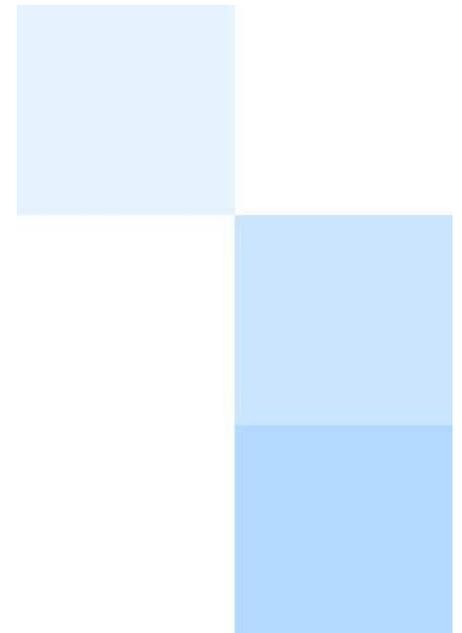


The law of unintended consequences:

The implications of Vnuk v Triglav

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Domestic vs EU legislation

- Part VI, Road Traffic Act 1988...
 - *use on road or other public place*
- EU consolidated Motor Insurance Directive...
 - *any use consistent with normal function of vehicle*
 - *i.e. duty to insure extends to all motorised vehicles, on or off road*





INCEPTION IMPACT ASSESSMENT

TITLE OF THE INITIATIVE	Adaptation of the scope of Directive 2009/103/EC on motor insurance		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	DG FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL MARKETS UNION, FISMA D4	DATE OF ROADMAP	08/06/2016
LIKELY TYPE OF INITIATIVE	Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/103/EC of the European Parliament and the Council relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability		
INDICATIVE PLANNING	Q3 2016		
ADDITIONAL INFORMATION	N/A		
<p>This Inception Impact Assessment is provided for information purposes only and can be subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.</p>			

1. Do nothing.

Impact: Member States must ensure motor liability insurance extends to vehicles outside of 'traffic' scenarios; or exempt certain categories of vehicle. Risk that some activities become unviable owing to cost of insurance, or the MIB is forced to pick up the tab.

2. Force Member States to set up guarantee funds for agricultural, construction, industrial, motor sports or fairground activities if uninsured.

Impact: This would require legislation and regulation at EU level. Difficult to police given divergences between Member States.

3. Exclude some types of vehicle (eg tractors, cranes, forklifts, motor sports vehicles).

Impact: Inadequate protection for victims. Some types of vehicles will potentially be uninsured even if on a road or other public place.

4. Narrow the scope of the MID to relate only to 'accidents caused by motor vehicles in the context of traffic'.

Impact: No changes in premiums or guarantee funds to compensate victims of accidents other than in 'traffic' situations.





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)

Comprehensive option

Risk	Impact
Fraud	Facilitated by increase in vehicles that are hard to trace, and off-road incidents
Uninsured and untraced driving	Low risk vehicle owners may not insure; newly-in-scope vehicles hard to trace
Proportionality and fairness	Unnecessary insurance for low risk vehicles; requirement to fund high risk activities via MIB levy
Satellite litigation	'Normal function of vehicle' open to interpretation

Comprehensive option

Risk	Impact
Compensation claims	Resurgence of claims management industry – hampers whiplash reform
Availability of insurance cover	Pricing?; Children’s policies?; Underwriting appetite?; Licences?
Adverse impact on desirable activities	Eg Motorsports – underwriting and affordability of cover
SORN vehicles can still be ‘used’	SORN scheme doesn’t work

Amended Directive option

Benefit

Maintains link to road traffic situations

Proportionality

Mitigate impact on uninsured driving

Amended Directive option

Benefit
Mitigate impact on MIB levy
Mitigate impact on fraud

Some practical challenges

Issue	Impact
Newly-in-scope vehicles – registration and traceability	Set up and administration costs; Cannot be retrospectively applied
Derogations	Pressure on MIB's levy; Potential need for separate guarantee fund; Derogated classes of vehicle may be target for fraudsters; Derogate by reference to potency or traceability?
Enforcement and penalties	Costly; Practically impossible to proactively enforce; Can't endorse where no license is required

What next?



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