

**Minutes of the meeting of the Expert Group on Banking, Payments and Insurance  
(Insurance formation) dedicated to motor insurance**

*Brussels, 20 May 2015*

The meeting was chaired by Mr Marek LYSY, Legal Officer of the Insurance and Pensions Unit at the European Commission's Directorate-General for Financial Stability, Financial Services and Capital Markets Union (FISMA).

### **1. Agenda**

The draft agenda was adopted.

### **2. Introduction by the Commission**

The Chairman stated that this meeting would be about motor insurance issues and specifically to discuss (i) the aftermath of the C-162/13 Vnuk case, (ii) the role of existing guarantee schemes in cases of insolvency of insurance undertakings in cross-border situations and (iii) adaptation of minimum ceilings for Motor Third Party Liability (MTPL) cover.

### **3. Scope of Directive 2009/103/EC; the aftermath of Judgement C-162/14 VNUK**

The goal of the session was to collect views of the Member States on judgement C-162/13 Damjan Vnuk v Zavarovalnica Triglav, discuss practical problems related to it and to see if these could be addressed without revising the Motor Insurance Directive (hereafter the Directive), including the provisions in Article 5 on derogations.

The Chairman noted that in the Vnuk judgment the Court of Justice of the European Union clarified the scope of Directive 72/166/EEC on Motor Insurance (now consolidated Directive 2009/103/EC). The case concerned an accident involving a tractor on a private property. The Court clarified the scope in two respects; first it states that motor vehicles are to be covered by MTPL insurance as regards their "use" and not only in relation with traffic. Second, it is implied that the cover extends to their use irrespective of the classification of property they are on. In addition, it introduced the notion of a "normal function of the vehicle" against which cases should be tested.

Some Member States had previously raised concerns because of what they saw as a very broad interpretation of the Directive, to cover types of vehicles that were not necessarily taken into account before (mobility scooters, electric bicycles, etc.). While Member States are

authorised to exempt certain types of vehicles from the scope of the Directive, the guarantee funds are still obliged to compensate victims of accidents that involve exempted vehicles.

From the discussion in the expert group, it would appear that only four Member States seem prima facie to be in full compliance with the Directive as interpreted by the Vnuk judgement. Specifically, the main issues include the territorial scope (private vs public property), definition of vehicle and activities of a vehicle other than travel-related ones.

As regards the territorial scope, there was widespread consensus that as a result of the judgement, no private property can be excluded from the MTPL coverage. While two Member States insisted on the exclusion of any private land (including for example airports), ten Member States placed emphasis on "publicly accessible land", since genuinely private properties cannot be accessed for enforcement purposes. The advocates of this approach also emphasised the need for protection of victims on private land which is accessible to the public.

The definition of "vehicle" remains problematic, as there are no derogations in the Directive and this is left for the Member States to deal with, under the condition that either a designated body (Art 5 (1)), or a guarantee fund (Art 5(2)), compensate victims of accidents involving exempted vehicles. The Chairman sought views on whether derogations under Article 5 could not remedy the issues related to vehicles for which Member States do not consider it necessary to require MTPL cover. However, the need to cover these vehicles from the guarantee fund remains a problem, most notably for motor sports (for which no MTPL is required in some Member States) and also because of the possibility of fraud. If an accident involving such a vehicle happens on inaccessible private land, there is no possibility to verify the facts, but the claim could still be valid.

Regarding operational vehicles (forklift, crane, burger van) it was noted that the judgement by its notion of the "normal function of the vehicle" undermined the concept of separating operational activities from transport. This might cause problems for vehicles with combined insurance, as the MTPL would take precedence over the operational segment of the cover.

The Commission undertook to further reflect on the issue.

#### **4. Protection of victims in the case of insolvency of insurers; Judgement C-409/11 CSONKA**

The Chairman introduced the discussion by outlining that in its Judgement in case C-409/11 of 11 July 2013 (Csonka and others), the CJEU confirmed that the role of guarantee funds established under Article 1(4) of Directive 84/5/EEC does not extend to situations where the insurer is insolvent. The Council of Bureaux gave a presentation on the Convention on Recourse between guarantee funds (in case of insolvency of a motor liability insurer operating in the EU/EEA space). It stressed the current EU law position of guaranteeing victims compensation in the case of uninsured or unidentified vehicles, while leaving it to the Member States as regards cases of insolvency of the insurance undertaking. For cross-border situations, a voluntary agreement was set up in 1995 (Convention on Recourse between Guarantee Funds), which established the principle of home Member State funding of these cases (prudential supervision link). However, not all Member States have signed it and not all those who signed it signed the subsequent two addenda, there are thus some opt-outs.

On the question of compensation of victims in case of insolvency of the insurer, especially in a cross-border context, the chairman asked Member States whether in their view harmonising action was needed at EU level. Twelve Member States reacted negatively, five gave a positive reaction; other Member States did not speak. Even those who took a negative stance nevertheless expressed views on whether such guarantee schemes should be funded by the home or host Member States of the undertaking. A majority of those which spoke expressed a preference for funding by home Member States, while initial reimbursement of the victim would be carried out by the host Member State's guarantee fund, which would then seek recourse with the home Member State's fund.

## **5. Adaptation of minimum amounts of cover**

The Chairman stated that the Commission will proceed this year together with the Member States to adapt the minimum ceilings for cover in accordance with the methodology agreed in the meeting of EIOPC of 30 June 2010.

In that context the Chairman invited Member States to provide the Commission with the current minimum ceilings as provided under their national legislation. If there are differences for different types of vehicles or based on types of legal relationship with the driver (for example rented or leased cars), the Commission wishes to receive this information as well. Furthermore, Member States were invited to verify the dates of the transition periods. The information requested should be provided by 15 July 2015.

**6. Any other business**

No issues were raised under this item.