



## Reports of Cases

### JUDGMENT OF THE COURT (Fourth Chamber)

26 March 2015\*

(Reference for a preliminary ruling — Compulsory insurance against civil liability in respect of the use of motor vehicles — Directive 90/232/EEC — Article 2 — Differentiation in the amount of the insurance premium depending on the territory in which the vehicle is used)

In Case C-556/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos Aukščiausiasis Teismas (Lithuania), made by decision of 17 October 2013, received at the Court on 28 October 2013, in the proceedings

**‘Litaksa’ UAB**

v

**‘BTA Insurance Company’ SE,**

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, K. Jürimäe (Rapporteur), J. Malenovský, M. Safjan and A. Prechal, Judges,

Advocate General: P. Mengozzi,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- UAB ‘Litaksa’, by D. Gintautas, advokatas,
- the Lithuanian Government, by D. Kriauciūnas and A. Svinkūnaitė, acting as Agents,
- the European Commission, by A. Steiblytė and K.-P. Wojcik, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

\* Language of the case: Lithuanian.

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 2 of the 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), as amended by Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 (OJ 2005 L 149, p. 14) ('the Third Directive'), and the principles of free movement of persons and goods and the general principle of non-discrimination.
- 2 The request has been made in proceedings between 'Litaksa' UAB ('Litaksa'), a road haulage company, and 'BTA Insurance Company' SE ('BTA'), an insurance company, concerning the reimbursement of compensation paid by way of compulsory insurance against civil liability in respect of the use of motor vehicles ('compulsory motor insurance') to the victims of road traffic accidents.

### Legal context

#### *EU law*

- 3 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), codified five directives which had been adopted in order to approximate the laws of Member States relating to compulsory motor insurance.
- 4 Nevertheless, as the facts in the main proceedings took place before the entry into force of Directive 2009/103, the relevant legal context is still that made up of those five directives, in particular 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 (OJ, English Special Edition 1972 (II), p. 360; 'the First Directive') and the Third Directive.

#### The First Directive

- 5 In order to facilitate the free movement of travellers between Member States, the First Directive established a system based, first, on the abolition of checks on insurance green cards on the crossing of internal borders in the European Union and, second, on the obligation on each of the Member States to take the necessary measures to ensure that civil liability in respect of the use of motor vehicles is covered by insurance.
- 6 To that effect, Article 3 of that directive provides:
  - '1. Each Member State shall ... 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;

...'

#### The Third Directive

- 7 The sixth, seventh, 12th and 13th recitals in the preamble to the Third Directive are worded as follows:

'Whereas any uncertainty concerning the application of the first indent of Article 3(2) of [the First Directive] should be removed; whereas all compulsory motor insurance policies must cover the entire territory of the [European Union];

Whereas in the interests of the party insured, every insurance policy should, moreover, guarantee for a single premium, in each Member State, the cover required by its law or the cover required by the law of the Member State where the vehicle is normally based, when that cover is higher;

...

Whereas [the First Directive and the 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)] should, in view of all these considerations, be supplemented in a uniform manner;

Whereas such an addition, which leads to greater protection for the parties insured and for the victims of accidents, will facilitate still further the crossing of internal [European Union] frontiers and hence the establishment and functioning of the internal market; whereas, therefore, a high level of consumer protection should be taken as a basis.'

- 8 Article 2 of the Third Directive states:

'Member States shall take the necessary steps to ensure that all [compulsory motor insurance] policies ...:

- cover, on the basis of a single premium and during the whole term of the contract, the entire territory of the [European Union], including any period in which the vehicle remains in other Member States during the term of the contract; and
- guarantee, on the basis of the same single premium, in each Member State, the cover required by its law or the cover required by the law of the Member State where the vehicle is normally based when that cover is higher.'

#### *Lithuanian law*

- 9 Article 10 of the Law on compulsory insurance against civil liability in respect of the use of motor vehicles (Transporto priemonių valdytojų civilinės atsakomybės privalomojo draudimo įstatymas), of 14 June 2001 (Žin., 2004, No 100-3718), entitled 'Territorial coverage of an insurance contract', provides in paragraph 1:

'On payment of the single (overall) premium, the insurance contract of a vehicle normally based in the territory of the Republic of Lithuania or the frontier insurance contract shall provide, for the full term of the contract, including any period in which the vehicle remains in other Member States of the European Union during the term of the contract, in each Member State, the cover required by the legislation of each Member State relating to compulsory insurance against civil liability in respect of the use of vehicles, or the cover resulting from the present law, if the latter is higher. The insurance

contract of a vehicle normally based in the territory of the Republic of Lithuania, under which the green card is issued, shall also provide insurance cover in the foreign States indicated on the green card.'

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 10 On 24 November 2008, Litaksa and BTA concluded two compulsory motor insurance contracts intended to cover Litaksa's civil liability in respect of the use of two vehicles it owned, for the period from 25 November 2008 to 24 November 2009. It was stipulated in the contracts in question that the vehicles would be used only for transporting passengers or goods in Lithuanian territory. The contracts also obliged Litaksa, in the event that it intended to use the vehicles beyond a 28-day period in another Member State, or to transport persons or goods there, first to inform BTA and pay a premium supplement in that respect.
- 11 In 2009 the two vehicles belonging to Litaksa were involved in road traffic accidents in the United Kingdom and Germany, without Litaksa having first notified BTA of its intention of using the vehicles in those Member States.
- 12 BTA compensated the victims of those accidents and then, taking the view that Litaksa had not abided by the contract clauses at issue in the main proceedings, whereby Litaksa had been obliged to inform it of its intention to use its vehicles in another Member State, brought proceedings before the Kauno miesto apylinkės teismas (Kaunas District Court) seeking to have Litaksa ordered to reimburse it half of the compensation paid to the victims.
- 13 By judgment of 30 July 2012, the Kauno miesto apylinkės teismas upheld BTA's action. Litaksa having appealed against that judgment, the Kauno apygardos teismas (Kaunas Regional Court), by order of 27 December 2012, first, set aside in part the judgment of the Kauno miesto apylinkės teismas, on the ground that one part of BTA's claims against Litaksa was time-barred, and, second, upheld the judgment in so far as it had ordered Litaksa to pay BTA the remaining claims, finding, like the Kauno miesto apylinkės teismas, that the breach of the clauses of a compulsory motor insurance contract could justify a claim against the policyholder for partial reimbursement of the compensation paid by the insurer. Litaksa appealed on a point of law to the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania).
- 14 According to the referring court, assessment of the appeal filed by Litaksa first requires a decision on whether the parties to a compulsory motor insurance contract may agree to apply a different premium according to whether the vehicle covered by the contract is to be used only in the territory of the Member State in which it is normally based or in the entire territory of the European Union.
- 15 In that regard, the referring court observes that Article 2 of the Third Directive requires that compulsory motor insurance contracts cover, on the basis of a single premium, the entire territory of the European Union. That court therefore questions whether differentiation in the amount of the premium depending on the territory in which the vehicle is used is contrary to that article. While such differentiation has no effect on compensating the victims of a road traffic accident, as they are compensated regardless of the Member State in whose territory the accident takes place, it could disregard the interests of the party insured, whose protection would appear to constitute one of the objectives of Article 2 of the Third Directive. There would be a risk that the compulsory motor insurance contract would not cover the entire territory of the European Union, within the meaning of that article, if the insurer could, in the event that an accident took place in a Member State other than that provided for in the contract, have recourse to the party insured so as to recover part of the compensation paid to the victims. Last, according to the referring court, it should be determined

whether differentiation in the amount of the premium depending on the territory in which the vehicle is used undermines the objective of free movement of goods and persons, pursued by the First and Third Directives, and the general principle of non-discrimination.

16 In those circumstances, the Lietuvos Aukščiausiasis Teismas decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- ‘(1) Is Article 2 of [the Third Directive] to be interpreted as meaning that the parties to a compulsory motor insurance contract do not have the right to agree on a territorial restriction of the insurance cover for the person insured (to apply a different insurance premium depending on the territory in which the vehicle is used — either in the entire territory of the European Union or only in Lithuania), but in any event without the cover of victims being restricted, that is to say, to define use of the vehicle outside Lithuania in another Member State of the European Union as a factor increasing the insurance risk, in which event a premium supplement has to be paid?
- (2) Are the principle of the free movement of persons and vehicles in the entire territory of the European Union and the general principle of equality (non-discrimination) to be interpreted as being contravened by the aforementioned agreement of the parties to an insurance contract whereby the insurance risk is linked to the territorial use of the vehicle?’

### **Consideration of the questions referred for a preliminary ruling**

#### *First question*

- 17 By its first question, the referring court is essentially asking whether Article 2 of the Third Directive must be interpreted as meaning that a premium which varies according to whether the insured vehicle is to be used only in the territory of the Member State in which that vehicle is normally based or in the entire territory of the European Union falls within the concept of ‘single premium’.
- 18 Pursuant to Article 2 of the Third Directive, Member States are required to take the necessary steps to ensure that all compulsory motor insurance policies cover, on the basis of a single premium and during the whole term of the contract, the entire territory of the Community, including any period in which the vehicle remains in other Member States during the term of the contract. Moreover, according to that article, Member States must take the necessary steps to ensure that those policies guarantee, on the basis of that single premium, in each Member State, the cover required by its law or the cover required by the law of the Member State where the vehicle is normally based when that cover is higher.
- 19 It follows from the wording of Article 2 of the Third Directive that all compulsory motor insurance policies must offer, in return for payment of a single premium, insurance cover valid throughout the territory of the European Union.
- 20 The obligation thus imposed on Member States is, moreover, reinforced by the requirement, mentioned in that article, that that cover remain valid during the whole term of the contract, including when the vehicle remains in Member States other than the one in which it is normally based.
- 21 The referring court nevertheless asks whether a compulsory motor insurance contract meets the requirements of EU law, in particular of Article 2 of the Third Directive, in circumstances such as those at issue in the main proceedings where, in return for payment by the party insured of the initial premium, the insurer undertakes to compensate the victims of accidents involving the insured vehicle, regardless of the Member State in whose territory those accidents take place, but can have recourse to



the party insured to obtain the reimbursement of half of the compensation paid where those accidents take place in the territory of a Member State other than the one in which the vehicle in question is normally based.

- 22 It should therefore be determined whether the provisions of Article 2 of the Third Directive regarding the single premium and the territorial scope of the insurance cover are aimed exclusively at the relationship between the insurer and the victim or also at the one between the insurer and the party insured.
- 23 According to the settled case-law of the Court, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objects of the rules of which it is part (judgments in *Csonka and Others*, C-409/11, EU:C:2013:512, paragraph 23, and *Vnuk*, C-162/13, EU:C:2014:2146, paragraph 42).
- 24 In that regard, it must be recalled that the Third Directive forms part of the system introduced by the First Directive and aimed at approximating the laws of the Member States relating to compulsory motor insurance.
- 25 With that system, the EU legislature imposed on each Member State the obligation to ensure, subject to clearly defined exceptions, that every owner or keeper of a vehicle normally based in its territory takes out a policy with an insurance company for the purpose of covering, at least up to the limits established by EU law, his civil liability arising as a result of that vehicle (judgment in *Csonka and Others*, C-409/11, EU:C:2013:512, paragraph 28).
- 26 In that context, as is clear from the 12th and 13th recitals in its preamble, the Third Directive supplements in a uniform manner inter alia the First Directive in aiming at greater protection not only for the victims of accidents caused by the use of a vehicle but also for insured parties, and in facilitating still further the crossing of internal EU frontiers and hence the establishment and functioning of the internal market, taking a high level of consumer protection as a basis.
- 27 According to the seventh recital in the preamble to the Third Directive, it is in particular in the interests of the party insured that the Member States should be required to take the necessary measures so that every insurance policy guarantee for a single premium, in each Member State, the cover required by its law or the cover required by the law of the Member State where the vehicle is normally based, when that cover is higher.
- 28 Furthermore, it should be recalled that the essentials of an insurance transaction are, as generally understood, that the insurer undertakes, in return for prior payment of a premium, to provide the insured, in the event of materialisation of the risk covered, with the service agreed when the contract was concluded (judgments in *CPP*, C-349/96, EU:C:1999:93, paragraph 17, and *Skandia*, C-240/99, EU:C:2001:140, paragraph 37).
- 29 Having regard to such a context and such objectives, it must be considered that the provisions of Article 2 of the Third Directive relating to the single premium and the territorial scope of the insurance cover are aimed not exclusively at the relationship between the insurer and victim but also at the one between the insurer and the party insured. In particular, those provisions imply that, in return for payment by the party insured of the single premium, the insurer assumes, in principle, the risk of compensating the victims of any accident involving the insured vehicle, regardless of the EU Member State in whose territory that vehicle is used or the accident takes place.
- 30 It follows that a premium that varies according to whether the insured vehicle is to be used only in the territory of the Member State in which that vehicle is normally based or in the entire territory of the European Union does not fall within the concept of 'single premium', within the meaning of Article 2

of the Third Directive. Such a variation, contrary to what that article provides, amounts to subjecting the insurer's commitment to assume the risk of using that vehicle outside the Member State in which it is normally based to the payment of a premium supplement.

- 31 Having regard to all the foregoing considerations, the answer to the first question is that Article 2 of the Third Directive must be interpreted as meaning that a premium which varies according to whether the insured vehicle is to be used only in the territory of the Member State in which that vehicle is normally based or in the entire territory of the European Union does not fall within the concept of 'single premium', within the meaning of that article.

*The second question*

- 32 In view of the answer given to the first question, there is no need to answer the second question.

**Costs**

- 33 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

**Article 2 of the 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, as amended by Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005, must be interpreted as meaning that a premium which varies according to whether the insured vehicle is to be used only in the territory of the Member State in which that vehicle is normally based or in the entire territory of the European Union does not fall within the concept of 'single premium', within the meaning of that article.**

[Signatures]