Reports of Cases

OPINION OF ADVOCATE GENERAL
MENGOZZI
delivered on 26 February 2014[1]

Case C-162/13

Damijan Vnuk
v
Zavarovalnica Triglav d.d.(Request for a preliminary ruling

from the Vrhovno sodišče (Slovenia))

(Insurance against civil liability in respect of motor vehicles — Concept of 'the use of vehicles' — Accident caused by a tractor towing a trailer while bales of hay were being put away in a barn)

1. By the present case, the Court is called on to define the scope of Council Directive 72/166/EEC 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.[2]

2. Article 3(1) of that directive provides that '[e]ach 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'. It follows that, in order to define the scope of Directive 72/166, it is necessary to determine the meaning of 'vehicle' and 'use'.

I – **The main proceedings and the question referred for a preliminary ruling**

3. The accident which has given rise to the main proceedings occurred on 13 August 2007 and is described by the referring court as having been caused by a tractor drawing a trailer — a vehicle in respect of which compulsory insurance against civil liability for damage caused by the use of motor vehicles had been taken out — when bales of hay were being put away in the loft of a barn. As he reversed in order to position the trailer in the barn, the tractor driver backed the trailer into a ladder on which the applicant in the main proceedings, Mr Vnuk, was standing. Mr Vnuk fell and was injured. He brought an action before the Slovenian courts for compensation for non-material damage against the insurance company with which the owner of the tractor had insured his vehicle.

4. Both the court at first instance and the court at second instance dismissed the action. They considered, in essence, that the main objectives of compulsory insurance are to shift the cost of risk to society and to promote the need for care to be taken of injured persons and passengers in road accidents. The circumstances in which the accident suffered by Mr Vnuk occurred did not, in their view, constitute a typical situation entailing the use of motor vehicles in traffic and Mr Vnuk's injury

1 — Original language: French.
2 — OJ, English Special Edition 1972(II), p. 360.

was unconnected with transport on surfaces intended for traffic. Moreover, the tractor was not being used, in the circumstances of the main proceedings, as a vehicle but, on the contrary, as a machine. Compulsory insurance cover did not extend to such use, since it applied only to traffic accidents, that is to say, those that occur when a vehicle is being used in road traffic.

5. Mr Vnuk was granted leave to appeal on a point of law against the decision of the court at second instance before the referring court. Under Article 15 of the Law on compulsory motor vehicle liability insurance (Zakon o obveznih zavarovanjih v prometu, 'the ZOZP'), 'the owner of a vehicle must take out insurance covering liability for damage caused by the use of the vehicle to third parties resulting in death, physical injury, invalidity, damage to or loss of property ("insurance against civil liability in respect of the use of motor vehicles") with the exception of liability for damage to property which the proprietor has agreed to transport'. Mr Vnuk therefore considers that the court at second instance's reading of that provision is too narrow. The concept of 'use' does not relate only to the use of vehicles on public roads. Moreover, the tractor was not being used as a machine when the accident occurred, since a tractor drawing a trailer must be classified as a vehicle. The accident must therefore be covered by the compulsory insurance provided for by Article 15 of the ZOZP.

6. The defendant in the main proceedings considers, on the contrary, that the accident occurred in a work situation in front of a barn and did not happen either when the tractor was being used as a vehicle for use in traffic or, more specifically, in a road traffic situation. It also states that insurance premiums are calculated in accordance with a special scale which takes into account the specific risks of each category of vehicle. On that scale, tractors are known to represent a lower risk, because there are far fewer such vehicles in use on the road in traffic, and the insurance premiums are therefore lower. That would not be the case if situations such as that in the main proceedings also had to be covered by the compulsory insurance provided for in Article 15 of the ZOZP.

7. The referring court states, for its part, that the concept of 'use of a vehicle' is not defined by the national law and that that lacuna is, in specific cases, filled by the case-law. The national courts therefore consider, as a general rule, that the question whether the damage occurred in a public area and/or whether it was caused when the vehicle was stationary or had its engine off is not decisive. On the other hand, it is not considered that the compulsory insurance provided for in Article 15 of the ZOZP covers a situation in which a vehicle is used as a machine, for example when a tractor is operated as working machinery in a field.

8. Since the obligation to take out insurance against civil liability in respect of the use of motor vehicles has its origin in EU law, the referring court also observes that neither Directive 72/166, particularly Article 3(1) thereof, nor the subsequent directives,[3] define the concept of 'use'. That concept may be understood either as meaning the use of motor vehicles in road traffic — in which case Mr Vnuk's accident, since it was not caused by a vehicle and did not take place in traffic, did not occur in the context of a situation entailing the use of motor vehicles in traffic —, or as meaning the use and/or operation of the vehicle, irrespective of whether the accident occurred in a situation entailing the use of motor vehicles in traffic.

3 — These are Second 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 (OJ 1984 L 8, p. 17), Third Council Directive 90/232/EEC of 14 May 1990 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 1990 L 129, p. 33), Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (Fourth motor insurance directive) (OJ 2000 L 181, p. 65), and Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles (OJ 2005 L 149, p. 14) (hereinafter together called 'the motor insurance directives'). It is also necessary to mention Directive 2009/103/EC 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), which in due course codified the matter but which is not applicable, *ratione temporis*, to the main proceedings.

9. In those circumstances, the Vrhovno sodišče (Slovenia) decided to stay the proceedings and, by order for reference received at the Court on 29 March 2013, to refer the following question for a preliminary ruling pursuant to Article 267 TFEU:

'Must the concept of "the use of vehicles" within the meaning of Article 3(1) of Directive [72/166] be interpreted as not extending to the circumstances of the present case, in which the person insured by the defendant struck the applicant's ladder with a tractor towing a trailer while hay was being stored in a hayloft, on the basis that the incident did not occur in the context of a road traffic accident?'

II – **Procedure before the Court**

10. The German and Irish Governments and the European Commission have submitted written observations before the Court.

III – **Legal analysis**

11. Before going to the crux of the matter, I wish to point out that, apart from the fact that the facts in the main proceedings are *a priori* anecdotal, this case is much more complex than it appears. It reveals a lacuna in EU law which it is for the Court to fill today in a particularly protean area, since the possible examples of accidents caused by or through the use of a vehicle are capable of being very varied. Consequently, it would be advisable for the Court to adopt a position which may contribute to the resolution of the dispute of the main proceedings by concentrating on the specific features of the present case, without seeking to provide a definitive interpretation of the concept of 'use'.

12. The particular caution which I advocate is dictated only by our inability to encase in a single definition what may be an accident which has occurred in a road traffic situation or which has resulted from the use of a motor vehicle, because the field is particularly varied. It must be clear that it is not dictated by the concern expressed by the defendant in connection with the main proceedings, which — unsurprisingly, all in all, for an insurance company — pleads the financial risk to which insurers and therefore, eventually, the consumer, would be exposed if the Court were to find that the type of accident which gave rise to the main proceedings is covered by insurance against civil liability in respect of the use of motor vehicles.

13. The single question posed by the referring court raises, in fact, a dual problem. First, in the light of the hearings held before the various national courts which have had to examine the case in the main proceedings, it may be helpful to confirm quickly, first of all, that a tractor may be regarded as a vehicle, within the meaning of Article 1(1) of Directive 72/166. Second, it will be necessary to determine whether the damage suffered by Mr Vnuk is the result either of the tractor being driven in traffic as a vehicle or of its being used and whether the accident of which he was the victim falls, on that basis, within the scope of the obligation to take out insurance against civil liability laid down in Article 3(1) of Directive 72/166.

A – *The tractor which caused the accident must be classified as a 'vehicle' within the meaning of Article 1(1) of Directive 72/166*

14. Under Article 1(1) of Directive 72/166, the directive applies to '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'.

15. Under Article 4 of Directive 72/166, Member States had the opportunity to act in derogation of Article 3 thereof in respect of certain categories of persons and vehicles, the list of which had to be communicated to the other Member States and to the Commission. [4] Although it appears that certain Member States have taken that opportunity, sometimes specifically to exclude from the obligation to take out insurance farm vehicles or tractors normally based in their territory — such as the Republic of Malta or the Republic of Finland — it is clear that the Member State in which the main proceedings are taking place has not followed that route. [5]

16. There is therefore no doubt that the tractor which caused the accident must indeed be classified as a 'vehicle' within the meaning of the motor insurance directives. It is also apparent from the file submitted to the Court that the tractor was towing a trailer and that it was the trailer which knocked over the ladder. There too, the wording of Directive 72/166 is very clear since it expressly states that trailers, whether or not coupled — which does not seem to be the situation in respect of the accident with which we are concerned — are regarded as vehicles.

17. Moreover, there is no legislative basis for the distinction drawn by the defendant in the main proceedings before the referring court between 'machines' and 'vehicles'. In that regard, I share the concerns expressed by the Commission as to the practical problems presented by such a criterion and its nature as a source of uncertainty for accident victims. It is often difficult, for those categories of 'mixed' use vehicles, to ascertain when they cease to operate as vehicles and start to be used as work tools. In any event, that assessment may help to determine whether an accident is the result of the use of a vehicle, within the meaning of Article 3(1) of Directive 72/166, but will not affect the classification, as such, of the vehicle within the meaning of Article 1(1) of that directive.

B – *The concept of an accident resulting from the use of vehicles, within the meaning of Article 3(1) of Directive 72/166*

18. In order to give a helpful reply to the referring court, I propose to consider, first of all, the reasons which make it doubt the meaning to be given to the national legislation which transposed Article 3(1) of Directive 72/166 and which have their origin in the variations in the wording of the different language versions of that article. Secondly, in order to provide an interpretation of that article that will be valid throughout the EU, it will be necessary to carry out a literal, teleological and systematic analysis of that provision. Finally, it will be necessary to draw the appropriate conclusions from the results of that analysis in relation to the specific case submitted to the Court today.

1. The sources of the doubt: the terminological imprecision of the EU legislature and the diversity of national practices

19. Since it is plainly a vehicle which was involved, the question remains whether the damage it caused actually arose in a situation entailing the use of a motor vehicle in traffic. The difficulties confronting the referring court stem from the linguistic divergences between the EU provisions which form the basis of the obligation to take out insurance against civil liability in respect of motor vehicles.

20. For a French-speaking reader, it is clear on a first reading that the motor vehicle insurance directives refer, to the extent of using the expression in their titles, to the '*circulation*' of vehicles.

4 — Article 1(3) of Directive 2005/14 supplemented Article 4 of Directive 72/166.

5 — See the list of the persons exempt from the obligation to take out insurance and the authorities and bodies responsible for compensating victims available at the internet address http://ec.europa.eu/internal_market/insurance/consumer/motor/index_en.htm.

21. However, it is sufficient to consult the English language version of those directives to discover that certain language versions seek to govern insurance against civil liability in respect of the '*use*' or '*utilisation*' of motor vehicles.[6] That is also the case of the Slovenian language version.

22. This same linguistic divergence is found in a reading of Article 3(1) of Directive 72/166.

23. The French language version requires each Member State to take 'toutes les mesures utiles … pour que la responsabilité civile relative à la *circulation* des véhicules ayant leur stationnement habituel sur son territoire soit couverte par une assurance'.[7] The same is true of the Dutch, Greek, Italian, Polish, Portuguese and Spanish language versions.

24. The English version of Article 3(1) of Directive 72/166, for its part, requires the Member States to take appropriate measures 'to ensure that civil liability in respect of the *use* of vehicles normally based in its territory is covered by insurance'.[8] The Bulgarian, Czech, Estonian, Finnish, Latvian, Maltese, Slovak and Slovenian versions also refer to the concept of the use of vehicles.

25. The Danish, German, Hungarian, Lithuanian, Romanian and Swedish language versions of Article 3(1) refer to the obligation to take out insurance against civil liability *in respect of* vehicles.

26. These divergencies clearly sow confusion regarding the precise cover of the obligation to take out insurance laid down by Article 3(1) of Directive 72/166. On the one hand, it may be interpreted as meaning that insurance companies are required to pay compensation only in respect of road traffic accidents — a concept which, furthermore, is still to be defined. That is the position adopted by the insurance company which is the defendant in the main proceedings before the referring court. On the other hand, in a broader sense, it may be conceived as covering any damage connected in any way with the use or operation of the vehicle, irrespective of whether or not the incident occurs in the context of a road traffic accident.

27. The ambiguity was not dispelled by the Member States when they came to transpose the motor insurance directives. Whereas the German language version of Article 3(1) of Directive 72/166 referred to the obligation to take out insurance *in respect of* vehicles, the German and Austrian transposal texts refer to the concept of the '*use*' of the vehicle.[9] Other national legislations use, simultaneously and without distinction, the terms '*circulation*' and '*utilisation*' of vehicles, as is the case, for example, in Croatia, Latvia, Lithuania and Portugal.

28. It also happens that the national case-law departs from the wording of the transposal legislation in order to extend or, on the contrary, to restrict, the scope of the obligation to take out insurance. The Court of Cassation (Luxembourg) has thus held that a vehicle covered by insurance against civil liability in respect of motor vehicles is, unless otherwise agreed, insured wherever it is, irrespective of whether or not the damage has been caused in a traffic incident.[10] The Lietuvos vyriausiasis administracinis teismas (Lithuanian Supreme Administrative Court) has accepted a more restrictive

6 — That is to say, 'use' in the English versions.

7 — Emphasis added.

8 — Emphasis added.

9 — See, in Austrian law, the law on compulsory insurance against civil liability in respect of motor vehicles (Kraftfahrzeug-Haftpflichtversicherungstgesetz, BGBl. 651/1994) and, under German law, Paragraph 1 of the law on compulsory insurance (Pflichtversicherungsgesetz).

10 — Judgment No 65/12 of the Luxembourg Court of Cassation of 20 December 2012.

interpretation than that which its national law appears to authorise by holding that the owner of a vehicle involved in an accident which occurred in an enclosed area was not subject to the obligation to take out insurance. [11] Furthermore, other courts have held that accidents involving a vehicle, which have occurred on farmland or 'enclosed' areas, are not covered by compulsory insurance. [12]

29. Faced with divergencies between the different language versions of Directive 72/166 which may give rise to such varied interpretations, the Court has repeatedly held that 'the need for a uniform interpretation of [EU] law makes it impossible for the text of a provision to be considered, in case of doubt, in isolation; on the contrary, it requires that it be interpreted also in the light of the versions existing in the other official languages … and by reference to the purpose and general scheme of the rules of which that provision forms part'. [13]

30. That need is all the more pressing because the ambiguity relates in this case to a concept which is central to the whole system introduced by the motor insurance directives, so that the concept, referred to in Article 3(1) of Directive 72/166, of 'circulation' or 'use', which in itself makes no express reference to the law of the Member States for the purpose of determining its meaning and scope, must be considered an independent concept of EU law and therefore be given an independent and uniform interpretation throughout the EU, having regard to the context of the provision and the objective pursued by the legislation in question. [14] It would be manifestly contrary to the intention of the legislature and to the objectives it pursued — a point to which I shall return immediately — to make compulsory insurance cover depend on the individual definitions which each Member State wishes to give to the concept of 'circulation' and/or 'use'.

2. The literal and teleological interpretation of the motor insurance directives

31. First of all, I would point out that Article 3(1) of Directive 72/166 must be read in the light of the subsequent compulsory motor insurance directives in order to determine the obligations imposed on the Member States by the requirement that they take all the appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in their territory is covered by insurance. [15]

32. It should be noted at the outset that the motor insurance directives do not contain a definition of the concept of 'accident', any more than what is meant by 'circulation' or 'use' of vehicles.

33. I also note a certain development in the lexicon employed by the legislature as it adopted the different directives. Accordingly, Directive 72/166 focuses rather on the notion of the vehicle *a priori* in the context of a road traffic situation: reference is made to the concept of 'vehicles normally based', [16] 'movement of travellers', and 'use of vehicles in its territory'. [17] Gradually, the wording of the directives moves away from those 'vehicle-centred' considerations, if I may so call them, in order to adopt a more person-centred approach, no longer concerned with the subject-matter of the

11 — See Judgment No N575-1685/2011 delivered on 23 September 2011. The Lithuanian Supreme Administrative Court nevertheless upheld a rather restrictive idea of what may constitute an enclosed area by holding, in that same judgment, that a forest, the periphery of a forest and moats cannot be classified as such.

12 — That is so, in particular, of the Bulgarian, Lithuanian or United Kingdom case-law.

13 — Case C-347/08 *Vorarlberger Gebietskrankenkasse* [2009] ECR I-8661, paragraph 26 and the case-law cited. See, also, to the same effect, Case C-22/12 *Haasová* [2013] ECR, paragraph 48 and the case-law cited, and Case C-277/12 *Drozdovs* [2013] ECR, paragraph 39 and the case-law cited.

14 — See Case C-426/05 *Tele2 Telecommunication* [2008] ECR I-685, paragraph 26 and the case-law cited.

15 — See point 27 of my opinion in Case C-409/11 *Csonka and Others* [2013] ECR.

16 — Articles 1(4), 2(2) and 3(1) of Directive 72/166.

17 — Recital 6 and Article 6 of Directive 72/166 respectively.

insurance — the vehicle — but rather with the different categories of accident victims, whose injuries are to be covered by compulsory insurance, whether they are 'passengers other than the driver',[18] 'parties involved in a road traffic accident',[19] 'any passenger'[20] or even pedestrians, cyclists and other non-motorised users of the road[21] and 'injured parties to accidents'.[22]

34. The concept of accident itself is designated in various ways and is not always connected with road traffic or the use of the vehicle. It may be a question at the same time of an 'accident caused … by a vehicle',[23] 'motor vehicle accident[s]',[24] 'accidents caused by … vehicles',[25] 'motor vehicle accident[s]',[26] 'motor vehicle accidents',[27] 'accidents … caused by the used of vehicles'[28] or 'motor vehicle accidents'.[29]

35. It will also be useful to point out that Article 8 of Directive 2000/26 amends, in part, First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance.[30] However, that amendment does not concern the classification of the risks to be covered by the compulsory insurance laid down in Article 3(1) of Directive 72/166, as stated in Point 10 of Annex A to Directive 73/239, which refers, in respect of civil liability of motor vehicles operating on the land, '[a]ll liability arising out of the *use* of motor vehicles operating on the land (including carrier's liability)'.[31] Under Directive 73/239, the risk to be covered does not appear to be restricted only to road traffic incidents.

36. It is not apparent from this analysis of the legislation that the legislature has established a particularly exclusive, inherent link between the regime put in place by the motor insurance directives and the requirement for there to be a road traffic situation, in its strictest ordinary meaning, namely the movement of vehicles on public roads intended for that purpose. The lack of rigour in the wording of the provisions leads me to consider that, although the notion of road traffic is indeed present, nevertheless it does not appear — I reiterate — either exclusive or predominant.

37. That finding is not contradicted by a teleological analysis of the motor insurance directives. The recognition, by Article 3(1) of Directive 72/166, of an obligation to take out insurance was initially based on the need to remove the insurance check carried out on the borders of each Member State before vehicles entered their territory, because that check hindered both the freedom of movement of persons and the free movement of goods. Although the removal of systematic checks was achieved with the first of those directives, the legislature is constantly expanding its legislative arsenal,

18 — Article 1 of Directive 90/232.

19 — Article 5 of Directive 90/232.

20 — Recital 15 of Directive 2005/14.

21 — See recital 16 and Article 4 of Directive 2005/14.

22 — Article 4 of Directive 2005/14.

23 — Article 5 of Directive 72/166.

24 — Fourth recital in the preamble to Directive 90/232.

25 — Eighth recital in the preamble to Directive 90/232, Article 1(3) of Directive 2000/26, recitals 5, 7 and 8 in the preamble to Directive 2005/14 and Article 4 of that directive.

26 — Recitals 8, 11 and 20 in the preamble to Directive 2000/26.

27 — Recital 14 in the preamble to Directive 2000/26.

28 — Article 1(1), first subparagraph, and (2) of Directive 2000/26. See, worded in similar terms, Article 1(1), second subparagraph of the same directive.

29 — Recitals 20 to 23 in the preamble to Directive 2005/14.

30 — OJ 1973 L 228, p. 3.

31 — Emphasis added. The French language version is here close to the term used in the English language version ('the use') or the Italian language version ('l'uso'), to cite only two of those language versions.

essentially in order gradually to specify the treatment to be accorded to victims.[32] Accordingly, the Court has held, in settled case-law, that 'according to the preambles to [Directives 72/166 and 84/5], their aim is, first, to ensure the free movement of vehicles normally based on EU territory and of persons travelling in those vehicles and, second, to guarantee that the victims *of accidents caused by those vehicles* receive comparable treatment irrespective of where in the European Union the accident occurred'.[33] The objective of protecting victims, present since Directive 72/166,[34] cannot therefore be regarded as secondary to the objective of facilitating the freedom of movement of persons and the free movement of goods with a view to implementing the internal market. The relevant case-law shows the Court's clear inclination to interpret broadly and generously provisions which may be favourable to victims and, on the contrary, to interpret more restrictively any provision which would have the effect of excluding a certain category of persons from the obligation to pay compensation.[35]

3. Application to the present case

38. I note that the Court, when interpreting the concept of 'loss or injury' within the meaning of Article 1(2) of Directive 72/166, has held that, since the legislature has not further defined that notion, there is nothing to suggest that certain types of damage should be excluded from the cover, and it cannot be concluded from any part of the first three motor insurance directives that the legislature wished to restrict the protection ensured by those directives by limiting the concept of 'loss or injury'.[36]

39. I am persuaded that the same line of reasoning may be followed here.

40. It must be stated that the concept of 'circulation' is used in the wording of Article 3(1) of Directive 72/166 in only 7 of the 22 available language versions. Moreover, the vocabulary used by the EU legislature in the motor insurance directives does not seem to be strictly and rigorously limited to road traffic accidents. Finally, the legislature continues to strengthen the safeguards offered to accident victims.

32 — A brief reference to the development of that protection for victims is required. Directive 84/5 laid down the principle of compulsory cover for damage to property and personal injuries, set the minimum guaranteed amounts of compensation and required the setting-up of a body with the task of providing compensation for damage caused by unidentified or uninsured vehicles (Article 1 of Directive 84/5), limited the exclusion clauses contained in insurance policies (Article 2 of Directive 84/5) and extended cover to members of the family of the insured person, driver or any other person liable in the event of an accident (Article 3 of Directive 84/5). Directive 90/232 extended the cover to personal injuries to all passengers other than the driver (Article 1 of Directive 90/232) and provided for the right of persons involved in an accident to information regarding the name of the insurance company concerned (Article 5 of Directive 90/232). Directive 2000/26 then listed the special provisions applicable to injured parties (Article 1 of Directive 2000/26), such as the direct right of action (Article 3 of Directive 2000/26), the obligation to appoint a claims representative (Article 4 of Directive 2000/26), the establishment of a new information centre (Article 5 of Directive 2000/26) and of a compensation body (Article 6 of Directive 2000/26). Finally, Directive 2005/14 permitted the minimum amounts of cover to be adjusted and to be reviewed every five years and also extended the scope of intervention of the body provided for in Directive 84/5 to damage to property or personal injuries (Article 2 of Directive 2005/14). It also restricted insurance cover exclusion clauses and extended that cover to personal injuries and damage to property suffered by pedestrians, cyclists and other road users, while prohibiting the application of excesses against injured parties and further extending their right to information (Article 4 of Directive 2005/14).

33 — Case C-300/10 *Marques Almeida* [2012] ECR, paragraph 26 and the case-law cited. Emphasis added.

34 — See, to that effect, Case C-129/94 *Ruiz Bernáldez* [1996] ECR I-1829, paragraph 18, and Case C-442/10 *Churchill Insurance Company and Evans* [2011] ECR I-12639, paragraph 30. That objective has also been reiterated recently (see *Haasová*, paragraphs 47 and 49, and *Drozdovs*, paragraphs 38 and 40).

35 — See, inter alia, Case C-348/98 *Mendes Ferreira and Delgado Correia Ferreira* [2000] ECR I-6711; and Case C-356/05 *Farrell* [2007] ECR I-3067; *Haasová* and *Drozdovs*.

36 — *Haasová*, paragraphs 53 and 54.

41. In those circumstances, to accept a broad interpretation of the concept of 'circulation', that is to say, an interpretation which is closer to the term used in the majority of the language versions, cannot be regarded as a distortion of the legislature's intention, and also seems to be in line with the case-law of the Court of Justice cited above. In that regard, I do not share Ireland's concerns regarding the principle of legal certainty and predictability and I note that the classification of the risk covered by civil liability under Directive 72/166 itself refers to the 'use' of the vehicle, not only to its use in traffic. [37]

42. The compulsory insurance taken out under Article 3(1) of Directive 72/166 must therefore cover, in the circumstances and within the limits set by all the motor insurance directives, the damage caused by a vehicle during its use, in so far as it is used in accordance with the natural operation of a vehicle. All road traffic incidents are, *a fortiori*, covered.

43. The fact that the accident of which Mr Vnuk was a victim occurred on private property does not appear to be a decisive factor. First, the manoeuvre took place in a farmyard, a place supposedly suitable for motor vehicles, and therefore exposing individuals to the risks inherent in the use of vehicles. Secondly, the objective of protecting victims, rightly considered by the EU legislature as the 'weakest party', [38] and of affording them similar treatment would be jeopardised if those victims were not to have their injuries covered by reason of the fact that the vehicle was used off the public highway. In my view, if the concept of 'circulation' is given a broad interpretation as meaning the 'use' of the vehicle, it must also be accepted that the accidents covered are not only those which take place on the public highway. Thirdly, that approach also satisfies the other objective pursued, inter alia, by Directive 72/166, of the freedom of movement of persons and free movement of goods, since compulsory insurance covers all the situations in which a vehicle is used — within the limits set out in the previous point — whatever the legal status or classification of the surface on which the accident occurred.

44. Finally, since the accident of which Mr Vnuk was the victim was caused because the vehicle was reversing, it is the use of the vehicle as such which is the operative event here, and it is unnecessary, for reaching a decision in the main proceedings, to examine further the possible consequences of the use of a vehicle as a machine in the light of the obligation to take out insurance.

45. I therefore propose that the Court reply that Article 3(1) of Directive 72/166, read in the light of the independent nature of the concept of 'use' as is also inferred from the subsequent motor insurance directives, is to be interpreted as meaning that the manoeuvre of a tractor in a farmyard to back its trailer into a barn must be regarded as falling within that concept.

IV – **Conclusion**

46. In the light of all the foregoing considerations, I propose that the Court of Justice should reply as follows to the question raised by the Vrhovno sodišče:

Article 3(1) 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, read in the light of the independent nature of the concept of 'use' as is also to be inferred from Second 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, Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, Directive 2000/26/EC of the

37 — See point 35 of this Opinion.

38 — See Article 4 of Directive 2005/14.

European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (Fourth motor insurance directive), and Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles, is to be interpreted as meaning that the manoeuvre of a tractor in a farmyard to back its trailer into a barn must be regarded as falling within that concept.