed analysis of all legal aspects of the use of automated, including autonomous vehicles in all branches of transport, see Kyriaki Noussia, Matthew Channon (ed.), *The Regulation of Automated and Autonomous Transport*, Springer Nature Switzerland AG, Chaim, 2023.

[46] From the content of these provisions, it could be concluded that they are, to some extent, designed based on certain comparative national legal solutions. A comparative overview of the legislative regulation of automated vehicle operation in a large number of countries (as well as at the level of international and EU legal sources) is available at https://www.connectedautomateddriving.eu/regulation-and-policies/national-level/, accessed: 1.7.2024. For a scientific and systematic overview of the regulation in German law, as one of the first legal systems to systematically regulate the operation of high-level automated vehicles, including the issue of liability insurance, see: Martin Ebes, 'Civil Liability for Autonomous Vehicles in Germany,' https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4027594, accessed: 1.7.2024.

It should be emphasized that the 2021 Directive does not have specific provisions relating to liability insurance for damage caused by the use of automated vehicles.[47] Therefore, it can be concluded that, for now, the European legislator considers that the provisions of the Sixth Directive can be applied to automated vehicles in the same way as to "traditional" vehicles.[48]

However, recital 39 of the preamble to the 2021 Directive states that the Commission should monitor and review the content of the Sixth Directive given the technological developments, including the increased use of autonomous and semi-autonomous vehicles. This recital has been "transformed" into a binding provision in the new Article 28 (c), paragraph 2, point (a) of the Sixth Directive. This provision contains the obligation for the Commission to submit a report to the European Parliament, the Council, and the European Economic and Social Committee by no later than December 24, 2030, in which it must evaluate the implementation of the Sixth Directive, including its application in the context of technological development, particularly regarding autonomous and semi-autonomous vehicles. If necessary, the Commission must attach a legislative proposal to this report. Therefore, it can be said that the 2021 Directive has granted the Commission the authority and the obligation to initiate further amendments to the Sixth Directive in the future if it is determined that this is necessary to improve the level of protection for individuals injured by the use of such vehicles, as well as for the policyholders (owners or users of such vehicles).

In line with the above, the latest amendments to the ZOOP regarding provisions related to liability insurance for damage caused by automated vehicles are not a result of alignment with the 2021 Directive. They reflect the needs of practice, but also the fact that that other regulations concerning the use of these vehicles have been enacted or are in the process of being enacted in the Republic of Croatia. Therefore, the amended ZOOP, in this regard, forms part of the general national legal framework concerning these vehicles, which is not fully defined but is still under development.

[47] However, the issue of liability for damage caused by the use of automated vehicles, as well as the issue of insurance for that liability, has been a subject of interest at the level of EU law and policy for many years, starting with the very comprehensive study by the European Parliament on this topic, 'A common EU approach to liability rules and insurance for connected and autonomous vehicles, *https://www.europarl.europa.eu/RegData/etudes/STUD/2018/615635/EPRS_STU(2018)615635_EN.pdf*, accessed: 1.7.2024. However, it should be noted that the regulation of the issue of liability for damage caused by motor vehicles is still within the competence of the member states, while the issue of insurance for that liability falls under the competence of the European Union. Nevertheless, when regulating liability for damage caused by motor vehicles, member states must not undermine the effectiveness of the European directives on insurance for that liability.

[48] In this context, it could be said that the European legislator agreed with the identical position expressed by Insurance Europe (the federation of European insurers) during the public consultation in the process of drafting the 2021 Directive proposal, see: https://www.insuranceeurope.eu/news/302/motor-insurance-directive-fit-for-purpose-for-connected-and-automated-vehicles/, accessed: 1.7.2024

In order to understand the content and purpose of the amendment to the ZOOP related to automated vehicles, it is necessary to briefly explain the concept of the automated vehicle, as well as to clarify the established levels of vehicle automation (up to the level of fully automated – autonomous vehicles), which are relevant to the legal regulation of all aspects of the use of these vehicles.

Therefore, an automated vehicle, according to the ZOOP amendment, is defined as a vehicle regulated by the law governing road traffic safety, and which meets the conditions of the vehicle definition within the ZOOP itself. According to the Road Traffic Safety Act, an automated vehicle is "a vehicle that uses hardware and software for continuous full dynamic control of the vehicle (a fully automated vehicle without a steering wheel)."[49]

This definition is not entirely clear. It seems that the Road Traffic Safety Act under the term "automated vehicle" refers only to vehicles with full automation (fully automated vehicles, often also called autonomous vehicles).

Vehicle automation is not a clear-cut term. Different vehicles can have different levels of automation. For the purposes of technology and the design of such vehicles, but also for the legal regulation of their use, the international *Society of Automotive Engineers* (SAE) has established a generally accepted differentiation of vehicles according to the level of automation.[50] According to this differentiation, there are six levels of automation in vehicles, starting from the so-called zero level and ending with level five.

At the first three levels (levels 0-2) of automation, the driver is considered to have the obligation and responsibility to operate the vehicle, regardless of whether any driver assistance features are activated (thus, at levels 0-2, there are no automated functions but rather driver assistance features). The driver of such a vehicle must constantly monitor the operation of these systems and must manage the vehicle, accelerate, and brake to maintain driving safety. Specifically, the following driver assistance functions apply at each level:

Level 0: Driver assistance functions are limited to warnings and immediate assistance (e.g. emergency automatic braking, blind-spot warning, or lane departure warning).

Level 1: Driver assistance functions enable acceleration during steering *or* braking (e.g. adaptive cruise control *or* maintaining the vehicle in the center of the lane while driving).

Level 2: Driver assistance functions allow acceleration during steering *and* braking (e.g. simultaneous use of adaptive cruise control *and* lane-centering assistance).

[49] Road Traffic Safety Act, *Narodne novine, Official Gazette of the Republic of Croatia*, Nos. 67/08, 48/10, 74/11, 80/13, 158/13, 92/14, 64/15, 108/17, 70/19, 42/20, 85/22, 114/22, 133/23, Article 2, paragraph 1, item 107.

[50] The differentiation developed by the Society of Automotive Engineers (SAE) has also been adopted by the International Organization for Standardization (ISO), and it is now officially represented as the ISO/SAE standard.

Vehicles that can be classified into the next higher levels (levels 3-5) have automated functions. At these levels, it is considered that the driver is not driving or operating the vehicle during the period when automated functions are activated, regardless of whether the driver is sitting in the "driver's seat" or not. However, as a kind of exception, it should be noted that at level 3, the driver must take control of the vehicle when required by the vehicle itself, i.e. the automated system, or when the driver, using reasonable attention, can recognize that it is necessary to take control. At levels 4 and 5, the system never requires the driver to take over vehicle control.

Specifically, the characteristics of automated functions by levels are as follows:

Levels 3 and 4: Driving, or operating the vehicle, is fully achieved through automated functions (without the need for any driver control), but only in specific situations or traffic conditions. Automated driving at these levels is not possible unless all necessary preconditions are met. For example, at level 3, fully automated driving is possible when driving in a traffic queue. At level 4, a fully automated (autonomous) drive is possible within a geographically predefined area, which can be the case for a geographically limited taxi service. Vehicles at level 4 may or may not have pedals or a steering wheel.

Level 5: At vehicles of this level of automation, fully automated (autonomous) driving is possible under all conditions, without geographical or other restrictions. As with level 4, vehicles do not need to have pedals or a steering wheel.[51]

In the context of motor liability insurance and the application of the amended ZOOP provisions, a question arises as to the circumstances under which damage caused by an automated vehicle would be considered. The answer would be that it is damage caused by an automated vehicle when the harmful event occurred during the period when the driver did not control the vehicle (level 5 automation, as well as level 4, assuming compliance with the limitations on automated functions related to this level), nor was the driver required to control the vehicle (level 3 automation, if the system in the vehicle did not require the driver to take control sufficiently before the harmful event occurred, giving the driver reasonable time to take control, and the driver could not reasonably have noticed the need to take control).

The amended ZOOP operates on the principle that its provisions related to the owner of a "classic" vehicle also apply to the owner or user of an automated vehicle, unless the regulation specifically provides otherwise.[52]

However, due to the specific issues that arise only in relation to the occurrence of a harmful event through the use of an automated vehicle, it was clear that liability insurance for damage caused by the use of such a vehicle cannot be adequately regulated simply by analogy with regulations applicable to "classic" vehicles. It was necessary to supplement this general provision with additional, specific provisions applicable solely to automated vehicles.

[51] *https://www.sae.org/blog/sae-j3016-update*, accessed: 1.7.2024.

[52] Article 2, Paragraph 4 of the amended ZOOP.

One of these issues is the obligation to conclude a motor liability insurance contract, taking into account the specificities regarding individuals who may be liable for the safety of using such vehicles in traffic.

The amended ZOOP stipulates that the owner of an automated vehicle is obliged to conclude a compulsory motor liability insurance contract, which also includes the liability of the vehicle's safety operator and the safety driver during the testing phase.[53] The safety operator is a person outside the automated vehicle who is connected to it via telecommunications and is liable for approving or selecting an alternative driving maneuver. The safety driver is a person inside the automated vehicle liable for monitoring it during testing and is capable of taking dynamic control.[54]

In this context, a question arises regarding the verifiability of this obligation, i.e. the obligation to have a policy or other proof of the motor liability insurance contract in the vehicle. In the case of "classic" vehicles, this is an obligation of the driver, who must present such proof to an official upon request. However, the question arises as to how to verify the existence of insurance for automated vehicles where there may not be a driver in the vehicle. The amended ZOOP stipulates that verification of the existence of insurance for automated vehicles is carried out by an official through a check in the computer system. In the case of a traffic accident, the owner of the

[53] Article 4, Paragraph 6 of the amended ZOOP. In Croatian law, there is no specific regulation establishing the legal basis for the liability of a safety operator or safety driver. It appears that their liability, at least at this point in time, should be assessed according to the provisions governing the liability of the owner or user of a motor vehicle, as set out in the Croatian *Obligations Act* (*Zakon o obveznim odnosima*), *Narodne novine*, *Official Gazette of the Republic of Croatia*, Nos. 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22, and 155/23, particularly Articles 1069–1072. Although the issue of regulating liability for damage caused by automated vehicles goes beyond the scope of this paper, it might be worth considering whether the safety operator could be regarded as a type of "external driver" of the automated vehicle. Similarly, an equivalent obligation applies to the owner or user of an automated vehicle concerning mandatory passenger insurance in public transportation. Notably, Croatia is currently in the process of amending the *Road Transport Act* (*Zakon o prijevozu u cestovnom prometu*, ZPCP), which regulates the conditions and requirements for providing public passenger transport with automated vehicles.
It is evident that the drafters of the amended ZOOP, while preparing its text, were mindful of the ongoing process of amending the ZPCP and anticipated the need to harmonize the two pieces of legislation with future developments. The proposed amendments to the ZPCP recently passed their "first reading" in the Croatian Parliament, and any adoption will follow after second reading see: https://www.sabor.hr/prijedlog-zakona-o-izmjenama-i-dopunama-zakona-o-prijevozu-u-cestovnom-prometu-prvo-citanje-pze-0?t=146878&tid=212707, accessed: 1.7.2024.

[54] The definitions of these persons are contained in Article 3, items 29 and 30 of the amended ZOOP. The definitions are also included in the Draft Amendments to the Road Transport Act (ZPCP) (newly proposed points 49.a and 49.b in Article 4, Paragraph 1), *ibidem*. The insurance coverage also extends to damages caused by actions of individuals who performed the function of safety operator or safety driver of an automated vehicle without authorization, i.e. without the owner's consent. The insurer will have the right to seek reimbursement of the full amount of the compensation paid from these individuals. This is explicitly prescribed by the provisions of Article 25, Paragraphs 4 and 5 of the amended ZOOP. Finally, the insurance coverage also includes cases where the damage was caused by a stolen automated vehicle (Article 25, Paragraph 3 of the amended ZOOP).

automated vehicle is obliged to provide personal data, information about compulsory motor insurance, and relevant driving data recorded by the automated vehicle to all participants in the traffic accident, who may use this information to submit compensation claims. The longest deadline for fulfilling this obligation is three days from the date the accident occurred. The owner of the automated vehicle must also provide this information at the request of the liable insurer for claims settlement, as well as at the request of traffic supervision authorities, judicial authorities, and other authorities involved in the accident investigation and enforcement of their rights and obligations under the provisions of ZOOP.[55]

It is particularly important to consider the provision in the amended ZOOP related to Article 23, paragraph 1, which defines situations in which the insurer is not obliged to pay compensation for damage under motor liability insurance. One of these situations is compensation for damage suffered by the driver of the vehicle that caused the damage, as well as their relatives and other individuals or legal entities, regarding damage due to the death or bodily injury of the driver.

Namely, in paragraph 2 of Article 23 of the amended ZOOP, it is stipulated that the provisions of paragraph 1 of that article apply to the owner or passenger of an automated vehicle. Regarding the specific case of exclusion related to damage suffered by the driver, there is no issue if it concerns a level 4 or 5 automated vehicle, as these vehicles do not have or will not have a driver. However, ambiguity may arise in the case of a level 3 automated vehicle, where a driver may be present in the vehicle and must take control, but only if the automated system requires it, or when the driver, using reasonable attention, can conclude that it is necessary to take control. If an accident occurs and the subsequent damage suffered by the driver (and/or their relatives and others) due to bodily injury or death happens while the driver was not controlling the vehicle, nor was the system previously required the driver to take control, and there was no reason for the driver to conclude the need to take control, the question arises whether the described exclusion from insurance coverage is justified. In such circumstances, the driver's position is very similar to that of a passenger. Of course, this provision in the amended ZOOP is justified if automated vehicles are understood to only mean fully automated vehicles (level 5 and, if certain assumptions are met, level 4 automation). However, this would mean

[55] Article 6, Paragraphs 3 and 4 of the amended ZOOP. Paragraph 5 of the same article also stipulates the obligation of the manufacturer of the automated vehicle to provide relevant data and information necessary to resolve a compensation claim, upon request from the owner of the vehicle, the insurer, the injured party, the authority liable for traffic supervision, judicial authorities, and other bodies involved in proceedings related to the traffic accident. In cases where an automated vehicle is involved in an accident, the obligation to exchange personal data and vehicle information between the owner of the automated vehicle and the participants in the accident is established by the provision of Article 38, Paragraph 4 of the amended ZOOP. In this context, the obligation to keep the European Accident Statement in the vehicle does not apply to automated vehicles.

that there is a "gap" in the application to level 3 vehicles, where the driver is present to take control when required or when he recognizes the need.[56] The only logical interpretation of this provision is that, in the context of insurance coverage and the (non-)exclusion of the insurer's obligation, no distinction should be made between levels of automation. Damages due to the death or bodily injury of the driver should be excluded from insurance coverage only when, at the time of the harmful event, the driver was indeed controlling the vehicle or was obligated to control it. If that assumption is not met, the driver of an automated vehicle should be considered a passenger, and if there is no other reason for exclusion, such damages should be included in the insurance coverage.[57]

Automated vehicles are associated with specific potential causes of harmful events and subsequent damage. These causes are related to the characteristics of the vehicle's software and its installation or updates. The amended ZOOP regulates insurance coverage for such causes of damage.

Insurance coverage includes:

a) damages caused by unauthorized or improper software for continuous dynamic control of an automated vehicle and
b) damages caused by unauthorized or improperly modified software for continuous dynamic control of an automated vehicle.

In case of (a), it refers to software not approved by the manufacturer of the automated vehicle or not a version recommended by the manufacturer. In case of (b), it refers to software (possibly correct) applied contrary to the manufacturer's instructions or by a person who is not the manufacturer of the automated vehicle or someone authorized by them to do so.

[56] Let us add to this that the Commission Implementing Regulation (EU) 2022/1426 of August 5, 2022, on establishing rules for the application of Regulation (EU) 2019/2144 of the European Parliament and the Council regarding common procedures and technical specifications for the type-approval of systems for automated driving (ADS) of fully automated vehicles, *Official Journal of the European Union* L 221 of August 26, 2022, defines the term "fully automated vehicle" as vehicles with dual mode of operation, designed and manufactured for the transportation of passengers or goods within a predefined area. Vehicles with dual mode of operation are defined in this Regulation as fully automated vehicles with a driver seat, designed and constructed with the following modes of operation: (a) "manual driving", performed by a driver; and (b) "fully automated driving", performed by an automated driving system without the supervision of a driver (Article 1, point (a), and Article 2, point 34 of the Regulation). Thus, this Regulation includes vehicles that would belong to level 3 (those with the possibility of dual mode operation) in the category of fully automated vehicles.

[57] Regarding the loss of insurance rights, according to paragraph 6 of Article 24 of the amended ZOOP, all circumstances that lead to the insured person losing their insurance coverage apply equally to both "traditional" and automated vehicles. Unlike cases of exclusion from insurance, in cases that result in the loss of the insured person's right to insurance coverage, the insurer will, if the necessary conditions are met, compensate the damaged party. However, in the next step, the insurer will have the right to full or partial recovery of the paid amount from the person liable for the damage.

If the insurer proves that the cause of the harmful event and resulting damage was one of the cases described in (a) or (b), they will have the right to recover the entire amount paid from the person liable for the damage (from the person who applied unauthorized or improper software or from the person who applied the software contrary to the manufacturer's instructions, or who was not authorized to apply the software).[58]

The amended ZOOP does not specifically address situations where the owner of an automated vehicle is the person who applied unauthorized or improper software, or who applied the software contrary to the manufacturer's instructions. Therefore, it should be considered that the described rules apply to them as well. Essentially, these would be specific cases where the owner of a motor vehicle loses their rights under the insurance policy.[59]

3. Cases of Exclusion from Insurance Coverage and Loss of Insurance Rights

The amendment of the ZOOP introduces a new case of exclusion from insurance coverage and changes regarding the regulation of one of the previously existing cases.[60]

In this sense, the new case of exclusion from insurance coverage refers to a situation where the damage is caused by a vehicle that, at the time of the traffic accident, was not being used as a means of transport but rather for industrial, agricultural, or other purposes. This exclusion is a result of the introduction and definition of the term "vehicle use" in the 2021 Directive and, consequently, in the amended ZOOP.[61]

The amendments regarding the regulation of one of the previously existing cases concerns damage caused during activities related to motorsport (races, competitions, training, testing, demonstrations on limited and marked areas). With a more precise expression, following the 2021 Directive, it is clearly stated that the exclusion from insurance coverage applies only to the owner and driver of the vehicle involved in these activities. Prior to the ZOOP amendment, this exclusion applied to all potential injured parties.[62]

[58] Article 25, Paragraphs 4, 6, 7, and 8 of the amended ZOOP.

[59] The cases of loss of insurance rights are regulated in Article 24 of the amended ZOOP and are applied analogously to the owner of the automated vehicle, the safety driver, and the safety operator.

[60] The amended Article 23, paragraph 1, item 6, third subparagraph, and item 7 of the ZOOP. All exclusions from insurance coverage stipulated in Article 23 of the amended ZOOP apply accordingly to the owner of the automated vehicle and passengers in the automated vehicle, as prescribed in paragraph 2 of that article.

[61] *Supra*, Chapter 1.1.

[62] The exclusion related to the use of vehicles in activities associated with motorsports is a consequence of such use being generally exempt from the application of the amended ZOOP, provided that the organizer of the activity has obtained (otherwise voluntarily) insurance for their professional liability

Speaking generally about the reasons for the loss of insurance rights, the amended ZOOP, in Article 24, adds a completely new case that results in the insured person losing insurance coverage. This concerns a situation where the driver, after a traffic accident resulting in property damage, leaves the scene before completing the European Accident Statement or otherwise exchanging personal details and vehicle information, or before notifying the relevant police authorities in cases where someone has lost their life or been injured. However, insurance rights will not be lost if the insured person temporarily leaves the scene of the accident in accordance with the ZSPC (e.g. if the insured person requires urgent medical assistance in a healthcare facility, or if the insured person assisted another individual in going to a healthcare facility for help, or if they left to inform the police about the accident). In fact, this is another sanction for violating the provisions of Article 176 of the ZSPC. This article of the ZSPC provides for a penalty for unjustified abandonment of the scene of an accident and failure to provide data, including failing to complete the European Accident Statement It is clear that the legislator considered this (additional) sanction of loss of insurance coverage in cases of unlawful abandonment of the accident scene to be proportional to the protection of the public interest, which aims to combat such events, the number of which is not negligible but rather quite the opposite.[63]

Furthermore, it is important to note that the amended ZOOP expands the previously prescribed case in which a driver loses their right to insurance if they were driving under the influence of alcohol (above the agreed level), drugs, psychoactive medications, or other psychoactive substances. The amendment now includes a situation where the driver loses this right if, after the accident, refuses to undergo testing for alcohol, drug, psychoactive substances, and psychoactive medications.[64] It should be noted that, even after the ZOOP amendment, it is not the driver's duty (which must be performed under the threat of losing insurance coverage) to organize the testing for the presence of these substances in his body on his own initiative. Instead, the driver's obligation is to undergo the testing when requested by another party (a police officer at the scene of the accident, or a healthcare facility under the order of the police).[65]

in organizing such activities (Article 2, Paragraph 5 of the amended ZOOP). In a broader sense, certain damages fall outside the insurance coverage established through motor vehicle liability insurance because such damages are covered by the Republic of Croatia. These are damages caused by vehicles of the Croatian Armed Forces and damages resulting from a terrorist act involving the use of a vehicle (Article 2, Paragraph 3 of the amended ZOOP).

[63] *https://www.jutarnji.hr/autoklub/aktualno/tko-se-udalji-je-nadrapao-evo-zasto-bijeg-s-mjesta-nesrece-sad-vodi-ravno-u-bankrot-15429477*, accessed: 1.7.2024.

[64] Article 24, Paragraph 1, Item 4 of the amended ZOOP.

[65] Article 181. ZSPC.

4. Procedure and Methods for Handling Compensation Claims

The issue of procedures and methods for handling compensation claims is always legally significant because it reflects the level of efficiency in achieving the primary goal of the regulations on motor liability insurance – protecting the injured parties and the insured. However, it is also important to consider the fact that insurance is a highly regulated financial activity. Insurers' actions when resolving compensation claims must be aligned with regulations governing their business operations in general to ensure stability and sustainability. In other words, the procedure and method for resolving compensation claims should be such that, taking into account all applicable legal regulations (not just the ZOOP), it achieves the highest possible level of protection for the injured parties and the insured. This principle must be observed when dealing with the substance of the compensation claim (deciding on the validity of the claim, including the amount of damage compensation requested) as well as the procedure itself (deadlines, communication with the claimant, communication with other individuals and legal entities when necessary to resolve the claim, etc.).

The fact is that injured parties, as well as other individuals involved in the process of damage compensation, e.g. auto repair shops, have not always been satisfied with the insurers' handling of compensation claims and have publicly advocated for changes to the regulations to ensure more professional handling by insurers. Insurers, on the other hand, have generally considered such complaints to be largely unfounded, although they have agreed that legislative amendments should be implemented to make the process more efficient.[66]

This issue was also on the agenda for the most recent amendments to the ZOOP, specifically the amendment of Article 12. As a further step, the latest ZOOP amendment grants the supervisory body (the Croatian Financial Services Supervisory Agency – HANFA) the authority and liability to issue a regulation specifying in more detail how compensation claims should be handled, including the content of the reasoned offer and substantiated response, the recording of compensation claims, and the informing of the injured party about the obligations of the liable insurer and the necessary data in the claims process, in accordance with the amended Article 12 of the ZOOP. HANFA has indeed issued such a regulation.[67] The issue of procedures and methods for handling compensation claims will further be discussed with consideration of the text of the amended Article 12 of the ZOOP and the Rulebook.

[66] https://osiguranje.hr/ClanakDetalji.aspx?22185, accessed: 1.7.2024.

[67] The Rulebook on the Procedure for Resolving Compensation Claims of Injured Parties in Traffic Accidents, *Narodne novine, Official Gazette of the Republic of Croatia*, No. 79/2024, of July 3, 2024, hereinafter: the Rulebook**.**

Regarding the types of decisions an insurer can make in response to a submitted compensation claim, the amended ZOOP does not introduce any substantial changes. The insurer is required to make:

- a reasoned offer for damage compensation when liability is not in dispute and the damage amount has been determined, or
- a substantiated response to all points of the compensation claim when liability is disputed or when the amount of damage has not been fully determined.

The deadline for the insurer to deliver one of these decisions to the claimant remains unchanged – no later than 60 days from the receipt of the compensation claim. The decision must at least contain the reasons for its issuance and information on the right to file an objection to that decision.[68] Since the amended ZOOP only specifies the minimal elements that must be included in each decision, the Rulebook provides a much more detailed explanation of the required elements for each of these decisions, with further differentiation of mandatory elements in a substantiated response, especially in cases where:

- the insurer has determined that it is not liable for compensating the damage;
- the insurer has determined that it is only partially liable for the compensation;
- the insurer has determined that it cannot fully determine the amount of damage.[69]

Analysis of these elements suggests that the general regulation issued by the supervisory body now requires insurers to provide a detailed explanation of why they believe, in the case of a reasoned response (either fully or partially), they are not liable for the damage incurred. In doing so, the insurer must respond in detail to each point of the claim and its attachments (e.g. each point of the report and opinion of the independent expert or service provider chosen by the injured party). Regarding the determination of the damage amount, the insurer must specify the damage (replacement parts, labor costs, etc.) in the decision (reasoned offer or substantiated response) and clearly and unambiguously state how the damage amount was calculated. All of this must be done in a clear and unambiguous manner that will be easily understood by the injured party.

[68] Article 12, paragraphs 1 and 2 of the amended ZOOP.

[69] Article 3, Paragraphs 1-3 of the Rulebook. Paragraph 5 also specifies what any decision must not contain: statements that are inaccurate, unclear, or that may mislead the injured party, such as a statement about the preclusive nature of the deadline for filing an objection to the decision on the damage claim, a statement that conditions the payment of the (undisputed) amount of damage compensation on the injured party taking unnecessary actions (e.g. requiring consent for payment when the insurer is already obligated to make the payment based on ZOOP and the Rulebook, requiring the signing of an agreement or declaration of settlement or compensation, requiring the provision of a bank account number for the payment to be made (if it has already been provided to the insurer), a statement by the insurer claiming they cannot establish their liability due to the lack of a statement from their policyholder, etc.

Therefore, insurers are required to be precise, reasoned, and comprehensive in their response to all elements of the compensation claim (including attachments) and to communicate clearly and understandably to the injured party.

Timeliness is also a requirement. In addition to delivering the decision within 60 days of submitting the compensation claim, the amended ZOOP specifies the deadline within which the insurer must make (full or partial) payment when issuing a reasoned offer, or when determining that he is only partially liable for the compensation or cannot fully ascertain the amount of the damage. Namely, in these cases, the insurer must pay the compensation (or the undisputed part of the compensation) within 15 days from sending one of the mentioned decisions, but in any case, no later than 60 days from the submission of the compensation claim.[70]

The amended ZOOP also specifies the insurer's liability in the period after the submission of the compensation claim, and before making a decision on the claim. Upon receipt of the claim, the insurer must immediately inform the injured party of their rights and obligations, as well as the insurer's liability, and actively and promptly take the necessary actions to fulfill the obligations outlined in this article (the principle of active damage settlement).[71] The Rulebook elaborates on this liability in great detail, requiring insurers, among other things, to treat the claim with the care of a good professional and good business practices, in accordance with the principles of diligence and fairness. A completely new requirement is that the insurer must have a document on their website containing key information about the insurer's obligations and the necessary data in the compensation claims process. The insurer must provide this key information to the injured party when requested, at the time of submitting the compensation claim. The Rulebook defines the formal appearance (form) of this document, its components, and the questions that must be included in the form (which must be clearly and precisely answered in the form), as well as the deadlines for the insurer's actions and information about the decisions the insurer can make with instructions on the right to object.[72]

[70] Article 12, paragraph 5 of the amended ZOOP. As before the entry into force of the amended ZOOP, in the case of non-compliance with the deadline for payment, the sanction is the payment of interest to the injured person, starting from the moment the compensation claim is submitted. Failure to comply with the deadline for delivering the decision gives the injured person the right to file a lawsuit against the insurer (if the lawsuit against the insurer or the liable party is filed before the expiration of the mentioned deadline, it will be considered premature).

[71] Article 12, paragraph 3 of the amended ZOOP. A provision of this content did not exist until this latest amendment.

[72] Article 5 of the Rulebook. The form is provided in the appendix to the Rulebook. Insurers must submit the form to HANFA before using it. The Rulebook also stipulates that insurers, no later than 6 months after the Rulebook enters into force (the Rulebook came into force on the eighth day after its official publication, i.e. July 12, 2024), must adopt and begin applying an internal act that will regulate the entire procedure for handling claims, from receipt to archiving. Of course, this internal act must be in accordance with the amended ZOOP and the Rulebook. The Rulebook also mandates insurers to maintain a record of claims

For the first time, the amended ZOOP explicitly stipulates that the injured party, in the process initiated by the submission of a compensation claim, can submit a report and opinion from an independent expert (regarding all types of damage) and an offer for damage repair from an authorized service provider (e.g. auto repair shops) that the injured party has personally chosen.[73]

The Rulebook stipulates that the insurer, when handling a compensation claim, must "take into account" the submitted report and opinion of the independent expert, or the offer or invoice for damage repair from the authorized service provider chosen by the injured party, and explain any rejection of the expert's report or the repair offer/invoice in part or in full. The insurer must provide a detailed explanation for each point of the report and opinion, or offer.[74] Thus, the report and opinion of an authorized independent expert, as well as the offer or invoice from the repair service provider chosen by the injured party, are not binding for the insurer. However, if the insurer disagrees with the report, opinion, offer, or invoice, it must provide a detailed explanation.[75]

Before the amended ZOOP came into effect, it was not prohibited for the injured party to attach any document to the compensation claim that they considered helpful in supporting their claim. Therefore, it was already allowed to attach a report or opinion from an authorized independent expert[76] or an offer or invoice from the authorized service provider who was expected to repair the damaged item. Even prior to the ZOOP amendment, these attachments were not binding for the insurer, but the insurer was required to take them into account and comment on them according to professional rules and based on valid interpretation and application of the provisions of the Code of Insurance and Reinsurance Ethics.[77]

with a precisely defined content of that record. Insurers have until June 1, 2025, to align their existing records with the requirements of the Rulebook.

[73] Article 12, paragraph 7, of the amended ZOOP. Prior to the amendment, under the provisions of the former Article 12, paragraph 5, the injured party was entitled to submit the report and opinion of an independent expert only in the case of non-property damage, while the right to submit an offer for repairs from an authorized service provider was not regulated at all. Now, the report and opinion can be submitted regarding any type of damage, and the possibility of submitting an offer for repairs from an authorized service provider is expressly regulated.

[74] Articles 2 and 3 of the Rulebook.

[75] Given the mentioned non-obligatory nature of the expert's report/opinion from an authorized expert or the offer/invoice from the service provider, the insurer can, during the processing of the compensation claim, engage other authorized experts to provide a report/opinion or request offers/invoices from other service providers different from those engaged by the injured party (or the representative of the injured party, who could be, for example, an auto repair shop authorized to represent the injured party in the claim resolution process, with their offer attached to the compensation claim).

[76] Indeed, as already mentioned, the previous version of the ZOOP limited this possibility to non-property damages only, while the amended ZOOP no longer contains such a limitation.

[77] „Code of Business Insurance and Reinsurance Ethics", Insurance Association of the Croatian Chamber of Economy,*https://huo.hr/upload_data/site_files/kodeks-poslovne-osiguravateljne-i-reosiguravateljne-etike-1-.pdf*, accessed: 1.7.2024."

With the ZOOP amendment and the Rulebook, there has been a slight shift in expanding the injured party's rights in this regard. It can be said that these rights are now (just) explicitly stated and described in the amended ZOOP and the Rulebook. The progress is more significant in procedural terms, thanks to the detailed specification of the insurer's obligations at each stage of handling the compensation claim, as outlined in the Rulebookn. It should also be noted that, due to more precise and detailed (sub)legal regulation of this issue, more efficient supervision of insurers' actions by HANFA can be expected.

III Conclusion

The 2023 amendment to the ZOOP can generally be evaluated as a significant step forward in increasing the efficiency of the protection of injured parties and policyholders. A large portion of the amendment was necessary for Croatian legislation, as it pertains to the transposition of the provisions of the 2021 Directive into Croatian domestic law. In this respect, it is important to highlight the expansion of the cases of damage caused by the use of vehicles that must be covered by insurance, which is the result of the (broad) definition of the term use of vehicles. On the other hand, it is important to point out the more precise regulation of certain specific circumstances in which accidents caused by motor vehicles occur, where insurance coverage under motor liability insurance for such damage does not need to be contracted, or must be contracted only conditionally (for example, damages related to motorsport events and damages where the vehicle was not being used for its usual transportation purpose).

European, and consequently Croatian, legislators have also made progress in regulating the protection of the injured party when insolvency occurs in the insurance company that has concluded a motor liability insurance contract with the liable party. Previous provisions, which were mostly of a general nature, have been replaced or supplemented with more precise and therefore more comprehensive material and procedural provisions. Regulating this issue at the EU level is significant normative support for the Croatian Insurance Office and equivalent bodies in other member states. It should not be forgotten that these bodies, when dealing with such situations, were, to a large extent, relying on mutual agreements. Now, the fundamental regulation of numerous issues has been elevated to a higher level.

A bold step forward has been made by the Croatian legislator by regulating liability insurance for damage caused by the use of automated vehicles. This is an amendment that was not necessary in terms of the transposition of European Union law into Croatian national legislation. The legislator was motivated by technological progress and the creation of a legal framework for vehicles that are not yet, but certainly will be in time, gradually present on Croatian roads. In addition to the

principle that insurance for damages caused by automated vehicles is regulated, as much as possible, in the same manner as for "classic" vehicles, the amended ZOOP contains a significant number of "special provisions" that had to be aligned with applicable regulations governing some aspects of the use of automated vehicles, as well as with emerging regulations. Naturally, the quality of these provisions in the amended ZOOP will be evaluated through future business and judicial practice. It already seems that some provisions will need to be clarified in the future to be more effectively applied (e.g. insurance coverage for a driver who was not operating the vehicle at the time of the accident, nor was required to do so, but the automated vehicle was doing so). It will certainly be necessary to consider the efficiency of these provisions, especially with the development of legal regulations in other areas, such as insurance for damages caused by defective products, and above all, the precise regulation of the provisions about what is covered (and/or the risk) insured, specifically liability for damage caused by autonomous vehicles. This will be the task of the Croatian legislator, as the European legislator also foresaw the need for a subsequent evaluation of the quality and applicability of its provisions in the near future, as stated in the 2021 Directive.

A positive assessment can also be made of the more detailed regulation of the process and manner of resolving claims. In this context, it is necessary to consider not only the provisions of the amended ZOOP but also those of the implementing Rulebook based on it. Although at first glance it may seem that "revolutionary" changes have occurred in terms of creating new rights for injured parties in this process, a more careful reading leads to the conclusion that such an assessment is not entirely accurate, and that in this respect, it is about the explicit determination of previously existing possibilities for the injured party, now codified in the provisions of the special legal and secondary legislation. However, it is certainly positive that some issues related to the method and procedure for resolving claims have been significantly more precisely resolved, almost to the level of uniformity. The legislator now expects insurers to strictly follow the procedures set forth in the amended ZOOP, particularly in the implementing Rulebook, with decisions that have a very precisely defined (relatively extensive) content. This is important not only for the harmonized approach of all insurers and more efficient handling of claims but also for the added layers of protection for the injured party. On one hand, they will clearly know what the insurer is obliged to do at a certain stage of processing their claim, especially which information the insurer must communicate to them and in what time frame, from the moment the claim is received until the decision is made regarding that claim. The mandatory elements of the insurer's decision, which require a high level of completeness and reasoning, will be particularly significant for the injured party when they are dissatisfied with that decision. It will then be easier for them to prepare a better-quality appeal (during the internal dispute resolution

phase with the insurer regarding the disputed decision). Moreover, the position of the insured party will be easier later on, if the dispute reaches the stage of resolution before other bodies – extrajudicial and/or judicial. While this will be important if the dispute is resolved through extrajudicial mechanisms, it seems that the significance of such well-argued and specific decisions will be particularly important in disputes that are resolved before the court. Namely, the injured party (or their lawyer) will have before them the insurer's thoroughly explained stance, which could help them draft a lawsuit against the insurer, presenting counterarguments in relation to what the insurer outlined in the decision (and in the procedure for the appeal, which the insurer must also precisely argue). This creates the opportunity to prevent a situation in which the insurer's fully reasoned position, which led to the decision (justified response) to fully or partially reject the claim, would only be revealed in the court proceedings, while in the earlier stages of the dispute, that position was merely outlined in general terms to the injured party. Now, the injured party must and should know the insurer's precise, reasoned position even before potentially initiating court proceedings. This could speed up and make the court procedure more efficient. And the faster and more efficient the court procedures, the better it is for the general public interest.

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