

REFIT REVIEW OF DIRECTIVE 2009/103/EC RELATING TO MOTOR INSURANCE
THIRD PARTY LIABILITY

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UK Insurance Industry comments on Inception Impact Assessment

Introduction

The UK Insurance Industry welcomes this opportunity to comment on the European Commission's proposed REFIT of the Motor Insurance Directive. This response has been prepared jointly by the Association of British Insurers (ABI), Motor Insurers' Bureau (MIB), British Insurance Brokers' Association (BIBA), International Underwriting Association of London (IUA), Lloyd's Market Association (LMA), Lloyd's, Managing General Agents' Association (MGAA) and the Forum of Insurance Lawyers (FOIL). This response is therefore supported by each part of the UK motor insurance industry and the reinsurance industry that underpins this, while also providing significant insurance capacity across the EU (especially in commercial lines). The response is also supported by lawyers who act for insurance industry clients.

General Comments

Whatever the outcome of the negotiations about the UK's future relationship with the EU, the UK Insurance Industry believes that both the UK and EU member states will benefit from as much alignment between EU and UK motor insurance law as is possible, in order to facilitate cross-border travel and freight.

We therefore welcome the inclusion within the REFIT consultation of detailed consideration of the implications of the ECJ's *Vnuk* judgment. It is essential that the Commission addresses the unwelcome and unintended consequences of this ruling. The judgment's interpretation effectively extends the requirement for compulsory motor insurance to any vehicle or mobile device, however and wherever it is used, which is expensive, introduces unnecessary administrative burdens and will likely have social consequences in terms of increased uninsured driving and fraud. The role of motor insurance has always been to protect road users, and with an estimated 390,000 people killed, disabled or seriously injured as a result of motor accidents across the EU each year, this must remain its focus.

All road users benefit from a consistently enforced requirement for compulsory insurance to cover liabilities to third parties for deaths, injuries and damage to property. The clarity provided by the Motor Insurance Directive has played an important role in reducing the level of uninsured driving. Following the ECJ *Vnuk* judgment, the lack of a clear and understood definition of where motor insurance law applies and where other (more appropriate) legal regimes apply puts this at risk. Resources currently used to enforce compulsory motor insurance for road users will need to be devoted to the many millions of off-road vehicles and devices now potentially brought into scope. This also threatens to undermine the consistent message to the public about the importance of driving with insurance and efforts to enforce this requirement.

While we recognise that victims of accidents that take place on private land also deserve appropriate redress, the Motor Insurance Directive is not an appropriate legal mechanism to achieve this – as there will be significant confusion for victims (who will have different legal

options depending whether their injuries were caused by stationary or mobile equipment) and a genuine risk that employers or event organisers will not be held accountable for accidents, as they may seek to pass responsibility onto individual drivers.

The Commission must also take into account the fact that, had Mr Vnuk's accident occurred in a different member state, his claim would have been settled satisfactorily by his employer (as there are well established liability insurance regimes in place in many member states). As a result, the ECJ *Vnuk* judgement effectively imposes a significant change onto member states, and this REFIT therefore represents a welcome opportunity to address the seemingly unintended consequences of that decision.

All parts of the UK motor insurance industry agree that the issues raised as part of this REFIT are important. We look forward to engaging with the Commission further on the detail of how to implement any proposals that are made as a result of this exercise. We have provided specific comments on the four issues raised in the Impact Assessment below. We look forward to further consultation and engagement on each of these issues during the REFIT process. We will also be providing a detailed response to the full consultation launched on 28th July.

Comments on specific issues raised in Inception Impact Assessment

Information about past claims

The UK insurance industry supports measures to improve the sharing of claim history information when consumers move from one country to another. We look forward to further consultation on how statements could be standardised to help improve this process. However, the Motor Insurance Directive is not an appropriate mechanism to regulate how these claims history statements are then used to calculate No Claims Discounts (NCDs), as an insurer's criteria for setting NCDs may include claims not covered by the scope of the Directive (such as accidental damage and theft). As NCDs are an important way that insurers compete with one another to attract and retain customers, they must retain the ability to use their own criteria to decide on the level of discount offered.

Protection of Victims In Case of Insolvency

In the UK the Financial Services Compensation Scheme (FSCS) deals with compensation in respect of insolvent insurance companies (and other financial services firms) who have been authorised by the UK, and European firms (who have been authorised by their home regulator) when operating in the UK. In its capacity as the Motor Guarantee Fund in the UK, the Motor Insurers' Bureau (MIB), compensates victims of uninsured and untraced drivers. It does not deal with cases of insolvency. We see no reason to alter this arrangement, as it has worked well in providing protection for policyholders and third party victims. In addition, the implementation of Solvency II is expected to reduce the likelihood of future insolvencies. As we have indicated in response to the Green Paper on Retail Financial Services, the ABI is supportive of EU action to establish a minimum harmonisation directive on Insurance Guarantee Schemes as all policyholders (life and non-life) deserve to have certain levels of protection.

Minimum amounts of cover

The UK's motor insurance regime does not specify a minimum amount of cover for personal injury claims and therefore any proposed changes to the limits for personal injury as set in the Directive would not directly affect the UK motor insurance market. We are not aware of any evidence to suggest the current limits set for property damage need to

be changed. Any arrangements to alter these in the future need to allow sufficient times for insurers to amend policy details and ensure appropriate cover is in place.

The Inception Impact Assessment also suggests that the Commission will consider setting different levels of minimum cover for different vehicle classes. It will not be possible for the Commission to conduct a reliable Impact Assessment on this issue whilst the uncertainty over the ECJ *Vnuk* judgment remains, as the Commission will need to consider that the Directive could be understood to apply to a wide range of industrial machinery (not just roadworthy vehicles).

Scope of the Directive

The UK insurance industry strongly supports the Commission's proposal to amend the Directive to confirm that it applies only in traffic. As an industry, we have significant concerns about the ECJ *Vnuk* judgment. Motorists who buy insurance in the reasonable expectation that they are part of a shared system from which all drivers can benefit should not fund compensation for victims of accidents of entirely unrelated industrial, agricultural and recreational activities.

In short, the ECJ *Vnuk* judgment, if implemented in full will add significant cost to citizens and be in part unworkable and unenforceable. It is likely to cause a deterioration in the level of compliance with compulsory insurance requirements – something that has been improved significantly over the last decade.

It will not be workable in practice to extend the remit of the Motor Insurance Directive onto private land – especially in workplaces, where it could create significant confusion for accident victims (there is no reason to treat the victim of a workplace accident differently depending on whether they were injured by stationary equipment or a mobile device).

Unless the Commission takes action, each member state will eventually need to amend local motor insurance law. There cannot be a harmonised approach to this, as the nature of off-road vehicle use varies considerably in different member states, as does the wider legal environment for health and safety, employment and public liability law with which this new motor insurance requirement will need to interact. Member states will not know how many newly-in-scope vehicles are in use on private land, and so will have no way to effectively measure whether this legal requirement is being complied with.

If no action is taken, the significant additional costs are unlikely to be split proportionately across the market as a whole, but will likely be concentrated on sectors where uncertainty is greatest. One example is motorsports. The Commission will be aware that in Finland, where a compulsory insurance requirement for motorsport competitors was introduced, average premiums have increased dramatically (from an initial average of €200 to a more recent average of €4000, with much higher premiums charged for some events). If other member states were required to introduce compulsory insurance for motorsport competitors like in Finland, such competitors could also face high upfront costs or could find that insurers are not willing to accept the potential risk. Given that there are 200,000 regular participants, this could mean UK motorsport collectively absorbing a very high additional annual cost – potentially enough to see many events and racetracks close entirely, despite no evidence of any problem with the current arrangements (*Note: Decisions as to premiums are for each individual insurer to take and insurers would be under no obligation to provide this cover – thus, motorsport competitors may find that they are unable to comply with the requirement to take out compulsory insurance*).

Motorsports is just one example of a much wider problem that could be felt immediately across a wide range of commercial motor fleets. In an already challenging market, the appetite of insurers to take on additional liabilities or absorb costs will be limited. In particular, the Commission must account for the affect this ongoing uncertainty will have on the functioning of the reinsurance market, which is dependent on being able to accurately assess the scale of its potential exposure.

However, while there is a possibility of increased claims costs as a result of the legal uncertainty the ECJ *Vnuk* judgment creates, the greater cost will come from ongoing administrative costs from complying with the compulsory insurance requirement. There will be limited opportunity to automate the quotation process as vehicles never intended to be used on roads are not captured in any recognised public database and drivers do not require a license to use them.

We expect that the complexity of extending the current motor insurance regime to many millions of additional vehicles will result in significant non-compliance, leading to an increase in uninsured driving and fraud. To address this, an extensive and expensive public information campaign will be needed. The combined cost of a public information campaign and additional police resources will be significant. We are concerned that resources that should be devoted to important road safety issues (such as drink driving and speeding) would instead be devoted to raising awareness of these new legal obligations.

As the Commission highlights in the REFIT consultation document, several member states use electronic checks of registration plates to ensure compliance with the compulsory insurance requirement. This technology will not be possible off-road as many newly in-scope vehicles do not have a registration plate and it is not viable to install a network of cameras on private land. This effectively makes this aspect of the compulsory insurance requirement unenforceable, which in turn dilutes existing enforcement messages. Lack of credible enforcement is likely to have serious social impacts, such as increasing uninsured driving and hit and run incidents, all of which add human and financial cost to society.

The UK insurance industry is currently undertaking a detailed assessment of these issues and will provide additional data and evidence in our full response to the consultation. The estimated additional financial cost should the Commission opt not to amend the Directive to clarify its scope of 'in traffic' situations only is expected to be very large and, therefore, it is vital that the European Commission acknowledges these warnings – which are based on detailed and wide ranging analysis of the likely impact of the judgment. For these reasons, the Commission must prioritise work to address the unintended consequences of the ECJ *Vnuk* judgment.