REGULATION NO. 9 OF 19 May 2015

REGULATION CONCERNING THE RULES ON THE CLAIMS HISTORY STATEMENT DATABASE AND ON THE CLAIMS HISTORY STATEMENT PURSUANT TO ART.134 OF LEGISLATIVE DECREE NO.209 OF 7 SEPTEMBER 2005 - CODE OF PRIVATE INSURANCE - DEMATERIALISATION OF THE CLAIMS HISTORY STATEMENT.

THE INSURANCE SUPERVISORY AUTHORITY

HAVING REGARD to law n. 576 of 12 August 1982 as subsequently amended and supplemented, on the reform of insurance supervision;

HAVING REGARD to legislative decree no. 209 of 7 September 2005 as subsequently amended and supplemented, introducing the Code of Private Insurance; in particular articles 134 (Claims history statement) and 170bis (Lifetime of the contract);

HAVING REGARD to Decree Law no. 95 of 6 July 2012, concerning urgent provisions for the review of public expenditure with unchanged services for citizens, converted with amendments into Law no. 135 of 7 August 2012; in particular, article 13 (Establishment of IVASS);

HAVING REGARD to Title IV of ISVAP Regulation no. 35 of 26 May 2010 laying down provisions on "Web-based information to policyholders";

HAVING REGARD to legislative decree no. 196 of 30 June 2003 and subsequent modifications and integrations, regarding the personal data protection code;

HAVING CONSIDERED art. 134 of Legislative Decree no. 209 of 7 September 2005, that lays down the obligation for insurance undertakings to enter the information in the claims history statements in an electronic Database held by a public institution or, if already existing, by a private entity;

HAVING CONSIDERED the need to redefine the regulations on claims history statements for motor liability contracts in compliance with art. 134 of Legislative Decree no. 209 of 7 September 2005, currently regulated by ISVAP Regulation no. 4 of 9 August 2006 as amended by ISVAP Order no. 2590 of 8 February 2008;

adopts the following:

REGULATION

Art. 1
(Definitions)

1.In this Regulation, the following definitions shall apply:

a) "decree": Legislative Decree no. 209 of 7 September 2005 (Code of Private Insurance);

b) "undertaking" or "insurer": an insurance undertaking authorised in Italy to the pursuit of compulsory motor liability insurance as well as the insurance undertaking having its head office is in another EEA Member State, licensed in Italy to the pursuit of compulsory motor liability insurance under the right of establishment or the freedom to provide services;

c) "compulsory insurance against civil liability in respect of the use of motor vehicles" or, in short, "MTPL": compulsory insurance covering civil liability in respect of the use of motor vehicles for the risks classified in class 10, other than carrier's liability, referred to in article 2, paragraph 3 of Legislative Decree no. 209 of 7 September 2005;

d) "policyholder": the natural or legal person who underwrites a compulsory insurance contract against civil liability in respect of the use of motor vehicles;

e) "person entitled": the natural or legal person who is entitled to delivery of the claims history statement (policyholder or, if different, the owner of the vehicle, the usufructuary, the buyer under reservation of title, the lessee of an operating financial leasing);

f) "claims history statement": an electronic document, which indicates the characteristics of the risk insured;

g) "claims history statement database" or, in short, "database": the electronic database that the undertakings have an obligation to feed with the information and data necessary to certify the claims history;

h) "company bonus class": category to which the contract is allocated, based on a rating scale developed by the individual undertaking and related to previous claims history, to determine the presumed risk level of the guarantee issued;

i) "universal bonus class": category to which the contract is allocated on the basis of a rating scale established by IVASS Order, that all undertakings must indicate in the claims history statement next to the company bonus class in the interests of comparability of the motor liability insurance offers;

j) "observation period": the contractual period relevant for a change of the bonus class as a result of claims paid during the period;

l) "transition rules": procedures laid down by the individual undertaking and IVASS in relation respectively to the change over time of the company bonus class under letter h) and of the universal bonus class under letter i);

m) "leasing contract": lease in which the lessor grants use of the vehicle in exchange for the payment of a periodic fee.

Art. 2
(Information included in the claims history statement)

1. The statement contains:
   a) the name of the insurance undertaking;
   b) the name and the tax code of the policyholder, if a natural person, or the name of the firm i.e. the corporate name and the relevant tax code or VAT number if the policyholder is a legal person;
   c) the same data as referred to in the preceding letter b) relative to the owner or any other person entitled;
   d) the insurance contract number;
   e) the data of the plate of the vehicle for which the contract is concluded or, when this is not prescribed, the identifying data of the chassis of the insured vehicle;
   f) the type of tariff according to which the contract was concluded;
   g) the expiry date of the contract for which the claims history statement is issued;
   h) the company bonus class of origin, that assigned by the undertaking for the following year, as well as the corresponding original and assigned universal bonus classes, regardless of the type of tariff according to which the contract was concluded[1].
   i) a table showing the previous claims history, with the indication of the number of claims paid, even partially, in the ten years prior to the contract expiry, with a distinct indication of the number of claims with main liability and the number of claims with equal liability, for the latter with an indication of the relative percentage of liability[2];
   j) the type of damage paid by specifying if it is only material damage, only personal injury or mixed (material damage and personal injury);
   k) any amounts of deductibles, requested and not paid by the policyholder.
   l) The Unique Risk Identifier (IUR) code determined by the combination of the owner, or other entitled person pursuant to article 6, paragraph 1, of this Regulation, and each vehicle owned or held under usufruct, financial leasing and reservation of title[3].
2. In the case of conclusion of the contract within the meaning and for the purposes of art. 134, paragraph 4-bis of the Decree, with the same or a different insurance undertaking, this indication must be reported in the claims history statement and maintained also in the statements subsequent to the first one.
3. In the case of partial payment of the claim, with consequent application of the penalty, the subsequent payments, referred to the same claim, do not determine the application of the contractual penalties.

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[1] Letter amended by article 1, paragraph 1, of IVASS Order no. 71 of 16 April 2018.

[2] Letter amended by article 1, paragraph 2, of IVASS Order no. 71 of 16 April 2018.

[3] Letter inserted by article 1, paragraph 3, of IVASS Order no. 71 of 16 April 2018.

4. Pursuant to paragraph 1, letter i), the main liability, in the event of an accident between two or more vehicles, refers to the vehicle which has been attributed a degree of liability greater than that of the other vehicles involved.

The share of liability other than the main liability attributable to the other vehicle or vehicles, will not lead to the annotation in the claims history statement nor to the application of the malus.

In the case of accidents between two or more vehicles, in which equal liability has been attributed, none of the contracts relating to the vehicles involved will undergo the application of the malus. In this case, however, an annotation will be made on the claims history statement of the percentage of shared responsibility attributed since if, as a result of several accidents paid in the last five years of observation of the claims frequency[4], the "cumulative" percentage of liability is equal to at least 51%, the malus may be applied.

The observation period ends without the application of penalties if, within 5 years from the first annotation, the sum of the percentages does not reach the threshold of 51%.

Art. 3
(Effective date and duration of the observation period)

1. For the purposes of the application of the transition rules both of the company bonus class and of the universal bonus class, in case of a vehicle insured for the first year, the observation period starts from the effective date of the insurance cover and ends sixty days before the expiry date of the insurance year. For the subsequent years, the observation period begins sixty days before the effective date of the contract and ends sixty days before the expiry date of the insurance year.
2. In the event of a contract with annual duration plus a fraction, the observation period starts from the effective date of the insurance cover and ends sixty days before the expiry date of the contract. For the subsequent years, the observation period begins sixty days before the effective date of the contract and ends sixty days before the expiry date of the contract.
3. The transition rules of the universal bonus classes will be regulated by a specific IVASS Order.

Art. 4
(Management of the Claims history statement database)

1. The database is held by public institutions or, if already existing, by private institutions.
2. In the event that the database is held by institutions other than IVASS, the latter stipulates a specific agreement that establishes data management and control procedures. In this case, the data controller is the owner and manager of the database; IVASS is the controller of the processing related to the use of the database for its statutory purposes.
3. The agreement provides that IVASS, in the pursuit of its statutory objectives, has free and unrestricted access to the information in the database.

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[4] Period amended by article 1, paragraph 7, of IVASS Order no. 71 of 16 April 2018. The previous version laid down: "if, as a result of several accidents that have occurred in the last five years of observation of the claims frequency"

4. Personal data are processed in accordance with Legislative Decree no. 196 of 30 June 2003 (Personal data protection code), with particular regard to the principles of art. 11 of the same Code.

5. The rights of the party concerned pursuant to art. 7 of the aforementioned Legislative Decree no. 196 of 30 June 2003 and the relating types of protection referred to in articles 145 and following of the same Legislative Decree shall remain unaffected.

Art. 5
(Feeding, consultation and operation of the Claims history statement database)

1. Undertakings shall feed the Claims history statement database with the information reported in the claims history statement referred to in art. 2, according to the procedures and times provided for by this Regulation and by IVASS Order.

2. The information relating to the last valid claims history statement is made available in the database at least thirty days before the expiry date of the contract.

3. Undertakings are responsible for the correctness and updating of the information sent to the database as well as for access to the same, in compliance with the security measures, including minimum measures, designed to guarantee the protection of the information contained in the database, in accordance with Legislative Decree no. 196 of 30 June 2003[5].

4. The responsibility and control of the use of the user profiles assigned to the undertakings for the consultation of the information in the database, lie with the undertaking and the System Administrator identified by the undertaking itself. These subjects as well as the internal staff, intermediaries and any service companies operating on behalf of the undertaking, which in accordance with the duties they perform are authorized for access, are bound to secrecy on the information acquired and are personally liable for the violation of confidentiality obligations arising from the processing of information acquired through consultation of the databases and their use or disclosure to third parties for purposes not permitted by law[6].

Art. 6
(Obligation to deliver the claims history statement)

1. The undertakings deliver the claims history statement to the policyholder and, if different, to the person entitled, that is:
   a) to the owner;
   b) in the case of usufruct, to the usufructuary;
   c) in the case of reservation of title, to the buyer;
   d) In the case of lease, to the lessee.

2. The obligation referred to in paragraph 1 shall also exist:
   a) whatever the type of tariff under which the contract was concluded;

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[5] Paragraph replaced by article 1, paragraph 4, of IVASS Order no. 71 of 16 April 2018.

[6] Paragraph inserted by article 1, paragraph 5, of IVASS Order no. 71 of 16 April 2018.

b) in the case of suspension of the cover during the life of the contract and subsequent reactivation, on the occasion of the new annual expiry date subsequent to reactivation, when the observation period is terminated;

c) in the case of theft of the vehicle, permanent export abroad, delivery for sale, destruction, end of life of the vehicle, if they have occurred after the termination of the observation period, i.e. in the sixty days prior to the expiry date of the contract;

d) in the case of sale of the vehicle, which occurred after the termination of the observation period, i.e. in the sixty days prior to the expiry date of the contract, if the transferor has exercised the option of termination or transfer of the contract referred to in article 171, paragraph 1, letters a) and b) of the Decree.

Art. 7
(Procedures and times for delivering the claims history statement)

1. At each expiry date of the contract, the undertakings shall deliver the claims history statement electronically, provided that the observation period referred to in art. 3, paragraphs 1 and 2 has terminated.

2. The claims history statement shall be delivered at least 30 days before the expiry date of the contract.

3. The delivery obligation referred to in paragraph 1 shall be deemed to be fulfilled when the claims history statement is made available in the restricted area of the website of the undertaking through which each policyholder can access his/her own insurance position, as regulated by art. 38-bis, paragraph 1, of ISVAP Regulation no. 35 of 26 May 2010. The undertakings, however, shall provide additional electronic delivery procedures to be activated on request of the policyholder.

4. The undertakings shall disclose the possibility of requesting the credentials to access the restricted area of their own website and the additional electronic delivery procedures, by publishing a specific notice on the home page of their website.

5. The information referred to in paragraph 4 shall also be made in writing at the time of underwriting the insurance contract.

6. In the cases where the policyholder is a person other than the person entitled, the undertaking shall activate for the latter the same delivery procedures envisaged for the policyholder.

7. For motor liability contracts relating to fleets of motor vehicles, the electronic delivery of the relevant claims history statements shall be made at the request of the policyholder, with the same procedures as those provided for in paragraph 3, without prejudice to other procedures agreed between the parties, of which the undertaking shall keep evidence.

8. For contracts acquired through intermediaries, the undertaking under the obligation to deliver the claims history statement, shall – upon request - provide to the person entitled, or to a person delegated by the same, a printed copy of the statement by means of their intermediaries, without any additional costs.
The claims history statements issued in this way may not be used by the persons entitled when underwriting a new contract.

9. The persons entitled may request at any time the claims history statement relative to the last five years, pursuant to art. 134, paragraph 1-bis of the Decree. In this case,

the undertakings shall deliver electronically, within fifteen days from the receipt of the request, the claims history statement including the last year for which, at the time of the request, the observation period has terminated.

The claims history statements issued in this way may not be used by the persons entitled when underwriting a new contract.

10. In the case of suspension of the cover during the contract, the claims history statement shall be delivered at least thirty days before the new annual expiry date subsequent to reactivation.

11. In the case of joint owners of the vehicle, the obligation of delivery to the owner, if different from the policyholder, shall be deemed to be fulfilled:

    a) for current contracts already present in the undertaking's portfolio, with delivery to the person entitled already indicated in the policy as owner;

    b) for new contracts concluded with effect from 1 July 2015 with the delivery to the first name appearing on the registration certificate.

Art. 8
(Validity of the claims history statement)[7]

1. In the event of the documented cessation of risk or in case of suspension or failure to renew the insurance contract for non-use of the vehicle, as stated in a specific statement of the policyholder, the latest claims history statement obtained shall be valid for five years, starting from the expiry date of the contract to which such statement refers.

Art. 9
(Acquisition of the claims history statement by the insurer)

1. When concluding a motor liability insurance contract, the undertakings directly acquire the claims history statement electronically through access to the claims history statement database.

2. Where, upon conclusion of the contract, the claims history statement is not, for any reason, present in the database, the undertaking shall acquire the last useful electronic claims history statement and request to the policyholder, for the remaining period, a statement pursuant to articles 1892 and 1893 of the Italian Civil Code, that allows to reconstruct the insurance position and proceed to a correct assignment of the bonus class.

3. In the case of accidents occurred during the reference period, where the policyholder is unable to provide information on his/her degree of liability and the undertaking is not able to promptly acquire the information, the contract is issued on the basis of the bonus class resulting from the last claims history statement present in the database.

4. In the event of complete absence of a useful claims history statement in the database and the impossibility of acquiring the electronic claims history statement, the

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[7] Article amended by article 1, paragraph 6, of IVASS Order no. 71 of 16 April 2018. Paragraphs 2, 3 and 4 shall be repealed as from the date of entry into force of IVASS Order no. 72 of 16 April 2018.

undertaking requests to the policyholder the statement referred to in paragraph 2 for the entire previous five-year period. Only for evidence and verification purposes, the undertaking will be able to acquire the previous paper certificates or previous insurance contracts provided by the policyholder in support of the aforesaid statement. In the absence of documentary evidence, the undertaking assigns to the risk the universal bonus class of maximum penalty.

5. In the cases referred to in paragraphs 2, 3 and 4 of this article, the undertakings, after accepting the contract, promptly verify the correctness of the statements made and, if necessary, proceed to the reclassification of the contracts.

Art. 10
(Repeals)

1. From the date of the entry into force of this Regulation, ISVAP Regulation no. 4 of 9 August 2006 shall be repealed, without prejudice to the provisions of art. 13 paragraph 5.

Art.11
(Sanctions)

1. Pursuant to paragraph 1 of art. 317 of the Decree, when verifying non-compliance with the regulations on the feeding of the database, the set of communications made by the undertaking in each two-month calendar period is considered, for the sole purposes of sanctions, as a single flow of communication. At the expiry date of each two-month calendar period IVASS, having established the existence of violations of the law, shall notify the undertakings of the failure to comply with the rules on the feeding of the database.

Art. 12
(Transitional and final provisions)

1. The undertakings, for the first year after the entry into force of this Regulation, on the occasion of the annual communication referred to in art. 170-bis of the Decree, shall communicate to the policyholders the legislative and regulatory amendments concerning the claims history statement.
2. In the same communication referred to in the previous paragraph, the undertakings shall inform the policyholder regarding the electronic delivery procedures of the claims history statement provided for by art.7 of this Regulation.
3. For a period of twelve months from the date of entry into force of this Regulation, necessary to complete the feeding of the database, the issuing of claims history statements pursuant to art. 7, paragraph 9, shall take place according to the delivery procedures indicated by the person entitled, without any additional costs.
4. The issuing of the claims history statements relating to insurance covers that have already expired on the date of entry into force of this Regulation, not present in the database, may be requested by the person entitled, according to the delivery procedures indicated by the latter and without any additional costs, directly to the undertaking that has provided the last insurance coverage.

5. The claims history statements issued pursuant to paragraphs 3 and 4 of this article may not be used by the person entitled for the underwriting of a new contract but only for informational purposes. In such cases, the undertaking, which has been requested to take out a new contract, acquires the claims history statement directly from the undertaking that has stipulated the last insurance coverage.

Art. 13
(Publication and entry into force)

1. This Regulation shall be published in the Official Journal of the Italian Republic and in IVASS' Bulletin. It is also available on IVASS website.
2. This Regulation shall enter into force with respect to motor vehicle liability contracts expiring from 1 July 2015. Undertakings shall comply with the provisions stated under art. 5, paragraph 1 by 30 June 2015.
3. Undertakings shall comply with the provisions stated under art. 7, paragraphs 6, 8 and 9 by 31 October 2015.
4. Undertakings shall comply with the provisions stated under art. 12, paragraphs 1 and 2 by 1 July 2015.
5. Pending the entry into force of the IVASS Order, referred to in art. 3 of this Regulation, the assignment rules and the transition rules of the universal bonus classes regulated by Annex 2 to ISVAP Regulation no. 4/2006 shall remain in force.

On behalf of the Joint Directorate
the President