



## **MIA's complete overview of the Vnuk issue its potential to destroy the future of motorsport and ACTION needed**

### **Could the European Commission's (EC) Motor Insurance Directive end EU and UK Motorsport?**

**Yes** - an unintended consequence of the decision of the Court of Justice of the European Union in the case of Damijan Vnuk v Zavarovalnica Triglav d.d. (case C-162/13)<sup>1</sup> is that motorsport vehicles and drivers are **now required** to be covered by unlimited third-party motor insurance during competition.

If the EC's Motor Insurance Directive is not amended, this ruling could end motorsport in the EU and UK.

The MIA offers a solution below which needs **ACTION BEFORE OCTOBER 20TH**.

### **The Vnuk case (C-162/13)**

In August 2007, a farmer, on a tractor with a trailer attached, was reversing in the farmyard to position the trailer in a barn, when it struck a ladder on which Mr Vnuk had climbed, causing him to fall. The Court of Justice of the European Union (CJEU) was asked to confirm whether the circumstances of Mr Vnuk's accident (i.e. the use of a tractor as a machine rather than as transport and whilst being in a farmyard) fell within the duty to insure a vehicle, as required under the existing Motor Insurance Directive.

The CJEU ruled that '**any use of a vehicle, consistent with its normal function**' was required to be insured under Article 3.1 of the EC Directive.

As using a tractor to manoeuvre a trailer on a farmyard is consistent with 'the normal function of that vehicle', the CJEU confirmed Mr Vnuk's accident should have been covered by third party insurance but were silent about the farmyard so it is widely assumed the Directive extends to use on private land. A vehicle is defined, widely, in the Directive (Article 1.1) as 'any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled'.

### **Difficult issues for Motorsport**

This CJEU ruling makes unlimited third-party insurance compulsory for anyone using any form of motorised transport in any location in EU Member States. This includes all participants in all forms of motorsport – cars, motorbikes, karts, drag, rally etc. at all levels from grassroots to Formula One, whether regulated or unregulated. This compulsory, unlimited insurance must cover all third-party damage, e.g. personal injury to other competitors and any damage to their vehicles, damage to property and injury to marshals etc.

Additionally, the EC Motor Insurance Directive has many exacting requirements, all of which must be met for the compulsory insurance to be compliant. These include:

- the policy must provide liability cover that meets, at least, the minimum levels specified either in the Directive, or in National Law of each EU Member State if higher (Article 9)
- the insurer must appoint claims representatives in every EU Member State (Article 21)
- the creation of an Information Centre in every EU Member State to keep a register of all vehicles (including motorsport) and details of the associated insurance covering each vehicle (Article 23)
- If a motorsport vehicle is not insured, the National Guarantee Fund in that Member State must pay full property damage or personal injury compensation to the third-party victim (Article 24)

Even if there is some insurance cover in place now, it will not be sufficient in future if:

- it only covers liability claims for injury to third parties and not cover car-to-car damage claims; or
- it only covers injury to spectators and marshals and not race competitors; or...
- it provides less than the Directive's minimum level of €6million cover for personal injury claims (n.b. - the National Law in many Member States applies a far higher level); or
- the National Guarantee Fund is not obliged to pay the claim in the event the insurance obligation hasn't been met

Each Member State is required, by the Directive, to take all appropriate measures to ensure these insurance requirements are complied with. If they don't enforce these requirements then they are not compliant with the Directive (e.g. if there are no insurance checks on vehicles or consequences for the vehicle user for not being insured).

The Directive allows Member States to exempt or derogate from the motor insurance requirement (a) certain types of vehicle and (b) certain vehicles having a special plate. So Member States could exempt motorsport vehicles from the requirement of the Directive, but this does not mean the liability goes away.

In the event of a claim where such 'derogated' vehicles are in use, it will fall to either the National Guarantee Fund (i.e. Motor Insurers Bureau in the UK), or a similar organisation, to compensate the victim from a central fund. Hence, if motorsport vehicles were exempted, the subsequent cost of the many claims arising from motorsport activities will dramatically increase the amount of compensation being paid by one of these funding options (e.g. MIB in the UK) so requiring a significant increase in the size of the fund.

This would transfer the cost of this solution onto the insurance of road-going motorists and be unfair when considering the high risk which competitive motorsport use represents, when compared to the normal use of a road-going motor vehicle. By working closely with Member States following the ruling, it is understood that, currently, none have a system which complies with the interpretation of the EC Directive given by the Vnuk ruling. In addition, insurers, including specialists in the London market, have failed to confirm how much it would cost to provide this new compulsory third party cover for motorsport but many have stated that such a level of risk is effectively uninsurable or, if made available, would be at a cost no participant could afford and so motorsport would cease.

'Principles of precedent' mean the CJEU interpretation of Article 3.1 took immediate effect in September 2014. Member States are **now** legally obliged to change their National Law to ensure the full effect of the Directive and the Vnuk ruling is implemented, so motorsport cannot ignore these dangers.

### **An immediate opportunity for motorsport to resolve this issue – before October 20th**

As the European Commission are currently undertaking a better regulation '[REFIT](#)' [review of the whole Motor Insurance Directive](#) We have until **20th October**, to deliver maximum support for an amendment to the Directive which restricts the SCOPE of this proposed third party motor insurance to being '**applicable in the context of traffic only**'.

The Commission offers FOUR options for Amendment in their Review, of which the **best, by far, limits the scope of compulsory third party motor insurance to only those accidents caused by motor vehicles' in the context of traffic**'.

Traffic is defined as being where 'the use of a vehicle for the transport of persons or goods, whether stationary or in motion, in areas where the public has access, in accordance with national law'. This amendment will reflect current insurance requirements in many Member States, who then are free to choose to have more substantial or extensive insurance requirements, in their National Law, for motorsport and/or other activities but without compulsion from the European Commission to do so.

**To do nothing, or to implement any of the other options offered by the Commission, will mean the closure of motorsport activities across the EU and significantly impact all motorists and the insurance industry.**

**It is NOW vital that ALL motorsport organisations, from every EU Member State, respond BY OCTOBER 20<sup>th</sup> to this REFIT review consultation and support the simple amendment offered.**

**The MIA has published easy to follow guidance on how to respond to this on [www.the-mia.com](http://www.the-mia.com) so please refer to this, for any questions – please email [carly.latcham@the-mia.com](mailto:carly.latcham@the-mia.com)**

<sup>1</sup> See the Advocate General's opinion in case C-334/16 [http://curia.europa.eu/juris/document/document\\_print.jsf?doclang=EN&text=&pageIndex=0&part=1&mode=req&docid=191775&occ=first&dir=&cid=255273](http://curia.europa.eu/juris/document/document_print.jsf?doclang=EN&text=&pageIndex=0&part=1&mode=req&docid=191775&occ=first&dir=&cid=255273)