

Vnuk Case Prompts Amendment of Road Traffic Act

The Court of Justice of the European Union (CJEU) ruled in the case of *Damijan Vnuk v. Zavarovalnica Triglav* in September 2014, which could have significant, wide-ranging implications for UK motor insurance, UK drivers and UK businesses—regardless of sector. As a direct result of the Vnuk case, you should expect the government to review and amend the Road Traffic Act 1988 (RTA) soon.

Background of the Vnuk Case

On 13th August 2007, Mr Vnuk, the claimant, was working on a ladder in a Slovenian farmyard when he was hit by a tractor. He sued the driver's insurer for injuries from the fall, but the court denied his claim, citing that compulsory motor insurance in Slovenia only covers vehicles for road use and transport, not for damage caused when they are used as machines on private land.

The Slovenian Supreme Court referred the case to the CJEU to determine whether the accident fell under the compulsory motor insurance requirements in Article 3 of the EU Motor Insurance Directive 2009/103/EC (Directive). In other words: Do European directives on motor insurance require this kind of 'use of vehicles' to be covered by compulsory third-party motor insurance?

The CJEU ruled that compulsory motor insurance directives **did** apply to 'any use of a vehicle that is consistent with the normal function of a vehicle', meaning that, although the accident took place on private property, since the use of the tractor is consistent with its normal function, the owner must have compulsory motor insurance.

Implications of the Vnuk Case for UK Law

The implications of the Vnuk case are wide-ranging and require the UK government to eventually amend the RTA to comply with this new interpretation of EU law. Due to the CJEU's ruling, UK law now conflicts with EU law—specifically the RTA, which enacts the road traffic motor insurance arrangements specified in the Directive. According to the CJEU ruling, compulsory motor insurance extends to:

- 'Any motor vehicle intended for travel on land and propelled by mechanical power'
- Any use of that vehicle 'consistent with a normal function of that vehicle'
- Any geographic location, including private property—the ruling does not explicitly state this, but this is the foregone conclusion based on the ruling's language



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The problem is, under the RTA, UK compulsory motor insurance does not extend to use on private land, only to 'use on roads or other public places' (s.143(1)) and it only applies to vehicles 'intended or adapted for use on roads' (s.185(1)). Therefore, the government must amend the RTA to harmonise it with the ruling by:

- Extending the definition of a vehicle to include any 'mechanically propelled vehicle intended for travel on land'
- Removing any restrictions on use, as long as that use is 'consistent with the normal function of that vehicle'
- Extending the scope of compulsory motor insurance to include use on private land

Extending compulsory motor insurance to include vehicles intended for travel and for use beyond public roads potentially means that previously exempt vehicles—such as construction plant, forklifts, go-karts, etc.—will now need compulsory motor cover. Businesses that rely on these vehicles, such as those in agriculture and construction, may soon be faced with the burden of insuring a large collection of vehicles that were previously exempt.

But Article 5 of the Directive does allow EU member states to derogate certain vehicles from compulsory motor insurance requirements, helping to mitigate Vnuk's effects.

What Happens Now?

Until the RTA is amended, which could take more than one year, the only recourse claimants have in a similar situation as the Vnuk case would be taking legal action against the Department for Transport for failing to adopt the Directive into UK law, also known as a Francovich action (a cause of action in damages

against a government for failure to implement EU law).

In the meantime, experts have speculated that the Motor Insurers' Bureau (MIB), which helps compensate victims of uninsured and untraced drivers, could cover situations like the Vnuk case, although the MIB may need to increase its levy on motor insurers in order to handle a higher volume of claims.

Amending the RTA will have a huge ripple effect—motor insurers will have to expand the scope of their motor policies, and some insurers will potentially have to join the MIB if they want to continue selling policies that cover vehicles previously exempt from compulsory motor insurance. Likewise, all policyholders will have to scrutinise their insurance to ensure that previously exempt vehicles now included under compulsory motor insurance are covered.

As a commercial insurance policyholder, be sure to consult **with Crendon Insurance Brokers Ltd** regarding your specific cover, since these upcoming changes may mean you need to update your policies to ensure that risks currently covered under employers' liability or product liability policies are covered under the new, forthcoming compulsory motor insurance requirements.

Crendon Insurance Brokers Ltd will continue monitoring this case as it progresses and work to ensure that its ramifications are as negligible as possible. Contact Crendon Insurance Brokers Ltd at 0121 454 5100 today for more risk management and compliance guidance.

