Ms Jennifer Cullen,
Department of Transport, Tourism and Sport
Policy Governance & Coordination Division,
25 Clare Street,
Dublin 2

5th August 2016

Re: Call for consultation on the Statement of Strategy for Transport, Tourism and Sport 2017-2019

Dear Ms Cullen,

Thank you for the opportunity to contribute to the above strategic plan. Please find our suggestions set out below.

**Urgently address the current gaps in the Insurance Compensation Framework**

- We were pleased to note the recent publication of the Review of the Framework for Motor Insurance Compensation in Ireland, which was under taken by the Joint Review Group of the Department of Finance ("DoF") and the Department of Transport, Tourism and Sport ("DTTAS"). We see this as a signal of the DTTAS commitment to resolving the unexpected issues that arose from the Setanta case.

- Whilst we welcome many of the proposals, including the lifting of the cap on compensation to third party motor accidents victims impacted by the failure of insurance companies, we have concerns around the funding of the proposed increased compensation and the new role envisaged for the Motor Insurers’ Bureau of Ireland ("MIBI") in collecting and contributing funds to the Insurance Compensation Fund ("ICF") following a motor insurance liquidation.

- The MIBI has consistently stated that the correct mechanism for handling such claims is through the Insurance Compensation Fund. We also believe that is the best mechanism in this case. MIBI is responsible for compensating innocent victims of uninsured or untraced drivers and the ICF has been responsible for compensating victims impacted by the failure of insurance companies. Previous examples of where this approach was taken include Insurance Corporation of Ireland, PMPA, and Quinn Insurance. As the DTTAS will be aware the matter of MIBI’s role is currently being litigated in the Supreme Court.

- As the MIBI is funded on a pay as you go model, i.e. funds to cover the cost of claims are levied from MIBI members as the claims are paid, it lacks the smoothing effect of the ICF approach where the costs of a large insolvency can be repaid over many years, reducing the volatility on individual consumer’s annual motor insurance premiums and reducing the systemic risk to the market. One could easily envisage a scenario whereby the cost of multiple insurance failures might have to be borne by an increasingly smaller number of motor insurance industry.
companies, potentially jeopardising their solvency in turn and/or contracting market capacity and increasing the cost of motor insurance for consumers.

- Once there is a sustainable approach agreed, appropriate legislative changes should be made to the Insurance Acts, and the 2009 Agreement between the Minister of Transport Tourism and Sport and the MIBI, and the MIBI Constitution, should be updated as a priority.
- We would suggest that resolving the above issues as soon as possible should be a key priority for the DTTAS, and that achieving a practical, sustainable outcome would be a key performance indicator.

**Uninsured Driving:**

- We welcome the Minister of Transport, Tourism and Sport’s recent announcement in the press that he intends to enhance the Road Traffic Acts to capture more insurance information to allow more robust enforcement by the Garda Síochána.
- We encourage the Department to work with the MIBI, and the wider industry, on practical measures to cost effectively implement the key elements of the above proposed legislation to aid Garda enforcement measures, e.g. facilitating the increased use of an enhanced Automatic Number Plate Recognition (ANPR) system via better quality data.
- We would welcome any additional measures that could make uninsured driving less socially acceptable and educate drivers as to the cost of uninsured driving (to the victims, the drivers, and society at large). We noted with interest that Dublin City Council has recently been naming and shaming ‘litter louts’. For example, would the DTTAS consider doing the same with uninsured drivers?
- Supporting the enforcement efforts against uninsured driving and a reduction in the numbers here should be a key performance indicator for the Department. The Department’s interventions have the potential to reduce MIBI claims, the levies on the insurance industry to pay for same, and ultimately consumers’ insurance premiums.

**Autonomous Driving:**

- As the Department will be aware technology that allows driverless cars is rapidly being developed. Properly implemented it has the potential to reduce motor accidents. Recent research by Carnegie Mellon University found that 93% of motor accidents could be attributed to human factors associated with alcohol, speeding, and distraction. These could be significantly reduced by suitable autonomous vehicles. It could also be a great boon to differently-abled drivers. As a country that prides itself on its tech-friendly business environment and one that has established itself as a go to choice for European HQs of Tech firms, there is an opportunity for Ireland to be an early European mover and adopter in this space, whilst keeping safety paramount.
- We recommend that the DTTAS form a working group to consider, and appropriately address key considerations (via legislation and codes of practice, etc.) which should include issues such as:
  - How will liability be determined? Who could be held liable after an accident – drivers, manufacturers, system developers, car dealers, vehicle repair firms or a combination thereof?
  - How data from individual vehicles will be recorded and used to improve safety and clarify liability.
  - How to cope with vehicles at different levels of automation.
  - New insurance coverages required, and how this will interact with compulsory coverage required under local RTA legislation and the EU Motor Directives.
  - Whether Ireland might need to make changes to existing road traffic legislation and what those changes might be?
- We would also want to avoid any unintended consequences or allow loopholes to develop that would cause any increase in uninsured or untraced driving claims.
- Are there any special considerations for Ireland after one considers the Irish road network, public transport services, and rural development considerations.

**Vnuk judgment**

- As the DTTAS would be aware, on 4 September 2014, the Court of Justice of the European Union ("CJEU") ruled on a question referred to it by the Slovenian Supreme Court to interpret the scope of the Codified EU Motor Insurance Directive (2009/103/EC) in the context of proceedings that concerned an accident on a private property caused by a tractor (C-162/13 Vnuk), including whether the obligation of third party liability cover extended to private properties. The Court ruled that the concept of 'use of vehicles' covers any use of a motor vehicle that is consistent with the normal function of that vehicle. It was implied in the ruling that there was no difference between private or public properties as regards the obligation of cover. The effect of the ruling is that vehicles used in certain locations and/or certain activities by vehicles which may not have been initially understood to be regulated under the Directive by some Member States are covered by the obligation of insurance cover in the Directive, and that also some non-road-traffic motoring activities must be covered by third party liability insurance. Consequently, accidents that are result of purely agricultural, construction, industrial, motor sports or fairground activities, in Member States which exempt these vehicles from the requirement to hold third party liability coverage, may be compensated from motor third party liability policies.
- Based on an EU inception impact assessment and roadmap dated 8/6/2016, it would appear that the EU is considering an amendment the Directive to legislate and address for Vunk type scenarios in the future.
- The road map indicates that an impact assessment is to be carried out and quotes Q3 2016 as the deadline for 'indicative planning'.
- Extract of key elements of the impact statement/ road map:
  - The objective of the proposal is to maintain a high degree of protection for victims of motor vehicle accidents while respecting the right of Member States to set up arrangements at national level to protect victims of accidents that are result of agricultural, construction, industrial, motor sports or fairground activities. Member States would remain free to decide whether victims of traffic accidents should be pooled together, through guarantee funds, with victims of activities unrelated to traffic. For the sake of legal certainty, the use of vehicles in traffic could be defined as the use of a motorised 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.
  - Rather than exempting some types of vehicles (e.g. cranes, forklifts, tractors, etc), in order to maintain the high level of protection of victims, the proposed approach seeks to effectively exclude the activities listed above from the scopes of the Motor Insurance Directive. In the absence of compulsory policies covering these activities at EU level, the scope of the Motor Insurance Directive should be limited to the use of vehicles in the context of traffic.
- The DTTAS / the State might wish to seek to avail of derogations in the Directive. However, given that the State will be required to ensure that vehicles which are the subject of a derogation are treated in the same way as vehicles for which the compulsory insurance obligation has not been satisfied, it would seem that this in turn may require such vehicles to fall within the scope of the MIBI compensation provisions, e.g. by way of an amendment to the 2009 MIBI Agreement. This is unlikely to be desirable as it could increase the number
and cost of claims, which would in turn be borne by the motor insurance industry, and ultimately the end consumers via higher premiums.

- We would encourage the DTTAS to use the consultation period envisaged in the above impact assessment to push for positive change to the EU Directive, and minimise the risk of any related increase of uninsured motor claims.

I hope the above suggestions will be of benefit to you in drafting the Department’s Statement of Strategy. I’d be happy to meet to discuss any of the elements in more detail and I would like to reiterate our thanks for inviting MIBI to contribute.

Yours sincerely

[Signature]

David Fitzgerald
Chief Executive Officer
MIBI