Reports of Cases

OPINION OF ADVOCATE GENERAL
BOBEK
delivered on 26 April 2018 [1]

Case C-80/17

Fundo de Garantia Automóvel
v
Alina Antónia Destapado Pão Mole Juliana
Cristiana Micaela Caetano Juliana

(Request for a preliminary ruling from the Supremo Tribunal de Justiça (Supreme Court, Portugal))

(Reference for a preliminary ruling — Motor vehicle civil liability insurance — Obligation to take out insurance — Scope — Notion of 'use of vehicle')

I. Introduction

1. Due to medical problems Ms Alina Juliana stopped driving her car and left it in her yard. She did not take out insurance against civil liability. Without her permission, her son took the keys to the car and drove it away from the yard. While on public roads, he lost control of the vehicle. He and two passengers were killed as a result of the accident.

2. The competent national compensation body, the Fundo de Garantia Automóvel ('the Fund'), paid out compensation. The Fund then sought to recover that money from Ms A. Juliana, owner of the car. In her defence, Ms A. Juliana argues that she was under no obligation to insure the vehicle because, although she owned it, she had taken it off the road and did not intend to drive it. The Fund argues that an obligation to insure did exist, because the vehicle was roadworthy.

3. In the context of that dispute, and in the light of Motor Vehicle Directives 72/166/EEC [2] and 84/5/EEC [3] ('the First Directive' and 'the Second Directive'), the Supremo Tribunal de Justiça (Supreme Court, Portugal) asks first whether, in such circumstances, the owner of a vehicle is obliged to insure it. Second, the referring court asks whether the Fund has a right of subrogation against the owner, even if the owner is not liable for the accident.

1 Original language: English.

2 Council Directive of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ, English Special Edition 1972(II), p. 360).

3 Second Council Directive of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1984 L 8, p. 17).

II. Legal framework

A. EU law

1. Directive 72/166

4. Articles 1 and 3 of the First Directive provide as follows:

‘Article 1

For the purposes of this Directive:

1. “vehicle” means 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;

…

4. “territory in which the vehicle is normally based” means

– the territory of the State of which the vehicle bears a registration plate, irrespective of whether the plate is permanent or temporary; or

– in cases where no registration is required for a type of vehicle but the vehicle bears an insurance plate, or a distinguishing sign analogous to the registration plate, the territory of the State in which the insurance plate or the sign is issued; or

– in cases where neither registration plate nor insurance plate nor distinguishing sign is required for certain types of vehicle, the territory of the State in which the person who has custody of the vehicle is permanently resident; or

– in cases where the vehicle does not bear any registration plate or bears a registration plate which does not correspond or no longer corresponds to the vehicle and has been involved in an accident, the territory of the State in which the accident took place, for the purpose of settling the claim as provided for in the first indent of Article 2(2) of this Directive or in Article 1(4) of [the Second Directive];

…

Article 3

1. Each Member State shall, subject to Article 4, take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance. The extent of the liability covered and the terms and conditions of the cover shall be determined on the basis of these measures.

2. Each Member State shall take all appropriate measures to ensure that the contract of insurance also covers:

– according to the law in force in other Member States, any loss or injury which is caused in the territory of those States;

– any loss or injury suffered by nationals of Member States during a direct journey between two territories in which the Treaty establishing the European Economic Community is in force, if there is no national insurers' bureau responsible for the territory which is being crossed; in that case, the loss or injury shall be covered in accordance with the internal laws on compulsory insurance in force in the Member State in whose territory the vehicle is normally based.'

2. Directive 84/5

5. Articles 1 and 2 of the Second Directive provide as follows:

'Article 1

1. The insurance referred to in Article 3(1) of Directive 72/166/EEC shall cover compulsorily both damage to property and personal injuries.

…

4. Each Member State shall set up or authorise a body with the task of providing compensation, at least up to the limits of the insurance obligation for damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which the insurance obligation provided for in paragraph 1 has not been satisfied.

The first subparagraph shall be without prejudice to the right of the Member States to regard compensation by the body as subsidiary or non-subsidiary and the right to make provision for the settlement of claims between the body and the person or persons responsible for the accident and other insurers or social security bodies required to compensate the victim in respect of the same accident. However, Member States may not allow the body to make the payment of compensation conditional on the victim establishing in any way that the person liable is unable or refuses to pay.

…

Article 2

1. Each Member State shall take the necessary measures to ensure that any statutory provision or any contractual clause contained in an insurance policy issued in accordance with Article 3(1) of Directive 72/166/EEC, which excludes from insurance the use or driving of vehicles by:

– persons who do not have express or implied authorisation thereto, or

– persons who do not hold a licence permitting them to drive the vehicle concerned, or

– persons who are in breach of the statutory technical requirements concerning the condition and safety of the vehicle concerned,

shall, for the purposes of Article 3(1) of Directive 72/166/EEC, be deemed to be void in respect of claims by third parties who have been victims of an accident.

However the provision or clause referred to in the first indent may be invoked against persons who voluntarily entered the vehicle which caused the damage or injury, when the insurer can prove that they knew the vehicle was stolen.

Member States shall have the option — in the case of accidents occurring on their territory — of not applying the provision in the first subparagraph if and in so far as the victim may obtain compensation for the damage suffered from a social security body.

2. In the case of vehicles stolen or obtained by violence, Member States may lay down that the body specified in Article 1(4) will pay compensation instead of the insurer under the conditions set out in paragraph 1 of this Article; where the vehicle is normally based in another Member State, that body can make no claim against anybody in that Member State.

The Member States which, in the case of vehicles stolen or obtained by violence, provide that the body referred to in Article 1(4) shall pay compensation, may fix in respect of damage to property an excess of not more than 250 ECU for which the victim may be responsible.'

B. National law

1. Decree Law No 522

6. According to the request for a preliminary ruling, at the date of the accident, Decreto-Lei No 522/85 — Seguro Obrigatório de Responsabilidade Civil Automóvel (Decree Law No 522/85 on compulsory automobile insurance against civil liability) of 31 December 1985 was in force in Portugal ('Decree Law No 522/85'). Decree Law No 522/85 provides:

Article 1(1): 'Every person who may be civilly liable for compensation for financial damage and non-financial damage deriving from personal or material injuries caused to third parties by any land motor vehicle … must, to enable such vehicles to be used on the roads, be covered … by insurance covering such liability.'

Article 2: 'The obligation to insure falls upon the owner of the vehicle, except in the cases of ...'

7. Article 8(1) and (2) of Decree Law No 522/85 states that 'the contract covers the civil liability of the policyholder, of the persons under an obligation to insure, as provided in Article 2, and of the lawful keepers and drivers of the vehicle' and also covers 'the payment of compensation owed by those responsible for the theft or robbery, the unlawful use of a vehicle belonging to another or traffic accidents knowingly caused …'.

8. Under Article 21, it is for the Fund to 'pay, in accordance with the present Chapter, the compensation arising from the accidents caused by vehicles subject to compulsory insurance, registered in Portugal ...'.

9. Finally, Article 25(1) and (3) provide that, 'once compensation has been paid, the Fund shall be subrogated to the rights of the injured party, having the right also to statutory interest and reimbursement of the expenses incurred by it in the assessment and settlement', and 'persons who, while being under the obligation to insure, have not taken out insurance, may be sued by the Fund, as set out in paragraph 1, having the right of recovery against other persons liable for the accident, if any, in relation to the amounts paid'.

2. Civil Code

10. Article 503(1) of the Portuguese Civil Code provides:

'The person with effective control of any motor vehicle and who uses it in his own interests, even if acting through an agent, is liable for the damage resulting from the risks posed by the vehicle itself, even when the latter is not in use.'

III. Facts, procedure and the questions referred

11. Due to medical problems, Ms A. Juliana stopped driving her car and left it in her yard. She did not take out insurance against civil liability.

12. On 18 or 19 November 2006, her son removed the keys to the vehicle from a drawer in her room without her permission or knowledge, and drove the car out of the yard.

13. On 19 November 2006, her son lost control of the car while driving it on a public road. The accident resulted in his death and that of two passengers.

14. The Fund paid out compensation in relation to the accident to the families of the deceased passengers. In its capacity as a creditor with a right of subrogation, the Fund then brought an action seeking an order against Ms A. Juliana as owner of the car ('the First Defendant'), and against Ms Cristiana Juliana, the deceased driver's daughter and successor ('the Second Defendant') for payment of the compensation it had granted, together with interest.

15. The first-instance court upheld the Fund's claims in part, holding that the lack of intention on the part of the owner of the vehicle to drive it and the fact that she was not liable for the accident that occurred did not negate the obligation to enter into an insurance contract. It found that the purpose of an insurance contract is to ensure the payment of compensation to those injured even where the vehicle has been stolen.

16. The First Defendant, Ms A. Juliana, lodged an appeal before the Tribunal da Relação (Court of Appeal, Portugal). That court held that she had no obligation to insure the car and that she was not liable for the accident. It therefore set aside the judgment at first instance and found that she was not liable in the appeal case before it.

17. The Fund brought an appeal on a point of law before the Supremo Tribunal de Justiça (Supreme Court, Portugal), which stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

'(1) Must Article 3 of [the First Directive] (in force at the date of the accident) be interpreted as meaning that the obligation to take out civil liability motor insurance extends even to the situations in which the vehicle is, at the owner's choice, immobilised in a private courtyard, away from the public highway?

Or,

in those circumstances, is the owner of the vehicle not under an obligation to insure, regardless of the liability of the Fundo de Garantia Automóvel to injured third parties, in particular in cases of the unlawful use of a motor vehicle belonging to another?

(2) Must Article 1(4) of [the Second Directive] (in force at the date of the accident) be interpreted as meaning that the Fundo de Garantia Automóvel which — because there was no civil liability insurance contract, paid the relevant compensation to the third parties injured by the traffic accident caused by the motor vehicle which, without the owner's knowledge or authorisation, was removed from the private land where it was immobilised — has the right of subrogation against the vehicle's owner regardless of whether that owner was liable for the accident?

Or,

does the subrogation by the Fundo de Garantia Automóvel in relation to the owner depend on the requirements for civil liability having been met, in particular that, when the accident occurred, the owner had effective control of the vehicle?'

18. Written submissions were lodged by the Government Government, Ireland, the Italian, Latvian, Portuguese, Spanish and United Kingdom Governments, as well as by the European Commission. With the exception of the Italian Government, those interested parties also presented oral argument at the hearing held on 30 January 2018.

IV. Assessment

A. Preliminary remarks

1. Liability for the accident and the obligation to insure

19. In addressing the referring court's questions it is important to bear in mind the difference between: (i) liability for the accident; and (ii) the insurance obligation.

20. It was confirmed by the Portuguese Government at the hearing that Ms C. Juliana, the Second Defendant, is being sued in her capacity as successor to the deceased driver, who was directly involved in the accident. Thus, the Second Defendant's liability depends on whether her father is liable for the accident (option (i)).

21. By contrast, Ms A. Juliana, the First Defendant, is being sued in her capacity as owner of the vehicle on the basis of an alleged infringement of her obligation to insure it (option (ii)). Thus, I understand that if Ms A. Juliana had no obligation to insure, she cannot be held liable and the case against her falls away.

22. For that reason it is necessary to address in detail the referring court's first question on the scope of the obligation to insure, specifically in relation to Ms A. Juliana. That in turn requires consideration of the scope of the concept of 'use of vehicles' under Article 3(1) of the First Directive and the beginning and end points of the obligation to insure (B).

23. If Ms A. Juliana did have an obligation to insure, that raises a second issue of whether, as a matter of EU law, she *could* be held liable given that she was not actually involved in the accident. That point is addressed within the context of the referring court's second question (C).

2. Who bears the obligation to insure?

24. To be clear, the present Opinion will only consider the question of the *existence* of an obligation to insure the car when it was parked in the yard, but not the person *on whom* that obligation is imposed. When I refer, for example in the preceding paragraphs, to the potential obligation of Ms A. Juliana to insure her vehicle, it is because the referring court states in the request for a preliminary ruling that, *if* there was an obligation to insure the parked car, it would, as a matter of national law, fall on her as the owner, potentially leading to her extra-contractual liability.

25. Indeed, the First Directive does not specify on whom the obligation to insure must be imposed by Member States. That is a question of national law. That interpretation has not been disputed by any of the parties in this case.

26. It is correct that the Court, in its judgment in *Csonka*, referred to the obligation of 'every owner or keeper of a vehicle' to insure.[4] However, I do not consider that the Court intended, by using that rather open-ended language, to confirm that the First Directive imposed the obligation on any specific individual. That is, in my view, clear from the context of the reference in that case, which did not focus at all on the identity of the person on whom the obligation is imposed.

27. Instead of seeking to ensure that a *specific person* is responsible, Article 3(1) of the First Directive aims at ensuring that all vehicles that are used are insured, so that if there is an accident, the victim is able to turn without difficulty to a (solvent[5]) entity to recover damages.[6]

B. First question

28. By its first question, the national court asks essentially whether, by virtue of Article 3(1) of the First Directive, there is an obligation to take out motor insurance on a vehicle even when the owner has removed the vehicle from the public roads and does not drive it or intend to. The referring court also asks whether the fact that the Fund is liable to compensate victims is relevant to the obligations of the owner in that regard.

29. In my view, in cases such as the present, there is an obligation to insure.

30. In addressing the referring court's first question, I will begin by setting out some observations on the relationship between the obligation to insure under Article 3(1) of the First Directive and the intervention of the compensation body as provided for in Article 1(4) of the Second Directive (1). I will go on to recall the main case-law in relation to the key concept of 'use of vehicle' (2). Next, I will consider the question of whether the 'use of vehicles' and the obligation to insure must be defined *ex ante* or *ex post* (3), look in more detail at the notion of 'use of vehicles' (4), and at the beginning and end points of the obligation to insure (5). Finally, I will consider the application of those findings to the present case (6).

4 Judgment of 11 July 2013, *Csonka and Others* (C-409/11, EU:C:2013:512, paragraphs 28 and 31).

5 Especially in cases of serious physical injury or death, the possibility that the person liable for an accident would be able to fully compensate the victim is greatly reduced. Whilst there may be cases where the insurance company is insolvent, such as happened in the judgment of 11 July 2013, *Csonka and Others* (C-409/11, EU:C:2013:512), those are, in principle, rare.

6 The same logic underlies Article 4 of the First Directive and Article 1(4) of the Second Directive. The latter provides for the creation of a compensation body in case the vehicle causing the accident is uninsured. The former allows for Member States to derogate from the obligation to insure, but in doing so requires them to designate the authority or body that must then compensate victims of accidents caused by vehicles benefiting from such derogations.

1. Relationship between the obligation to insure and the compensation body

31. Article 3(1) of the First Directive lays down the general obligation for Member States to ensure that vehicles are insured. Article 1(4) of the Second Directive requires the compensation body to step in where the insurance obligation has not been met.

32. I make the following observations in that regard.

33. First, under the Second Directive, the compensation body is not a sort of 'guarantee scheme in respect of insurance against civil liability relating to the use of motor vehicles; rather, it is intended to take effect only in specific, clearly identified, sets of circumstances'. It intervenes as a 'measure of last resort' to cater for situations where damage caused by an uninsured vehicle due to a 'breakdown in the system [of insurance] which the Member State was required to establish'.[7]

34. Second, if a situation does not fall within the scope of the obligation to insure as defined under Article 3(1) of the First Directive, the compensation body will not be required to provide a safety net under Article 1(4) the Second Directive. In other words, the potential scope of intervention of the compensation body is coextensive with the obligation to insure.[8] Member States may, in principle, 'gold plate' their transposition of the Second Directive and provide that the compensation body also intervenes in other situations. However, it is not a mandatory requirement of EU law.

35. It follows from the above points that the First and Second Directives distinguish between, on the one hand, the large majority of situations where an 'individual', taking out insurance, must bear the cost of the risk associated with 'use of vehicles' and, on the other, marginal/residual situations where that cost of risk is borne by society at large,[9] that is, by the intervention of the compensation body. However, to the extent that *there is no insurance obligation at all*, the basic consequence is that the risk may end up being borne by the victim of the accident, in particular in situations where, due to the seriousness of the consequences of the accident, the amount of compensation is considerable or where the victim cannot obtain adequate compensation due to the insolvency of the person liable for the accident.

36. The practical result of the above is that the two provisions are inextricably linked and must be read in conjunction: the more narrowly the scope of the obligation to insure under Article 3(1) of the First Directive is interpreted, the smaller the safety net provided to the victim by the compensation body under Article 1(4) of the Second Directive becomes.[10]

37. In the following sections, I shall look in more detail at the scope of the obligation to insure, beginning with an overview of the existing case-law in relation to the key concept of 'use of vehicles'.

7 Judgment of 11 July 2013, *Csonka and Others* (C-409/11, EU:C:2013:512, paragraphs 30 to 32). Clearly, the compensation body does, in a certain sense, 'guarantee' compensation in specific clearly identified sets of circumstances. At national level compensation bodies may indeed be called 'guarantee funds', as is, for example, the case in Portugal — 'Fundo de Garantia Automóvel'. When the Court states that the compensation body is not a 'guarantee scheme', I understand that it means essentially that the body is not there generally to step in and so effectively *replace* the obligation to insure.

8 In addition, the compensation body is required to intervene in other specifically defined situations. Thus, for example, Article 1(4) provides that it must also intervene when the vehicle is unidentified.

9 Depending on the exact system of financing of the compensation body that may mean a larger or smaller group (for example, if the body is financed through general taxation as opposed to the insurance premiums of individuals).

10 See in that sense judgment of 11 July 2013, *Csonka and Others* (C-409/11, EU:C:2013:512). In that case, the insurer was insolvent. However, the national guarantee body had no obligation to intervene because the obligation to insure had in fact been respected.

2. 'Use of vehicles': Vnuk, Andrade and Torreiro

38. *Vnuk*,[11] *Andrade*[12] and *Torreiro*[13] are the main cases that are relevant for the notion of 'use of vehicles'. I shall consider each in turn below and summarise the definition of that concept that emerges from those judgments.

(a) Vnuk

39. In the judgment in *Vnuk*[14] the Court assessed whether the manoeuvre of a tractor in the courtyard of a farm in order to bring the trailer attached to that tractor into a barn was covered by the concept of 'use of vehicles' within the meaning of Article 3 (1) of the First Directive.

40. Given the significant differences between the language versions as regards the term 'use of vehicles', the Court considered the general scheme and purpose of EU legislation on compulsory insurance. It referred to the 'dual objectives' of protecting victims of accidents and the free movement of persons.[15] The Court further expounded on the protection of victims, an objective that had 'continuously been pursued and reinforced'.[16] In particular, in the light of that objective, it held that 'the view cannot be taken that the European Union legislature wished to exclude from the protection granted by those directives injured parties to an accident caused by a vehicle in the course of its use, if that use is *consistent with the normal function* of that vehicle'.[17]

41. The Court thus found that the manoeuvre in question did fall within the concept of 'use of vehicles'.

(b) Andrade

42. In the *Andrade*[18] case a stationary tractor with the engine running in order to drive a pump for spraying herbicide on vines in a vineyard fell down the terraces and overturned because of a landslip, killing a farm worker. The national court asked whether such a situation fell within the notion of 'use of vehicles' under Article 3(1) of the First Directive.

43. The Court began by recalling its findings in the *Vnuk* case.[19] It went on to observe that the tractor had a dual function: a 'normal use as a means of transport' and 'in certain circumstances as [a machine] for carrying out work'. In such a case the Court held that 'it is necessary to determine whether, *at the time of the accident* … that vehicle was being used principally as a means of transport, in which case that use can be covered by the concept of "use of vehicles" …, or as a machine for carrying out work, in which case the use in question cannot be covered by that concept'.[20]

44. Since, in that particular case, at the time of the accident the tractor was being used principally as a machine for carrying out work, the circumstances of the case fell outside the notion of 'use of vehicle'.

11 Judgment of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146).

12 Judgment of 28 November 2017, *Rodrigues de Andrade* (C-514/16, EU:C:2017:908).

13 Judgment of 20 December 2017, *Núñez Torreiro* (C-334/16, EU:C:2017:1007).

14 Judgment of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146).

15 Judgment of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146, paragraph 49).

16 Judgment of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146, paragraph 52, see also paragraphs 50 and 53 to 55).

17 Judgment of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146, paragraph 56). Emphasis added.

18 Judgment of 28 November 2017, *Rodrigues de Andrade* (C-514/16, EU:C:2017:908).

19 Judgment of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146).

20 Judgment of 28 November 2017, *Rodrigues de Andrade* (C-514/16, EU:C:2017:908, paragraph 40). Emphasis added.

(c) Torreiro

45. Mr Núñez Torreiro was taking part in night-time military manoeuvres when the all-terrain military vehicle fitted with 'Anibal' wheels, in which he was a passenger, overturned. The vehicle was travelling, *not on public roads* or even in an area for wheeled vehicles, but rather in an area restricted to military exercises for tracked vehicles. [21]

46. The Court held that such a situation fell within the notion of 'use of vehicles'. It repeated in essence the findings in the judgments in *Vnuk* [22] and in *Andrade*, [23] before stating that the fact the vehicle was being used in a military exercise in an area that was not suitable for the use of wheeled vehicles could not have any effect on that conclusion.

(d) Interim summary

47. On the basis of the above cases, the basic working definition of 'use of vehicles' is at first sight rather broad, covering uses consistent with normal use (as a means of transport) (*Vnuk*), irrespective of the specific place it is being used (*Torreiro*), but excluding cases where the principal use at the time of the accident is something other than as a means of transport (*Andrade*).

48. In the following section I will consider the relationship between the 'use of vehicles' and the obligation to insure and the point in time at which each of those can and should be identifiable.

3. 'Use of vehicles' and obligation to insure: ex ante or ex post?

49. Pursuant to Article 3(1) of Directive 72/166, the obligation to insure extends to 'civil liability in respect of the use of vehicles'.

50. The definition of 'use of vehicles' in *Vnuk*, *Andrade* and *Torreiro* was centred around the activity the vehicle was engaged in or the mode that it was in '*at the time of the accident*': reversing with a trailer; working as a machine; driving on (in)appropriate terrain. [24]

51. It could be inferred from that, that when an accident has already happened, the existence of an obligation to insure should be assessed with reference to the specific circumstances of the accident. In other words, whether there was the obligation to insure would be assessed after the event (*ex post facto*).

52. Therefore, in the present case, this would mean that, since the accident occurred while the car was being driven on a public road (thus what would appear to be the normal use of the vehicle), there certainly was an obligation to have the vehicle insured *at that moment*. However, that does not answer the question of whether there was an obligation to insure when the vehicle was parked in Ms A. Juliana's yard. That is the crux of the referring court's first question and, as I understand it, key to the question of whether she can be held liable in this case.

53. Moreover, while I agree that there was undeniably an obligation to insure at the time of the accident in this case, I do not consider that the trio of judgments in *Vnuk*, *Andrade* and *Torreiro* should be read as generally meaning that the obligation to insure is to be assessed *ex post facto*.

21 Judgment of 20 December 2017, *Núñez Torreiro* (C-334/16, EU:C:2017:1007).

22 Judgment of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146).

23 Judgment of 28 November 2017, *Rodrigues de Andrade* (C-514/16, EU:C:2017:908).

24 Judgment of 28 November 2017, *Rodrigues de Andrade* (C-514/16, EU:C:2017:908, paragraph 40). See also judgments of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146, paragraph 59), and of 20 December 2017, *Núñez Torreiro* (C-334/16, EU:C:2017:1007, paragraph 32).

54. It must be possible to define the notion of 'use of vehicles' and the scope of the obligation to insure *ex ante*. That is most obviously for reasons of legal certainty. Vehicles cannot drift in and out of the general obligation to insure depending on what activity they happen to be engaged in or mode they are in at a given time. The existence of the obligation cannot simply depend on reasoning in retrospect based on the circumstances of the accident.

55. In the judgments in *Vnuk*, *Andrade* and *Torreiro*, the Court took into account the activity of the vehicles at a given time because that was necessary for the national court to determine *liability*. It ought to be stressed that in all those cases the vehicles involved in the accidents were insured.[25] I understand that the fact that there was a general obligation to insure was not in dispute. The relevant question that the national courts had to resolve in those cases was rather whether the accidents came *within the scope of the insurance* contract, with the result that the insurance companies had to pay, since all parties disputed their liability on the basis that the accidents themselves did not involve 'use of vehicles' in the specific circumstances of the accident.

56. By contrast, in the present case, the question is quite different, posed at a higher level of abstraction and generality: does an obligation to insure *generally* arise from the kind of use being made of the vehicle in this case?

57. For example, driving a car to and from work every day clearly falls within the notion of 'use of vehicles'. There is an obligation to insure against civil liability. Does that obligation technically end when the car is parked in a (private) garage in the evening and its engine is switched off, only to be revived the following morning when the key is turned in the ignition and the car is once again driven on a public road?

58. I consider that clearly it does not. The activity a vehicle is used for or the mode it is in at any given time will vary. That cannot be the case for the general obligation to insure, which *requires a clear beginning and end* in time and a certain logical degree of continuity and foreseeability.

59. It is conceivable that, between those points in time, a vehicle may be employed in a way which does not amount to 'use' within the meaning of Article 3(1) of the First Directive. That is indeed what happened in the *Andrade* case. In *general*, it is likely that the tractor in that case was being used in a way that fell within the notion of 'use of vehicles' and was insured. At the *specific* time of the accident, however, it was being used as a machine, which did not constitute a 'use of vehicles'. Yet the obligation to insure was not theoretically suspended during those minutes or hours when the tractor was being used as a machine.

60. It follows that, while the notion of *use of vehicle* is central to defining the scope of the *obligation to insure*, the two concepts are not identical. Bearing those distinctions in mind, I shall consider in more detail in the following sections the concept of 'use of vehicles' and the beginning and end points of the obligation to insure.

4. Definition of 'use of vehicles'

61. Since the notion of 'use of vehicles' includes the concept of 'vehicle' which has a separate definition under the First Directive, I will begin by looking at that first (a), and then proceed to the notion of 'use' (of vehicles) in its various contexts (b).

25 Judgments of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146, paragraph 19); of 28 November 2017, *Rodrigues de Andrade* (C-514/16, EU:C:2017:908, paragraph 12); and of 20 December 2017, *Núñez Torreiro* (C-334/16, EU:C:2017:1007, paragraph 11).

(a) Vehicle

62. The definition of 'vehicle' under Article 1(1) of the First Directive is limited to motor vehicles 'intended for travel'.

63. It is, in my view, clear that 'intended' in that context cannot refer to the subjective, individual intent of the owner or anyone else having control over the vehicle. Nor does it refer to what is being done with the vehicle at any particular point in time.

64. Rather, the words 'intended for travel' in the definition of 'vehicle' must logically refer to the *objective purpose* of the vehicle. That is supported by other language versions of the directive, which use rather neutral vocabulary.[26] Moreover, I agree with the Commission that making the definition of vehicle dependent on the subjective intent of its owner at a specific moment in time would lead to intolerable legal uncertainty. Finally, that interpretation is also confirmed by the Court's judgment in *Vnuk*, where it held that the definition of 'vehicle' is independent of the use that is or '*may be*' made of it.[27]

65. Therefore, and contrary to the views presented in particular by Ireland in its written pleadings, the fact that the owner is not using the vehicle for travel at a given point of time (and does not intend to do so) does not prevent it from being a 'vehicle' within the meaning of the First Directive, in relation to which there may be an obligation to insure. On the contrary, the concept of 'vehicle' must be objective and 'stable' (in the sense of continuing over a reasonable period of time).

(b) Use

66. 'Use of vehicles' under Article 3(1) of the First Directive constitutes an autonomous concept of EU law, which must be interpreted in the light of the context of that provision and the objectives pursued by the rules of which it is part.[28]

67. As previously pointed out by the Court,[29] 'use of vehicles' is translated in rather different ways in the various official language versions. That underlines the need to interpret the concept in the light of the directive's 'dual objective of protecting the victims of accidents caused by motor vehicles and of liberalising the movement of persons and goods'.[30] In that regard, the Court has, moreover, stressed the increasingly strong protection provided to victims of accidents caused by vehicles over the years following the adoption of the First Directive.[31]

68. The above considerations have led the Court in its case-law to adopt a broad interpretation of the notion of 'use of vehicle', which 'covers any use of a vehicle that is consistent with the normal function of that vehicle'.[32]

69. I would add the following observations in that regard, concerning the territorial and material scope of that definition.

26 For example in Czech: 'určený k'; Dutch: 'bestemt'; French: 'destiné à'; German: 'bestimmt'; Italian: 'destinato a'; Spanish: 'destinado a'; or Portuguese: 'destinado a'.

27 Judgment of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146, paragraph 38).

28 Judgments of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146, paragraphs 41 and 42); of 28 November 2017, *Rodrigues de Andrade* (C-514/16, EU:C:2017:908, paragraph 31); and of 20 December 2017, *Núñez Torreiro* (C-334/16, EU:C:2017:1007, paragraph 24).

29 Judgment of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146, paragraphs 43 to 45).

30 Judgment of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146, paragraph 49).

31 Judgment of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146, paragraph 52).

32 Judgments of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146, paragraph 59); of 28 November 2017, *Rodrigues de Andrade* (C-514/16, EU:C:2017:908, paragraph 34); and of 20 December 2017, *Núñez Torreiro* (C-334/16, EU:C:2017:1007, paragraph 28).

(i) Territorial scope of 'use of vehicles'

70. The notion of 'use of vehicles' is not limited to use in a particular place or on a particular terrain or territory. It is 'not limited to road use, that is to say, to travel on public roads'.[33] In their written pleadings, Ireland and the United Kingdom Government argued in favour of an approach to the notion of 'use of vehicles' and the compulsory insurance obligation that distinguishes between use on public roads and elsewhere.

71. Whilst some contextual basis was proposed for that distinction, it is, in my view, rather meagre.[34] On the contrary, there is ample textual support for a broad reading of the territorial scope of the notion of 'use of vehicles' and the insurance obligation. In that regard, Article 1 of the First Directive gives a basic definition of 'territory in which the vehicle is normally based' as 'the territory of the State in which the vehicle is registered'. The First Directive refers generally to the 'territory of [another] Member State' and to 'motor vehicles travelling in Community territory'. No explicit distinction is drawn between (i) public and private land, or, (ii) areas that are designated for motor vehicles to travel through and areas that are not, in spite of the fact that the directive(s) deals quite extensively with its territorial applicability.

72. Moreover, such a distinction would potentially exclude from the insurance obligation under Article 3(1) of the First Directive many situations involving motor vehicles clearly capable of giving rise to accidents. That would risk seriously compromising one of the main purposes of the First Directive identified above, namely to protect victims of accidents caused by motor vehicles.[35] In that regard, it may well be the case that, in the light of land ownership structures and property law in certain Member States, individuals may be able to make extensive use of vehicles on private land. However, the possibility of those vehicles *never* being driven off the private land on public roads and the *total absence* of third parties entering that area, so that there is simply no risk of accidents, seems a rather unlikely and unrealistic scenario. It is not one that I think justifies trying to read limitations into the concept of 'use of vehicles' without any solid textual basis for doing so, and goes against the logic and purpose of the legislative instrument in question.

73. On those grounds in particular I see no reason to revisit the Court's clear conclusions in the case-law cited above and to limit the concept of 'use of vehicles' to use in specific places.

33 Judgment of 20 December 2017, *Núñez Torreiro* (C-334/16, EU:C:2017:1007, paragraph 28).

34 Ireland cites in that regard Article 12(3) and Article 23(5) of the directive which codified the Motor Insurance Directives, Directive 2009/103/EC, which mention, respectively, risks to 'non-motorised road users' and 'traffic accident[s]' (Directive of the European Parliament and of the Council of 16 September 2009 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 (OJ 2009 L 263, p. 11)). In relation to Article 12(3), I note that Article 12 is entitled 'Special categories of victim'. Article 12(1) refers to insurance in relation to harm to passengers, without any reference to 'roads'. If such a significant limitation were intended in Article 12(3), it would logically also appear in Article 12(1). Article 23(5) relates to logistics of recovery (information centres) and therefore should not be used to read significant limitations in the scope of the insurance obligation itself. Also, no provisions equivalent to Article 12(3) and Article 23(5) exist in the First and Second Directives.

35 See above point 67. To the extent that Ireland and the United Kingdom Government rely on the free movement aims of the First and Second Directives, I note that the Court clearly refers, for example, in *Vnuk*, to the 'dual purpose' of the directives and indeed places more emphasis on the purpose of increased protection of victims (judgment of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146, paragraph 49 et seq.)).

(ii) Material scope of 'use of vehicles'

74. As mentioned above, 'use of vehicles' 'covers any use of a vehicle that is consistent with the normal function of that vehicle'.[36] In my view, the 'normal function' of a vehicle is to be used for 'travel', in other words in order to move from point A to point B,[37] for whatever purpose. This already seems fairly apparent from the definition of a 'vehicle' contained in Article 1(1) of the First Directive.

75. In that regard, it is correct that the Court has stated, notably in the judgment in *Andrade*, that the normal function of a vehicle is to be used as a means of 'transport'. However, I do not consider that by employing that term, the Court intended to refer to a specific 'transport' function distinct from and logically narrower than that of 'travel'.[38] It would rather appear to me that the Court sought to distinguish use as a machine from the normal function of a vehicle. In my view, and in the light of Article 1(1) of the First Directive, a more accurate definition of the 'normal function' of a vehicle is to be used for 'travel'.

76. That said, if a vehicle is not travelling that does *not* mean that whatever it is doing generally falls *outside* the concept of 'use of vehicles'. The Court's case-law indicates rather, that any use made of a vehicle that is 'consistent' with its normal function falls within the scope of 'use of vehicles'. That would, in principle, include situations where the vehicle is stationary for some time, irrespective of the owner's intentions to travel with it later or not.

77. Building on the example already provided above (at point 57), when a car is parked overnight, with the owner having no intention of using it before morning, that stationary state is entirely consistent with its normal use. One may imagine that, the next morning, the owner impulsively takes a taxi to the airport instead of driving her car, and spends a week skiing. Alas, during her holiday she breaks a leg and the leg is put in plaster for a month. During her incapacitation she decides to sell her car, and in fact never uses it again.

78. Thus, after driving home from work on the last night before departing for her holidays, the owner, in practice, never drove the car again. Did the '*use of the vehicle*' or the *obligation to insure* cease at any point during these events and if so when? When she turned off the engine for the last time? When she left to go on holiday? When she broke her leg and was actually unable to drive? When she decided to sell the car? Or some other point in time?

79. In my view, irrespective of all those (unfortunate) events, there still was an ongoing obligation for the car to be insured. It is true that, *ex post facto*, there may be specific ways in which a vehicle is employed at a given time that can be identified as falling outside the concept of 'use of vehicles', thus potentially negating liability for related accidents. That is confirmed by the judgment in *Andrade*.[39]

36 Judgments of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146, paragraph 59); of 28 November 2017, *Rodrigues de Andrade* (C-514/16, EU:C:2017:908, paragraph 34); and of 20 December 2017, *Núñez Torreiro* (C-334/16, EU:C:2017:1007, paragraph 28).

37 Thus excluding the *Holtzman effect* that famously allowed for folding of space and time and thus for 'travelling without moving' in Frank Herbert's *Dune* (first edition in Chilton Books, Philadelphia, 1965). However, it is safe to assume that even if the *Holtzman effect* were ever actually to be put into practice, it would be used for other types of 'vehicles' than those 'intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled' in the meaning of Article 1(1) of the First Directive.

38 It could be argued that whenever a vehicle is moving, it will be travelling. But the purpose of that travel may not always be the transport of goods or people. See, for a similar discussion, for example, judgment of 28 July 2016, *Robert Fuchs* (C-80/15, EU:C:2016:615, paragraphs 28 to 36), concerning the issue whether or not providing flight training services amounts to transport of persons, or of 5 July 2017, *Fries* (C-190/16, EU:C:2017:513, paragraphs 81 to 88), in the context of ferry flights moving a plane between two airports without transporting passengers, cargo, or mail. In both of these cases, there was travel, but arguably no transport (unless of course it is maintained that the mere fact of moving a vehicle from point A to point B amounts by definition to the *transport of that vehicle*).

39 Judgment of 28 November 2017, *Rodrigues de Andrade* (C-514/16, EU:C:2017:908).

80. However, identification of such specific situations of 'non-use' after the event (*ex post facto*) does not negate the broader and general obligation to insure (*ex ante*). Rather, I consider that the reverse is in fact true: if a vehicle is intended to travel on land and can indeed do so, a general obligation to insure such a vehicle normally arises under Article 3(1) of the First Directive. That does not mean that, during the period covered by the insurance obligation, there will not be *specific instances* when, because of the precise type of use at the very moment the accident occurred, there will be *no liability* under the vehicle insurance contract.

81. In any event, it must be possible to determine *ex ante* whether there is indeed such a context of 'use of vehicles' giving rise to an obligation to insure, *with a clear and objectively identifiable beginning and end points but being continuous between those points*. Neither the mere fact that a vehicle is, in practice, stationary, nor the intentions of the owner or holder to abstain from driving the vehicle (especially if no formalities have been undertaken to communicate those intentions to the public authorities and to officially remove the vehicle from circulation), can be used to determine the existence of such a context and clearly and objectively identify those beginning and end points.

82. In short, I consider that, the starting point for establishing a context of 'use of vehicles' for the purposes of determining the existence of an obligation to insure should be that the *vehicle is intended to travel on land and can indeed do so*. I shall return to the question of how precisely to identify in practice the beginning and end points of the obligation to insure below. Before doing so, however, I will address some of the concerns raised in relation to an allegedly overly broad interpretation of the concept of 'use of vehicles' and the obligation to insure.

(iii) Objections to a broad interpretation of 'use of vehicles' and the obligation to insure

83. First, Ireland in particular argues that a broad interpretation of 'use of vehicles' and the obligation to insure would lead to unintended and unacceptable results. Notably it would unjustifiably impose a compulsory insurance requirement on 'large numbers of people' who are 'not using' their vehicles (for travel on public roads), which does not pursue any objectives of the First Directive.

84. I disagree.

85. The suggestions of Ireland concerning the potential distinction between driving a vehicle on private land as opposed to public roads have already been dealt with above.[40] As for other potential instances of an unduly broad interpretation of the obligation to insure that would affect large numbers of people and lead to unintended and unacceptable results, Ireland's arguments have remained somewhat unexplored.

86. In any case, as the Court has already stated, one of the dual purposes of the directives is to protect victims. Imposition of a broad compulsory insurance requirement contributes to that aim. The alternative is that, at least in cases of insolvency of the person liable for the accident, victims of accidents caused by uninsured vehicles may well not receive any compensation. I do not see anything in the First Directive or elsewhere that supports the idea that the legislature intended the cost of risk to be spread in that way as a default. On the contrary, Article 4 of the First Directive includes explicit derogations allowing the cost of risk to be shifted to compensation bodies in specific cases identified by Member States.[41]

40 Points 70 to 73 of this Opinion.

41 See also above, point 35 of this Opinion.

87. I would add that, at least to some extent, the narrower interpretation of 'use of vehicles' and the obligation to insure that was argued for in particular by Ireland and the United Kingdom Government appears to be based on the idea that the specific factual circumstances of some situations involve a very significantly reduced likelihood of accident. For that reason, the inference made is that there is no need for compulsory insurance in those situations. Ireland refers, for example, to vehicles temporarily kept in a storage facility on private land or on display by a retailer.

88. I agree that in such cases the vehicle does not pose the same risk as one driven on the highway on a daily basis. However, the possibility of the car being driven, for example, being moved across the dealer's forecourt, means that the risk, albeit reduced, still exists. I do not see how by dint of judicial interpretation, some kind of risk threshold can be read into the Motor Insurance Directives via the notion of 'use'[42] leading to the conclusion that there is no obligation to insure. In my view, such distinctions are clearly better and more appropriately dealt with by the motor insurance industry, or, if and to the extent necessary, by the public law regulation of the motor insurance market. For example, I understand that in some Member States, the insurance obligation is extremely broad but in cases where a vehicle is, in practice, not driven, insurance premiums are, as a result very low. Insurance companies may also charge different premiums based on the mileage, or use other means to allow for reasonable differentiation in premiums that matches the scope and extent of 'use' with the type of potential risk involved.

89. To sum up, on a systemic level, the fact that the vehicle might generally be stationary for (extended) periods and, as a result, the risk might be minimal, is perhaps a good reason for a difference in premiums, but not for excluding the duty to insure altogether. That is in particular the case since, as already stated above, the fact that there was no obligation to insure, in principle, means that there will be no safety net for compensation either.[43]

90. Second, Ireland also contends that an overly broad reading of the concept of 'use of vehicles' and the obligation to insure would strip the term 'use' of any meaning and make the obligation contingent on mere ownership.

91. I consider that concern to be unfounded.

92. As demonstrated by the judgment in *Andrade*,[44] the concept of 'use of vehicles' does have limits. Moreover, while the obligation to insure cannot be contingent on transient or subjective circumstances, that does not mean it is contingent on mere ownership. The obligation also has limits in time — a beginning and an end. It is to the identification of those limits that I now turn.

5. Beginning and end points of the obligation to insure

(i) Registered and non-registered vehicles

93. As regards the 'beginning and end points', *the registration* of a vehicle in a Member State is, in my view, a key objective factor to be taken into account in establishing whether there is a general context of 'use of a vehicle' giving rise to an obligation to insure within the meaning of Article 3(1) of the First Directive.

94. Two scenarios can be distinguished in this regard.

42 For example, the vehicle will very rarely be driven or only for limited distances.

43 Above, points 34 to 36 of this Opinion.

44 Judgment of 28 November 2017, *Rodrigues de Andrade* (C-514/16, EU:C:2017:908).

95. First, the vehicle is and remains registered in the Member State. As long as the vehicle is registered, and no official measures have been taken to suspend or terminate that registration, it must be considered that there is a general context of 'use of the vehicle' within the meaning of Article 3(1) of the First Directive, giving rise to an obligation to insure. Registration of a vehicle is consistent with (and in most cases necessary for) its normal use for travel.

96. That does *not* automatically mean that, following registration, anything that is in practice done with the vehicle constitutes a 'use' for the purposes of determining *liability* in relation to a specific event or the scope of an insurance contract. While the case-law confirms that the concept of use is extremely broad, it does have limits. [45]

97. Second, there are the situations in which the vehicle is not registered in a Member State, because it has not yet been registered, because it is no longer registered, or because registration has been suspended.

98. The fact that the vehicle falls into this second scenario does not necessarily mean that the vehicle is automatically no longer subject to the insurance obligation under Article 3(1) of the First Directive. Absence of registration is indeed not necessarily *inconsistent* with normal use of a vehicle for travel. Or, put differently, vehicles may be suitable for and actually used to travel on land without being registered. That may be either legally, under conditions provided for by national law, or illegally, where they should be registered under the relevant national rules but are not. In either of these situations, such vehicles can potentially be involved in accidents.

99. There is nothing in the First Directive indicating that the legislature intended that either the compensation body or still less victims should, in principle, bear the risk in such situations. More generally, there is nothing in the First Directive that would indicate that the notion of 'use of vehicles' is limited to the use of *registered* vehicles. The overall scheme of the First Directive, in particular Article 1(4), first and second indents, and Article 3(1), rather implies an obligation to ensure that civil liability in respect of the use of vehicles on a Member State's territory is also covered by insurance in cases where they are not registered.

100. However, in some cases there may be (temporary) deregistration or suspension of registration, which effectively requires that the vehicle not be used for travel on land, even for short distances (for example, by making such use of the vehicle a criminal offence). I understand that a similar system exists in certain Member States, for example, during winter months in the case of vehicles that are driven only during periods of good weather. I consider that, in such circumstances, 'use of the vehicle' is clearly and objectively excluded to the extent that it puts an end to the '*ex ante*' obligation to insure. [46]

101. That leaves open the question of whether and under what other conditions a vehicle that is *not* registered (or in relation to which registration has been suspended) may potentially fall outside the insurance obligation.

(ii) Non-registered vehicles falling outside the obligation to insure

102. I understand that, in the main case, the vehicle involved in the accident was registered. At the hearing, the Portuguese Government confirmed that the vehicle in question did have registration plates and that it was still subject to road tax. I will therefore not go into this point in great detail.

45 As evidenced by the judgment in *Andrade* and discussed in detail above in points 74 to 82 of this Opinion.

46 I stress that that does not mean there *cannot* be any use of the vehicle. It may of course be stolen and/or driven illegally. In such circumstances, however, the vehicle would be driven *in breach of* an obligation to insure as (exceptionally) identified *ex post*, thus preserving the compensation fund safety net for victims.

103. The issue of when the obligation to insure begins and ends in general was nonetheless discussed extensively at the oral hearing. Broadly, three types of situation were mentioned: (a) new vehicles that have not yet been registered but are clearly capable of being driven (for example, vehicles being transported from factories or sitting in dealership forecourts); (b) other vehicles, which are no longer registered or whose registration has been suspended and which are capable of being driven but are *de facto* not (for example, vehicles located in a museum);[47] (c) vehicles that are not registered and have been 'incapacitated' in some way through, for example, the removal of parts (wheels, battery and so on).

104. As regards (a) and (b), there are, in my view, several good reasons why the Court should not, in order to deal with such cases, begin reading elaborate (and potentially rather complex) limitations into the notion of 'use of vehicles' under the First Directive, for example based on the fact they are not driven often or unlikely to be driven.

105. First, such limitations simply have no clear textual basis in the directive. They would effectively have to be invented by the Court. They would sit uneasily with previous case-law giving a broad definition of 'use of vehicles'.[48]

106. Second, to the extent that such vehicles are driven (for example across a dealership forecourt), they could potentially cause accidents. Without an obligation to insure, the victim would risk having no 'safety net' in the form of compensation.[49] Moreover, such an approach would again, under scenario (b), make the insurance obligation dependent on specific factual circumstances and the intentions of individuals, to the detriment of legal certainty.[50]

107. Third, and perhaps most importantly, there is a clear legal basis in the First Directive — Article 4 — for derogations from the obligation to insure in relation to *certain persons* and/or *certain vehicles* (or certain vehicles that have special plates).[51] If those derogations are used, then the same provision also explicitly states that Member States must provide a safety net for potential victims by making sure that compensation is paid in respect of any loss or injury caused by such explicitly excluded types of vehicles.

108. In such circumstances, there seems little justification for attributing a complex (even convoluted) judicial interpretation to the concept of 'use of vehicles', and in doing so potentially exposing victims to the risk of not being (fully) compensated, in order to cater for particular circumstances that could be perfectly well addressed using the derogations under Article 4. Put metaphorically, if one of the stated aims is to provide for a safety net, then it makes good regulatory sense to me that one should be casting a strong and thick net and then, if need be, release (exempt) the wrong fish, rather than throw out a net full of holes and then wonder how some fish got away.

109. As regards (c), there are, in practice, infinite ways to 'incapacitate' a vehicle, from removing the keys to removing the battery, the wheels and so on. At a certain point, it might even be said that the 'vehicle' no longer exists, let alone 'use of the vehicle'. Thus, for example, removal of the engine means that the vehicle is technically no longer 'motorised' within the meaning of Article 1(1) of the First Directive.

47 Aside from the kind of situations referred to above at point 100.

48 Above, point 47 of this Opinion.

49 Above, point 35 of this Opinion.

50 Above, point 62 of this Opinion.

51 Those derogations vary to a great degree from one Member State to another. At the time of delivery of this Opinion, a list is available on the Commission's website at https://ec.europa.eu/info/business-economy-euro/banking-and-finance/insurance-and-pensions/motor-insurance_en.

110. In my view, however, whether or not there is sufficient incapacitation of a vehicle to conclude that there is no 'vehicle' within the meaning of the First Directive or that no 'use' can be made of it, is above all a question of proof and evidence. Whilst some abstract consideration of that issue is no doubt possible, I do not think it necessary to dwell on that issue in the present case. After all, there is no doubt about the fact that the car was clearly drivable and was indeed driven.

6. Application to the present case

111. On the basis of the facts as presented by the referring court, it is, in my view, clear that parking a fully functioning car in a yard, which — as confirmed at the hearing by the Portuguese Government — was still subject to road tax at the material time in the main proceedings, bore registration plates and in relation to which no formalities had been undertaken to officially remove it from circulation, cannot mean that the obligation to insure has been dispensed with. That is the case irrespective of the subjective intent of the owner, in so far as that intent was in no way officially communicated to the public authorities.

112. As noted above at points 94 to 100, the failure to undertake administrative formalities to remove the car from circulation is, to my mind, already decisive in confirming that there is a general context of 'use of a vehicle'. The car's precise location, its physical state, the fact that the owner does not drive (for medical reasons) and the owner's subjective intentions in relation to the vehicle cannot alter that conclusion.

113. That is the *general* answer to the first question put by the referring court. However, that does not mean that that general answer must also be applicable in the *individual* case of Ms A. Juliana. Two points are worth highlighting in that regard.

114. First, the First Directive imposes an obligation on the Portuguese Republic to ensure that vehicles are insured. Whether that obligation has been fulfilled by the Member State and, if it has, *on whom* the obligation to insure is imposed, are questions of national law for the referring court to determine.

115. Second, even if the national law were at some stage to provide for the obligation to be imposed on the owner to insure her car, I wish to recall two elements that might be of relevance for the referring court. On the one hand, according to established case-law of the Court, even in cases where the provisions of a directive are capable of direct effect, Member States (including emanations thereof[52]) cannot rely directly on those provisions against individuals (absence of 'reverse vertical' direct effect).[53] On the other hand, a Member State cannot rely on the provisions of a directive that has not been transposed properly for the purposes of a conform interpretation of national law that has the consequence of imposing obligations on an individual.[54]

116. These principles of Union law are of particular relevance in situations when national laws that were supposed to transpose the relevant motor insurance directive could be said to be unclear or contradictory. That includes conflicting national judicial pronouncements on the relevant points of law. In that regard it is for the national court to assess and draw appropriate consequences in view of the facts of the individual case.

52 Judgments of 12 July 1990, *Foster and Others* (C-188/89, EU:C:1990:313, paragraph 18), and of 10 October 2017, *Farrell* (C-413/15, EU:C:2017:745, paragraph 33 to 35).

53 Judgment of 8 October 1987, *Kolpinghuis Nijmegen* (80/86, EU:C:1987:431).

54 Judgments of 26 September 1996, *Arcaro* (C-168/95, EU:C:1996:363, paragraph 42), and of 5 July 2007, *Kofoed* (C-321/05, EU:C:2007:408, paragraph 45).

7. Conclusion on the first question

117. In the light of the foregoing, I propose to answer the referring court's first question as follows:

Article 3 of the First Directive (in force at the date of the accident) must be interpreted as meaning that the obligation to take out civil liability motor insurance extends to the situations in which the vehicle is, at the owner's choice, immobilised in a private courtyard, away from the public road, but where no administrative formalities have been undertaken to deregister the vehicle officially. It falls to the Member States to determine under national law who is obliged to insure the vehicle in those circumstances.

C. Question 2

118. By its second question, the national court asks whether Article 1(4) of the Second Directive must be interpreted as granting the Fund a right of subrogation against the owner of the vehicle even if the latter was not liable for the accident. The referring court also asks whether subrogation against the owner depends on the conditions of civil liability being met (and specifically whether the fact that the owner did not have control over the vehicle is relevant).

119. Article 1(4) of the Second Directive gives a *right* to Member States to provide for subrogation against the person 'responsible for the accident'. However, that provision further provides that to the extent Member States avail themselves of that right, they may not allow the compensation body to make the payment of compensation conditional on the victim establishing in any way that the 'person liable' is unable or refuses to pay.

120. The possibility of subrogation (and conditions thereof) must therefore be provided for in national law. That includes defining the notion of person 'responsible for the accident' or 'liable' in national civil law.[55] None of the parties submitting observations contested that interpretation.

121. It follows that, to the extent the referring court asks whether Article 1(4) of the Second Directive *must* be interpreted as granting a right of subrogation, the answer is no. Article 1(4) only offers the *possibility* for Member States to do so.

122. As regards the conditions of exercising the right of subrogation, there is, in my view, some ambiguity in the order for reference as to what basis for 'liability' is being discussed: liability *for the accident itself* or liability based on *failure to insure the vehicle* (where there was an obligation to do so).

123. To the extent the question refers to *liability for the accident*, the conditions for such liability are to be determined by national law. I see no obstacle in EU law to the imposition of a condition that the person being held liable was in control of the vehicle at the time of the accident.

124. However, the referring court's question asks if there is a right of subrogation against the owner 'regardless of whether [she] was liable for the accident', which I understand as meaning 'regardless of whether the owner fulfils the conditions for liability for the accident'. Article 1(4) does not envisage such a possibility. That provision only envisages subrogation against a person who *is* liable for the accident.

55 Judgment of 23 October 2012, *Marques Almeida* (C-300/10, EU:C:2012:656, paragraph 29).

125. To the extent that the referring court asks whether Article 1(4) of the Second Directive *must* be interpreted as meaning that the Fund has a right of subrogation against a person *liable for failure to insure a vehicle*, the answer is no. Again such a possibility is simply not referred to under Article 1(4) of the Second Directive and no such rule can therefore be inferred from that provision. However, that does not mean that the Member States would be prevented from providing for a right of subrogation under other circumstances, including against the person who failed to comply with the obligation to insure imposed by national law transposing Article 3(1) of the First Directive. That is again a matter for the national law.

126. In the light of the foregoing, I propose to answer the referring court's second question as follows:

Article 1(4) of the Second Directive must be interpreted as meaning that Member States may provide for a right of subrogation by a compensation body, such as the Fundo de Garantia Automóvel which, in the absence of civil liability insurance, paid compensation to the third parties injured by a traffic accident caused by the motor vehicle which was removed without the owner's knowledge or consent from the private premises where it was immobilised, against the person or persons responsible for the accident. The conditions of liability of such person or persons are to be provided for under national law. Those conditions may include a requirement that the person(s) concerned had effective control of the vehicle at the relevant time.

That provision does not require Member States to foresee or prevent them from foreseeing a right of subrogation under other circumstances, including against the person who failed to comply with the obligation to insure imposed by national law transposing Article 3(1) of the First Directive.

V. Conclusion

127. I propose that the Court answer the questions referred by the Supremo Tribunal de Justiça (Supreme Court, Portugal) as follows:

Question 1

Article 3 of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (in force at the date of the accident) must be interpreted as meaning that the obligation to take out civil liability motor insurance extends to the situations in which the vehicle is, at the owner's choice, immobilised in a private courtyard, away from the public road, but where no administrative formalities have been undertaken to deregister the vehicle officially. It falls to the Member States to determine under national law who is obliged to insure the vehicle in those circumstances.

Question 2

Article 1(4) of Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles must be interpreted as meaning that Member States may provide for a right of subrogation by a compensation body, such as the Fundo de Garantia Automóvel, which, in the absence of civil liability insurance, paid compensation to the third parties injured by a traffic accident caused by the motor vehicle which was removed without the owner's knowledge or consent from the private premises where it was immobilised, against the person or persons responsible for the accident. The conditions of liability of such person or persons are to be provided for under national law. Those conditions may include a requirement that the person(s) concerned had effective control of the vehicle at the relevant time.

That provision does not require Member States to foresee or prevent them from foreseeing a right of subrogation under other circumstances, including against the person who failed to comply with the obligation to insure imposed by national law transposing Article 3(1) of the First Directive.