

**The Motor Sports Association response to the Department for
Transport Technical consultation on motor insurance:**

**Consideration of the European Court of Justice ruling in the case of
Damijan Vnuk v Zavarovalnica Triglav d.d (C-162/13)**

April 2017

Introduction

The Royal Automobile Club Motor Sports Association Limited, trading as the Motor Sports Association (**MSA**), is recognised by the Fédération Internationale de l'Automobile (FIA) as the sole governing body for the control of four-wheeled motorsport in the United Kingdom.

The MSA is an association of more than 700 registered motor clubs which organise motor sport events across 11 main motor sport disciplines. The MSA issues more than 5,000 organising permits each year to motor clubs organising motor sport events. More than 100,000 people take an active role in the planning, organising and running of safe motor sport events every year. Motor sport events, large and small, provide a substantial economic impact to local communities, particularly in the leisure and tourism sector, including rural communities.

All motor sport events which take place under an organising permit issued by the MSA are automatically covered under an umbrella public liability insurance policy maintained by the MSA for the sport, with cover up to £67 million. All competitors and officials at such events are also automatically covered under an umbrella personal accident insurance policy.

Most competitors can take part in lower risk motor sport disciplines, subject only to being members of registered motor clubs. The MSA issues approximately 32,000 motor sport competition licences to individuals each year covering core disciplines which present the potential for higher risks, including circuit racing, karting, rallying, sprinting and hillclimbing. These competitor licences are issued subject to successful completion of driving and theory tests, and satisfaction of certain medical criteria.

In addition to our own submission, we anticipate separate submissions from other interested groups within motor sport, including some of our own recognised clubs and competitors.

Other bodies represent two-wheeled motorsport, including the Auto-Cycle Union (ACU) affiliated to the Fédération Internationale de Motorcyclisme (FIM), and other motor sport disciplines not recognised by the FIA or FIM.

Separately from the sport, the motor sport industry in the UK is estimated to be worth approximately £10 billion annually, and employs more than 45, 000 people. We encourage Government to consider separate submissions on behalf of the Motorsport Industry Association (MIA) and the Motor Cycle Industry Association (MCIA).

General Comments

The MSA recognises the very wide scope of the Government's consultation, and understands that there will be many interested respondents making submissions across that spectrum of interest. This submission from the MSA, to the greatest extent possible, relates only to motor sport activities and MSA regulated motor sport specifically. The clear position of the MSA is that it strongly opposes any extension of the scope of compulsory insurance to cover motor sport competition vehicles.

The European Court of Justice (ECJ) decision in the *Vnuk* case has triggered a fresh consideration of scenarios where routes to compensation for victims of road traffic accidents can be improved. The MSA would not object to the several areas where improvements are to be welcomed.

However, at the outset, the MSA must make clear to Government that the purported extension of compulsory third party motor insurance requirements to motor sport is an unintended consequence of the ECJ decision. It is an unnecessary additional requirement on a sport which is already closely self-regulated and adequately insured against foreseeable risks. To our knowledge, no other sport in the UK or the EU is subject to a legislative requirement to carry compulsory insurance. The Government is rightly focussed on "routes to compensation" where none may exist, however the MSA submits that there is no existing recognised failure in the status quo for motor sport.

All motor sport events which take place under an organising permit issued by the MSA are automatically covered under an umbrella public liability insurance policy maintained by the MSA for the sport, with cover up to £67 million. All competitors and officials at such events are also automatically covered under an umbrella personal accident insurance policy. The claims incidence under these policies is typically less than 50 claims in any given year.

The legal position as to the duty of care owed by one competitor to another, in any sport, has been long established by common law. It is often the nature of competition that those taking part are pushing themselves close to their maximum capability. The standard is recognised as a very different degree of care from that owed by one public road user to another.

Competitors in motor sport recognise and understand the risks which they may face, and they have the opportunity to make a risk-based decision as to whether they wish to insure themselves against injury or other loss, and to insure their equipment (a competition vehicle) against damage or other loss. Competitors also explicitly recognise the risks at the point they sign-on to every event. Much of MSA regulated motor sport takes place either at low speed, or in running order one after another, and in circumstances where risks are

relatively low. The exception is circuits where multiple vehicles can be in close proximity. Sometimes so called “racing incidents” may occur in which competitors are judged not to have fallen short of the driving standards owed to each other in the competitive environment.

The Motor Insurance Directives over the years have been intended to harmonise minimum insurance obligations across the EU and to facilitate free movement of vehicles across the EU. The MSA submits to Government that it was never intended that such Directives should apply to sporting situations, for which alternative insurance arrangements exist.

The MSA notes that the UK is currently the only country in the EU which is going through such detailed consideration and consultation as a result of the *Vnuk* decision. Bearing in mind that the UK has triggered Article 50 and will have left the EU within two years, it is questionable whether there is any need at all to take such extensive efforts to harmonise with EU laws when no other EU country is doing the same. Also, at this time it is unclear whether the UK will continue be subject in any way at all to the jurisdiction on the ECJ from 2019 onwards.

Over the last two years, the MSA has engaged with other motor sport bodies in the UK and across the EU and we have supported steps taken in the European Commission to review and propose changes to the insurance regime. We have also consulted with the motor sport industry and the insurance sector regarding the unintended and severely damaging impacts of the *Vnuk* decision. We have been consistently advised by the insurance market that compulsory third party motor insurance for motor sport events will be unobtainable. We have no reason to doubt that view.

If Government imposes such an insurance requirement on motor sport competition, even if only for a short period prior to leaving the EU, the effect on motor sport in the UK will be so immediate that it may never recover. The effect on the motor sport industry may take longer, but is equally likely to be damaging to the UK economy in the medium to long term.

Section one – Introduction

Q1. Due to the uncertainty, do you think that the Government should add either a sunset clause or a review clause in any new Regulations stemming from this consultation?

Any new interpretation of legislation which may deem motor sport competition vehicles to be “newly-in-scope” vehicles will have rapid, detrimental and unintended impact on all motor sport.

Any new Regulations which may require motor sport competition vehicles to have compulsory third party motor insurance, will have the effect of immediately stopping most, if not all, regulated motor sport. All indications to date from the insurance industry are that it will be impossible to cover motor sport competition vehicles for compulsory third party road risks. As a result, bona fide organisers of regulated motor sport events will not organise events in the certain knowledge that competition vehicles are not insured as required at law. Some competition may survive, but it would be unregulated, illegal activity.

Therefore, whether there is a review clause or a sunset clause is largely irrelevant as regulated motor sport would quickly cease, enthusiasm and expertise would be quickly lost from the sector, and it is far from clear what, if any, regulated motor sport would be capable of restarting following either the review or the expiry of the sunset period.

The MSA recognises that this rather binary view is probably unique to regulated motor sport, and that other groups and individuals responding to the Government consultation may take a very different position. Nonetheless, this goes to reinforce our position that regulated motor sport must be excluded from considerations of compulsory motor insurance.

Q2. Leaving the EU allows us to look afresh at our overall policy aims on motor insurance. What are your views on the approach the UK should seek to take once we leave the EU?

The MSA recognises that Government will need to consider carefully the issues of equivalence and harmonisation of UK laws with those of the EU, once the UK leaves the EU. The relatively free and unrestricted movement of motor sport competitors and competition vehicles across the UK border will be a very small subset of total movements.

The MSA encourages Government to regard regulated motor sport as being outside the scope of motor insurance in the context of road traffic. There is no underlying or prevailing concern that existing insurance arrangements within MSA regulated motor sport are inadequate. Importantly, motor sport in the UK is recognised globally for both its strong heritage and its current competitive excellence, both as a sport and an industry. We

encourage Government to consider deregulation in the context of motor sport and motor insurance to preserve this position once we leave the EU. Notably, no other sport is subject to a legislative requirement for compulsory insurance.

Section three – The Comprehensive Option

Q3. Compared with the current position do you believe if the domestic law on motor insurance changed in line with the comprehensive option it would be:

- **Better?**
- **Worse?**

The MSA takes the view that a change in UK law in line with the Comprehensive Option would not only be worse than the current position, but would likely signal the end of regulated motor sport in the UK.

We have consulted with the insurance sector regarding the unintended and severely damaging impacts of the *Vnuk* decision. We have been consistently advised by the insurance market that compulsory third party motor insurance for motor sport events will be unobtainable. We have no reason to doubt that view.

Section four – The Amended Directive Option

Q4. Which of the Commission’s four suggestions do you believe would be best for amending the Directive?

- **Do nothing**
- **Required guarantee schemes**
- **Insurance required when vehicle is used in traffic**
- **Take some vehicles out of scope**

Since the impacts of the ECJ decision in *Vnuk* have been understood, the MSA has consistently lobbied for motor sport competition vehicles to be excluded from the scope of the Motor Insurance Directive. The process by which these vehicles could be identified and therefore removed from scope remains unclear. Nonetheless this would be the MSA’s preferred option.

Recognising those difficulties, the MSA has publicly supported the Government’s preferred option to require compulsory insurance only in traffic. However, our unequivocal support

for this option is tempered by the need for greater certainty around the definition of “use in traffic” and also “areas where the public has access” in UK law. As far as possible, the MSA would prefer to see legislative certainty rather than common law interpretation around these concepts.

The MSA urges Government to engage in further consultation on this specific issue.

Q5. If the Directive was amended so insurance was required when vehicles are used in traffic when compared to the comprehensive option would this make it:

- **Better?**
- **Worse?**

For the brief reasons stated in answer to Q4, and subject to the further clarification and request for further consultation stated in that answer, the MSA is of the view that a “use in traffic” requirement would be far preferable to the Comprehensive Option.

Q6. What do you think would be the effects in particular areas of the UK of using as the basis for compulsory insurance “areas where the public has access in accordance with national law”?

As highlighted in our answer to Q4, the MSA urges Government to engage in further consultation on this specific issue of areas where the public has access.

Section five – Derogations

Q7. Do you think government should make use of the power available to derogate certain vehicles in the:

- **Comprehensive option?**
- **Amended Directive option?**

The MSA strongly opposes any extension of the scope of compulsory insurance to cover motor sport competition vehicles.

However, if changes were to be effected, the MSA encourages Government to take steps to derogate all motor sport competition vehicles engaging in MSA regulated motor sport. The MSA submits that such vehicles are all easily identifiable and traceable, and are already

operated under the umbrella of a substantial £67 million public liability insurance policy maintained by the MSA for its regulated motor sport, together with an umbrella personal accident policy.

As with most sports now, motor sport competitors are already able to purchase insurance to compensate for personal injuries and other losses to themselves arising out of competition. Similarly, owners of competition vehicles are able to purchase insurance for damage to such vehicles; in much the same way as other expensive sporting equipment can be insured against damage in other sports.

Q8. Which factors provide the most suitable basis for deciding which types of newly-in-scope vehicles to derogate?

The MSA submits that the single most important factor must be the existence already of suitable protections and insurance arrangements, as exist in regulated motorsport, such that the need to bring competition vehicles in-scope is rendered unnecessary.

The historic incidence of claims arising out MSA regulated motor sport is very small, being typically less than 50 claims for injury or property damage in any year.

The availability of competitor training, testing requirements, and ongoing licensing requirements, including regular medical assessments and declarations are also compelling factors.

Importantly, the MSA encourages Government to be consistent in its approach to derogations. If there was a rationale to derogate an 8-year old child on an electric motorised buggy in a public park, on a footpath or pavement, then there must be a more compelling rationale to derogate a similarly aged child in a kart in the much safer and restricted environment of a kart club circuit.

Section six – Enforcement

Q9. What do you think are the main enforcement challenges – and how do you think we should deal with them in the :

- **Comprehensive option?**
- **Amended Directive option?**

The MSA strongly opposes any extension of the scope of compulsory insurance to cover motor sport competition vehicles.

Identification of motor sport competition vehicles at MSA regulated events would not present significant difficulties as all are marked, or carry unique chassis numbers or other identification plates. The significant challenges of enforcement will arise from non-regulated motor sport events and from the myriad of other newly-in-scope vehicles which may arise from a new interpretation of legislation.

The MSA encourages Government to exclude motor sport competition vehicles from any compulsory insurance requirement during regulated events.

Q10. Should a central register of every newly-in-scope vehicle be maintained?

The MSA currently holds a limited amount of data on a small number of existing competition vehicles. In our experience, to expand this to cover all motor sport competition vehicles would be a very significant undertaking, with substantial costs requiring external investment. We submit that a central register for all newly-in-scope vehicles would be of such significant burden either to Government or to insurers, both to set up and to maintain, as to be unworkable.

Q11. Who should maintain the register?

See response above to Q10.

Q12. Is it important for all newly-in-scope vehicles to have a traceability marking for the:

- **Comprehensive option?**
- **Amended Directive option?**

It is probable that neither option can work without traceability markings for all newly-in-scope vehicles. It is also likely that the cost and administrative burden of any system will be prohibitive.

Section seven – Statutory Off-Road Notification

Q13. Should all SORN vehicles be required to have third party insurance under the comprehensive option?

This is not an area in which MSA has sufficient interest or relevant expertise to comment. We encourage Government to consider separate submissions on this area, in particular those of the Federation of British Historic Vehicle Clubs (FBHVC) and similar organisations.

Q14. Would there be problems with SORN under the Amended Directive option?

See response above to Q13.

Section eight – Penalties

Q15. Should the same level of fine apply in respect of newly-in-scope vehicles as currently applies to cars?

The MSA strongly opposes any extension of the scope of compulsory insurance to cover motor sport competition vehicles.

By extension, the MSA takes the view that any fines, regardless of their level, are wholly inappropriate.

Section nine – Fraud

Q16. What requirements to deter fraud might be built into the claims procedure under the two main options in this consultation?

The historic incidence of claims arising out of MSA regulated motor sport is very small, being typically less than 50 claims for injury or property damage in any year. Of this already small number, only a very small proportion raise concerns as to the veracity of the claim made.

The MSA works very closely with its insurers to ensure thorough investigation of every claim made. Each investigation will include from the outset confirmation that the motor sport event was legitimately organised under an MSA permit, together with clear identification of any competition vehicle involved.

The MSA strongly opposes any extension of the scope of compulsory insurance to cover motor sport competition vehicles. However, if such scope is increased under either option it would be reasonably foreseeable that claims incidence would substantially rise. Such claims would not be made under liability policies maintained by the MSA and the close monitoring and investigation of claims as exists today between MSA and its insurers would be lost.

It is unlikely that either the MSA, or any of its recognised motor clubs would have the administrative resources available to assist other insurers with the level of investigation that might be expected to combat fraud, without substantial external investment.

Q17. What comments do you have about the nature and extent of fraud which will be generated by the two main options in this consultation?

The MSA strongly opposes any extension of the scope of compulsory insurance to cover motor sport competition vehicles. However, if such scope is increased under either option it would be reasonably foreseeable that incidents of fraud would substantially rise, particularly in unregulated motor sport.

Q18. What ideas do you have for combatting any fraud which might be generated by the two main options in this consultation?

This is not an area in which MSA has sufficient interest or relevant expertise to comment.

Simon Blunt

General Secretary

for and on behalf of The Royal Automobile Club Motor Sports Association Limited