

The logo for Weightmans, featuring the name in white text on a dark teal rectangular background with rounded corners.

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The Vnuk decision & the European Motor Insurance Directives

November 2015

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A decorative graphic at the bottom of the slide consisting of several overlapping, wavy teal lines that create a sense of movement and depth.

1st Directive 72/166/EEC (24/4/1972)

- Aim was free movement of vehicles; frontier checks and the common market
- ‘Traffic’, ‘road’ accidents
- ‘Circulation’ of traffic
- ‘Vehicle’;

“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” (Art 1).

- MS obligation was
- *“to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance” (Art 3).*
- Derogation in respect of persons and vehicles (Art 4)

2nd Directive 84/5/EEC 30/12/1983

Aim – to remove disparities and guarantee victims ‘adequate compensation’.

- Not only PI but also PD (Art 1(1))
- Established minimum levels of compensation (Art 1(2))
- Establishment of guarantee fund for when offending ‘vehicle’ (not driver or user) is uninsured or unidentified (Art 1 (4))
- Exclusion clauses limited against victim (see later) (Art 2)
- Family of insured not excluded from claiming (Art 3)

3rd Directive 90/232/EEC (14/5/1990)

Aim – to remove disparities further

- Passengers to be covered by insurance (Art 1)
- Victim does not have to show that person liable is unable or refuses to pay (Art 2)
- El passenger claims to be a motor liability due to Art 1.
- But see *Clarke v Kato* (1998) 1WLR1647 (H/L) – key was free movement of vehicles and people and it was all about use on roads.

4th Directive 2000/26/EEC (16/5/2000)

Aim – to improve the rights of the visiting victim

- Compensation Body (UK–MIB)
- Must be a direct right of action against insurer (Art 3)
- Lead up still referred to traffic

5th Directive 2005/14/EC (11/5/2005)

Aim – to improve compensation levels

- Higher minimum levels of compensation (Art 2)
- Pedestrians and cyclists must be covered (Art 4(2))
- No exclusion for drunk driver (Art 4(1))

1st Directive on the Regulation of Non-life insurance 73/239/EEC (24/7/1973)

Motor Insurance – must cover *“all liability arising out of the use of motor vehicles operating on land.”*

6th Directive 2009/103/EEC (16/9/2009)

- Consolidated Directive incorporating previous 5
- No substantive changes

Damijan Vnuk v Zararovalnica Triglar dd [2014] CJEU C-162/13

- Slovenia
- Accident on farm
 - “a tractor to which a trailer was attached, which was reversing in the courtyard of a farm in order to position the trailer in that barn, struck the ladder on which Mr Vnuk had climbed, causing him to fall”.*
(Para 19).
- Insurance required for use in Slovenia. No specification of private land.
- AG said victim protection not secondary to the free movement of goods and people. Insurance must cover *“the damage caused by a vehicle during its use, in so far as it is used in accordance with natural operation of a vehicle”*.
- AG added victim protection covers private land and use on *“whatever the legal status or classification of the surface on which the accident occurred”* might be.

ECJ decision

- 2 objectives equally important
- Protection of victims to the fore more recently, notwithstanding constant references in Directives to the free movement of persons and vehicles
- Reliance on Directive 73/239
- ‘Use’ means:
 - “any use of a vehicle that is consistent with the normal function of that vehicle”*
- Reversing a tractor into a barn on a farm?

UK law

- 1988 Act more restrictive
- ‘*Road or other public place*’ (S143 & S145)
- “*A mechanically propelled vehicle intended or adapted for use on roads*” (S185)
- On the face of it, amendments required
- Insurers can currently rely on 1988 Act as can MIB
- Effect of Directives
- *Marleasing SA v La Comercial* (1990) ELR 1.4135 (ECJ)
- *Francovich v Italy* (1991) ECR 1-5387 (ECJ)

Issues

(1) Can Insurers exclude private land use?

Art 13 of 2009 Directive – certain contractual provisions are void re victim, namely where

- a) the driver does not have permission to use the vehicle
- b) the driver is unlicensed
- c) there is a breach of Regulations concerning condition of the vehicle
- d) driver drunk to knowledge of passenger

– Not an exhaustive list (*Ruiz Bernaldez* (1996) ECR I-1929 (ECJ)) and *Candolin & Ors v Pohjola*, 30/6/2005, ECJ, Case C-537/03)

Private land use – cont'd

One view – all uses must be covered, this being for the protection of victims. MS to ensure use of vehicle is ‘covered by insurance’.

Other view – the UK complies with Art 3 of the 1st Directive, viz criminal offence, enforcement etc. However, insurers free to decide what to cover provided MIB acts as safety net (or where insurer is Art 75 insurer)

- See C/A decision in *EUI Ltd v Bristol Allianz Partnership* (2012) EWCA Civ 1267, Ward LJ
- Does it matter which view is correct?

(2) 'Use' – “Consistent with the normal function of that vehicle

- Forklift truck
- Combine harvester
- Caravan
- Burger/fast food bar
- MIB's acceptance of uncoupled trailers used 'as vehicles'
- What about validity of existing UK case law
 - (a) *Dunthorne v Bentley & Cornhill Insurance* (1996) RTR 428
 - (b) *AXN & Ors v Worboys & Ors* (2012)EWHC 1730
- Terrorism?

(3) Motor vehicles

Very wide – must include Segways, disability carriages, off road bikes and sports vehicles or specialist airside vehicles.

- Essentially anything which moves and can carry a person – not a pedestrian controlled lawn mower (as opposed to ride on)

(4) Derogation

- Currently, in UK, only Crown vehicles and state vehicles derogated (see S144)
- Other MS approaches
- Derogation when risks are low
- Guarantee fund must pay as a fall back unless it is the state
- Derogation should be limited to avoid sending wrong enforcement message

(5) How should Vnuk be dealt with?

(A) Approach to the commission

- (i) DFT to issue consultation once impact assessment complete
 - (ii) MIB to support approach to the Commission – likely to be more about ‘vehicle’ definition than private land use
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- Proposals before the 5th Directive for strict liability for passengers – impact assessment
 - Difficult to succeed. Commission submitted in *Vnuk* that compulsory insurance should be required for “*the use of vehicles, whether as a means of transport or as machines, in any area, both public and private, in which risks inherent in the use of vehicles may arise, whether those vehicles are moving or not*” (para 35)

How should Vnuk be dealt with (cont'd)?

(B) RTA 1988 ss143 & 145 will change to encompass private land use

(i) Registered vehicles

- Motor policies cover private land use anyway but, where no indemnity, will need to provide compensation at least to minimum Directive levels (may be more).
- SORN will have to become a statutory off road AND non use notification.
- Enforcement is vital, but difficult with private land use
- Other offences such as drink/drug driving, careless/reckless driving under the 1988 Act should encompass private land use to protect enforcement.

How should Vnuk be dealt with (cont'd 2)?

- Not considered to be a particular problem with registered vehicles used on roads
- Vehicles used off road currently
 - (a) covered by EL policies
 - (b) covered by PL policies
- Arguably better to have motor insurance going forward with insurer being a member of MIB
- Dispute resolution process
- Pending move to motor insurance, EL or PL insurer to indemnify MIB?

How should Vnuk be dealt with (cont'd 3)?

(ii) Non registered vehicles

- Even more difficult to enforce
- Consider derogation in limited cases (eg ride on mowers, children's toys etc)
- Move to motor insurance in time? Huge task with registration
- If left with EL/PL insurers, policies must cover third party claims & insurers must deal where no indemnity
- Reimbursement of MIB?

How should Vnuk be dealt with (cont'd 4)?

(C) Public messaging campaign

- Considerable effort required to ensure new requirements are understood.
- Hard to see how police can proactively enforce private land use

Conclusions

- Watch this space
- More to follow
- Lord Denning in *Bulmer v Bollinger* (1974) 2 All ER 1226 said
- *“when we come to matters with a European element, the treaty is like an incoming tide. It flows into the estuaries and up the rivers. It cannot be held back.”*