Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

21 January 2016*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Choice of applicable law — Regulation (EC) No 864/2007 and Regulation (EC) No 593/2008 — Directive 2009/103/EC — Accident caused by a tractor unit coupled with a trailer, each of the vehicles being insured by different insurers — Accident which occurred in a Member State other than that in which the insurance contracts were concluded — Action for indemnity between the insurers — Applicable law — Definitions of 'contractual obligations' and 'non-contractual obligations')

In Joined Cases C-359/14 and C-475/14,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Vilniaus miesto apylinkės teismas (District Court of the City of Vilnius, Lithuania) and the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania), by decisions of 15 July and 8 October 2014, received at the Court on 23 July and 17 October 2014 respectively, in the proceedings

'**ERGO Insurance' SE**, represented by 'ERGO Insurance' SE Lietuvos filialas,

v

'**If P&C Insurance' AS**, represented by 'IF P&C Insurance' AS filialas (C-359/14),

and

'**Gjensidige Baltic' AAS**, represented by 'Gjensidige Baltic' AAS Lietuvos filialas,

v

'**PZU Lietuva' UAB DK** (C-475/14),

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Third Chamber acting as President of the Fourth Chamber, J. Malenovský, M. Safjan (Rapporteur), S. Prechal and K. Jürimäe, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: Lithuanian.

after considering the observations submitted on behalf of:

— 'ERGO Insurance' SE, represented by 'ERGO Insurance' SE Lietuvos filialas, by M. Navickas, advokatas,

— 'Gjensidige Baltic' AAS, represented by 'Gjensidige Baltic' AAS Lietuvos filialas, by A. Rjabovs,

— 'If P&C Insurance' AS, represented by 'If P&C Insurance' AS filialas, by A. Kunčiuvienė,

— the Lithuanian Government, by R. Krasuckaitė, G. Taluntytė and D. Kriaučiūnas, acting as Agents,

— the German Government, by T. Henze and J. Kemper, acting as Agents,

— the European Commission, by A. Steiblytė and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 September 2015,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 14(b) of 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), and Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6) ('the Rome I Regulation') and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ 2007 L 199, p. 40) ('the Rome II Regulation').

2 The requests have been made in two sets of proceedings between the insurance companies 'ERGO Insurance' SE and 'If P&C Insurance' AS, on one hand, and 'Gjensidige Baltic' AAS ('Gjensidige Baltic') and 'PZU Lietuva' UAB DK ('PZU Lietuva') on the other, concerning the law applicable to actions for indemnity between the parties following road traffic accidents which occurred in Germany.

Legal context

EU law

The Rome I Regulation

3 According to recital 7 in the preamble to the Rome I Regulation:

'The substantive scope and the provisions of this Regulation should be consistent with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [OJ 2001 L 12, p. 1] ('the Brussels I Regulation') and the [Rome II Regulation].'

4 Article 1(1) of the Rome I Regulation defines the scope of that regulation as follows:

‘This Regulation shall apply, in situations involving a conflict-of-laws, to contractual obligations in civil and commercial matters.

It shall not apply, in particular, to revenue, customs or administrative matters.’

5 Article 4 of that regulation, entitled ‘Applicable law in the absence of choice’, provides:

‘1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3 and without prejudice to Articles 5 to 8, the law governing the contract shall be determined as follows:

(a) a contract for the sale of goods shall be governed by the law of the country where the seller has his habitual residence;

(b) a contract for the provision of services shall be governed by the law of the country where the service provider has his habitual residence;

(c) a contract relating to a right *in rem* in immovable property or to a tenancy of immovable property shall be governed by the law of the country where the property is situated;

(d) notwithstanding point (c), a tenancy of immovable property concluded for temporary private use for a period of no more than six consecutive months shall be governed by the law of the country where the landlord has his habitual residence, provided that the tenant is a natural person and has his habitual residence in the same country;

(e) a franchise contract shall be governed by the law of the country where the franchisee has his habitual residence;

(f) a distribution contract shall be governed by the law of the country where the distributor has his habitual residence;

(g) a contract for the sale of goods by auction shall be governed by the law of the country where the auction takes place, if such a place can be determined;

(h) a contract concluded within a multilateral system which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments, as defined by Article 4(1), point (17) of Directive 2004/39/EC, in accordance with non-discretionary rules and governed by a single law, shall be governed by that law.

2. Where the contract is not covered by paragraph 1 or where the elements of the contract would be covered by more than one of points (a) to (h) of paragraph 1, the contract shall be governed by the law of the country where the party required to effect the characteristic performance of the contract has his habitual residence.

3. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply.

4. Where the law applicable cannot be determined pursuant to paragraphs 1 or 2, the contract shall be governed by the law of the country with which it is most closely connected.’

6 Article 7 of that regulation, entitled ‘Insurance contracts’, provides as follows:

‘1. This Article shall apply to contracts referred to in paragraph 2, whether or not the risk covered is situated in a Member State, and to all other insurance contracts covering risks situated inside the territory of the Member States. It shall not apply to reinsurance contracts.

2. An insurance contract covering a large risk as defined in Article 5(d) of the 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 [(OJ 1973 L 228, p. 3), as amended by Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 (OJ 2005 L 323, p. 11)], shall be governed by the law chosen by the parties in accordance with Article 3 of this Regulation.

To the extent that the applicable law has not been chosen by the parties, the insurance contract shall be governed by the law of the country where the insurer has his habitual residence. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with another country, the law of that other country shall apply.

…

6. For the purposes of this Article, the country in which the risk is situated shall be determined in accordance with Article 2(d) of the Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services [(OJ 1988 L 172, p. 1), as amended by Directive 2005/14 of the European Parliament and of the Council of 11 May 2005 (OJ 2005 L 149, p. 14)], and, in the case of life assurance, the country in which the risk is situated shall be the country of the commitment within the meaning of Article 1(1)(g) of Directive 2002/83/EC.’

7 Under Article 15 of the same regulation, entitled ‘Legal subrogation’:

‘Where a person (the creditor) has a contractual claim against another (the debtor) and a third person has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of that duty, the law which governs the third person’s duty to satisfy the creditor shall determine whether and to what extent the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship.’

8 Article 16 of the Rome I Regulation, entitled ‘Multiple liability’, provides:

‘If a creditor has a claim against several debtors who are liable for the same claim, and one of the debtors has already satisfied the claim in whole or in part, the law governing the debtor’s obligation towards the creditor also governs the debtor’s right to claim recourse from the other debtors. The other debtors may rely on the defences they had against the creditor to the extent allowed by the law governing their obligations towards the creditor.’

9 Article 23 of that regulation, entitled ‘Relationship with other provisions of Community law’, provides:

‘With the exception of Article 7, this Regulation shall not prejudice the application of provisions of Community law which, in relation to particular matters, lay down conflict-of-law rules relating to contractual obligations.’

The Rome II Regulation

10 Recital 7 in the preamble to the Rome II Regulation states:

'The substantive scope and the provisions of this Regulation should be consistent with [the Brussels I Regulation] and the instruments dealing with the law applicable to contractual obligations.'

11 Under Article 4 of that regulation, entitled 'General Rule':

'1. Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.

2. However, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply.

3. Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.'

12 Article 15 of the Regulation, which is entitled 'Scope of the law applicable', provides:

'The law applicable to non-contractual obligations under this Regulation shall govern in particular:

(a) the basis and extent of liability, including the determination of persons who may be held liable for acts performed by them;

(b) the grounds for exemption from liability, any limitation of liability and any division of liability;

…'

13 Article 18 of the regulation, entitled 'Direct action against the insurer of the person liable' states:

'The person having suffered damage may bring his or her claim directly against the insurer of the person liable to provide compensation if the law applicable to the non-contractual obligation or the law applicable to the insurance contract so provides.'

14 Article 19 of the same regulation, entitled 'Subrogation', states as follows:

'Where a person (the creditor) has a non-contractual claim upon another (the debtor), and a third person has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of that duty, the law which governs the third person's duty to satisfy the creditor shall determine whether, and the extent to which, the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship.'

15 Under Article 20 of the Rome II Regulation, entitled ‘Multiple liability’ provides:

‘If a creditor has a claim against several debtors who are liable for the same claim, and one of the debtors has already satisfied the claim in whole or in part, the question of that debtor’s right to demand compensation from the other debtors shall be governed by the law applicable to that debtor’s non-contractual obligation towards the creditor.’

16 Article 27 of that regulation, entitled ‘Relationship with other provisions of Community law’ provides:

‘This Regulation shall not prejudice the application of provisions of Community law which, in relation to particular matters, lay down conflict-of-law rules relating to non-contractual obligations.’

Directive 2009/103

17 Recital 26 in the preamble to Directive 2009/103 states:

‘In the interests of the party insured, every insurance policy should 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.’

18 Article 3 of that directive, entitled ‘Compulsory insurance of vehicles’, provides in its third paragraph:

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

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

…’

19 Article 14 of that directive, entitled ‘Single premium’, is worded as follows:

‘Member States shall take the necessary steps to ensure that all compulsory policies of insurance against civil liability arising out of the use of vehicles:

(a) cover, on the basis of a single premium and during the whole term of the contract, the entire territory of the Community, including for any period in which the vehicle remains in other Member States during the term of the contract; and

(b) 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.’

Lithuanian law

20 The provisions of Directive 2009/103 were transposed into national law by the Law on compulsory insurance against civil liability in respect of the use of motor vehicles (TPVCAPDĮ), of 5 March 2004 (Zin., 2004, No 46-1498), as amended by Law No X-1137 of 17 May 2007 (Zin., 2007, No 61-2340, (‘the Law on compulsory insurance’).

21 Article 10(1) of the Law on compulsory insurance, entitled 'Territorial scope of insurance contracts', provides:

'A standard insurance contract [for a vehicle which is normally based in Lithuania] or a cross border insurance contract shall on the basis of a single premium and during the whole term of the insurance contract, including for any period in which the motor vehicle remains in other Member States during the term of the insurance contract, provide insurance coverage in any Member State of the European Union to the extent required by the legal acts of the respective Member State of the European Union regulating compulsory insurance against civil liability in respect of the use of motor vehicles or to the extent required by this Law, if that coverage is higher …'

22 Under Article 11 of the Law on compulsory insurance, entitled 'Sums insured and insurance premiums':

'…

3. The insurer shall pay compensation for the damage caused in another Member State of the European Union based on the sums insured in accordance with the legal acts of the Member State concerned or the sums insured as specified in paragraph 1 of this Article, if the latter are greater.

…'

23 Article 16(1) of that law, entitled 'Principles of paying compensation', provides:

'The responsible insurer or the Bureau shall pay compensation if the user of motor vehicle incurs civil liability for damage caused to an injured third party. The compensation is to be paid in accordance with the legislation regulating compulsory insurance against civil liability in respect of the use of motor vehicles of the State in which the road traffic accident took place.

…'

The actions in the main proceedings and the questions referred for a preliminary ruling

Case C-359/14

24 On 1 September 2011, near Mannheim (Germany), a tractor unit coupled with a trailer overturned on the road while performing a U-turn. On the basis of the findings made by police officers who attended the site of the accident, the driver of the tractor unit was held to be responsible. Consequently, the insurer of that vehicle, a branch of 'ERGO Insurance' SE, paid the victims of the accident 7760.02 Lithuanian litas (LTL) (approximately EUR 2 255). That insurer then brought an action before the referring court seeking an order for the insurer of the trailer, that is the Lithuanian branch of 'If P&C Insurance' AS, to pay half of the compensation on the ground that it had to assume joint liability for the damage caused.

25 According to the referring court, there are doubts as to how to determine the law applicable to the dispute between those two insurers.

26 It was in those circumstances that the Vilnias miesto apylinkės teismas (District Court of the City of Vilnius) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 4(4) of the Rome I Regulation, which provides that “[w]here the law applicable cannot be determined pursuant to [Article 4(1) or (2)], the contract shall be governed by the law of the country with which it is most closely connected”, be interpreted as meaning that, in circumstances such as those at issue in the case in the main proceedings, German law has to be applied?

(2) If the answer to the first question is in the negative, must the principle laid down in Article 4 of the Rome II Regulation be interpreted as meaning that, in circumstances such as those at issue in the case in the main proceedings, the law to be applied to the dispute between the insurer of the tractor unit and the insurer of the trailer must be determined in accordance with the law of the country of the place in which the damage resulting from the road traffic accident occurred?’

C-475/14

27 In a road traffic accident which occurred in Germany on 21 January 2011, a tractor unit coupled with a trailer caused damage to property belonging to third parties. At the time, the tractor unit was insured against civil liability with the Lithuania branch of Gjensidige Baltic. The trailer was insured under an insurance contract against civil liability concluded with PZU Lietuva.

28 Following claims submitted in Germany by the victims of that accident, Gjensidige Baltic paid compensation of LTL 4331.05 (approximately EUR 1254.36). Gjensidige Baltic takes the view that since that compensation covered all the damage suffered by those victims, it could bring an action for indemnity against PZU Lietuva to recover half of that amount, that is LTL 2165.53 (approximately EUR 629).

29 By judgment of 2 January 2013, the Vilniaus miesto apylinkės teismas (District Court of the City of Vilnius) upheld Gjensidige Baltic’s action. It ordered PZU Lietuva to reimburse Gjensidige Baltic the compensation paid out in the sum of LTL 2165.53, plus 6 per cent annual interest. That court held that, in accordance with Article 4(1) of the Rome II Regulation, German law applied to the non-contractual obligation arising from the event giving rise to the damage. Under German law, liability on account of the damage resulting from a road traffic accident caused by a vehicle coupled with a trailer must be shared. Where the damage is compensated by one of the insurers, the latter is entitled to recover half of the amount from another insurer.

30 By judgment of 8 November 2013, the Vilniaus apygardos teismas (Vilnius Court of Appeal) set aside the judgment of the Vilniaus miesto apylinkės teismas (District Court of the City of Vilnius) and dismissed the action for indemnity brought by Gjensidige Baltic. The Court of Appeal held that, in the case at issue in the main proceedings, issues pertaining to the civil liability of vehicle users had to be resolved on the basis of the compulsory civil liability insurance contract for vehicle users and that the provisions of the Rome II Regulation were not applicable. Given that a compulsory insurance contract had been concluded in the case in the main proceedings, the situation at issue could not fall within tort, delict or quasi-delict. Taking the view that PZU Lietuva’s obligation derived from the compulsory insurance contract, that court held that Lithuanian law applied.

31 The appeal in cassation brought by Gjensidige Baltic before the referring court seeks to have that judgment set aside and to have the judgment of 2 January 2013 of the Vilniaus miesto apylinkės teismas (District Court of the City of Vilnius) confirmed.

32 The referring court observes that the dispute concerns essentially the classification of the legal relationship existing between the respective insurers of the tractor unit and the trailer, and the determination of the law applicable to that relationship. That classification is decisive for the dispute, since the Lithuania and German legal systems lay down different principles for the allocation of responsibility between the insurer of the tractor unit and the insurer of the trailer where the damage is caused by a towing vehicle.

33 Furthermore, it is necessary to determine whether, as Gjensidige Baltic claims, Article 14(b) of Directive 2009/103 lays down a conflict-of-law rule according to which the law of the place where the accident occurred is applicable to a dispute between insurers such as that at issue in the main proceedings.

34 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) Does Article 14(b) of [Directive 2009/103] lay down a conflict-of-law rule, which *ratione personae* should be applied not only to the victims of road traffic accidents but also to the insurers of the vehicle responsible for the damage caused in the accident, for the purposes of determining the law applicable to the relations between them, and is this provision a special rule with respect to the rules on the applicable law laid down in [Rome I and Rome II]?

(2) If the first question is answered in the negative, it is important to ascertain whether the legal relations between the insurers in the present case fall within the concept of ‘contractual obligations’ within the meaning of Article 1(1) of the Rome I Regulation. If the legal relations between the insurers do fall within the concept of “contractual obligations”, the important question is then whether those relations fall within the category of insurance contracts and whether the law applicable to them must be determined in accordance with Article 7 of the Rome I Regulation

(3) If the first two questions are answered in the negative, it is important to ascertain whether, in the case of an action for indemnity, the legal relations between the insurers of vehicles used in a combination fall within the definition of a “non-contractual obligation” within the meaning of the Rome II Regulation and whether or not these relations should be treated as derivative legal relations arising as a result of the road traffic accident (delict), when determining the applicable law in accordance with Article 4(1) of the Rome II Regulation. In a case such as the present case, must the insurers of the vehicles used in a combination be treated as debtors who are liable for the same claim within the meaning of Article 20 of the Rome II Regulation, and must the law applicable to the relations between them be determined according to that rule [?]’

35 By order of the President of the Court of 19 November 2007, Cases C-359/14 and C-475/14 were joined for the purposes of the oral procedure and of the judgment.

Consideration of the questions referred for a preliminary ruling

36 By their questions, which it is appropriate to examine together, the referring courts ask essentially how to interpret the Rome I and II Regulations and Directive 2009/13 in order to determine the law or laws applicable in third party was bought by the insurer of a tractor unit, which compensated the victim of an accident caused by the driver of that vehicle against the insurer of the trailer which, at the time of the accident, was coupled to that vehicle.

37 It should be stated that, as is clear from Article 1 thereof, the Rome I and II Regulations have harmonised the conflict-of-law rules on the applicable laws in civil and commercial matters relating to contractual obligations and non-contractual obligations respectively. The law applicable to those two

categories of obligations must be determined by means of one or other of those regulations, without prejudice however to the rules referred to in Articles 23 and 25 of the Rome I Regulation and Articles 27 and 28 of the Rome II Regulation.

38 In that regard, it must be observed, first, in answer to the question referred by the Lietuvos Aukščiausiasis Teismas (Supreme Court, Lithuania) in Case C-475/14, that Article 14(b) of Directive 2009/103 does not lay down a special conflict-of-law rule with regard to the conflict-of-law rules laid down in the Rome I and II Regulations regarding actions for indemnity between insurers and, therefore, does not fulfil the conditions laid down in Article 23 of the Rome I Regulation and Article 27 of the Rome II Regulation respectively.

39 Directive 2009/103 requires Member States to adopt measures guaranteeing that the victim of a road traffic accident and the owner of the vehicle involved in that accident are protected. According to recital 12 in the preamble thereto, that directive has a general objective of ensuring the protection of accident victims by guaranteeing that they receive a minimum amount of insurance cover.

40 There is nothing in the wording or the objectives of Directive 2009/13 to suggest that it is intended to lay down conflict-of-law rules.

41 More particularly, Article 14 of that directive, read together with recital 26 in the preamble thereto, merely requires Member States to take the measures necessary so that motor insurance policies cover, on the basis of a single premium, all the territory of the European Union for the term of the contract, and that they guarantee, on the basis of that premium, in each of the Member States 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.

42 That provision therefore deals exclusively with the territorial extent and level of cover that the insurer is required to provide, so as to ensure adequate protection for the victims of road traffic accidents. No rule can be inferred according to which the law of the Member State thus determined governs the allocation of responsibility between insurers.

43 Second, as regards the respective scopes of the Rome I and Rome II Regulations, the definitions of 'contractual obligation' and 'non-contractual' obligation set out therein must be interpreted independently, by reference to their scheme and purpose (see, by analogy, judgment in *ÖFAB*, C-147/12, EU:C:2013:490, paragraph 27). As is clear from recital 7 in the preamble to each of those regulations, account should be taken not only of the aim of consistency in the reciprocal application of those regulations, but also in the application of the Brussels I Regulation which, inter alia, draws a distinction, in Article 5 thereof, between matters relating to contract and matters relating to tort, delict and quasi-delict.

44 It is clear from the case-law of the Court on the Brussels I Regulation that only a legal obligation freely consented to by one person towards another and on which the claimant's action is based is a 'matter relating to contract' within the meaning of Article 5(1) thereof (see judgment in *Kolassa*, C-375/13, EU:C:2015:37, paragraph 39). By analogy, and in accordance with the aim of consistency mentioned in paragraph 43 of the present judgment, it must be held that the concept of 'contractual obligation' within the meaning of Article 1 of the Rome I Regulation designates a legal obligation freely consented to by one person towards another.

45 As regards the concept of 'non-contractual obligation', within the meaning of Article 1 of the Rome II Regulation, it must be recalled that the concept of 'matters relating to tort, delict and quasi-delict', within the meaning of Article 5(3) of the Brussels I Regulation, includes all actions which seek to establish the liability of a defendant and are not related to a 'contract' within the meaning of Article 5(1) thereof (judgment in *ÖFAB*, C-147/12, EU:C:2013:490, paragraph 32 and the case-law

cited). Furthermore, it must be observed, as appears from Article 2 of the Rome II Regulation, that that regulation applies to obligations ensuing from damage, that is to say, any consequence arising out of tort/delict, unjust enrichment, '*negotiorum gestio*' or '*culpa in contrahendo*'.

46 In the light of the above, 'non-contractual obligation' must be understood as meaning an obligation which derives from one of the events listed in Article 2 of that regulation, set out in the preceding paragraph of this judgment.

47 In the present case, it is clear from the orders for reference that contractual obligations, within the meaning of the Rome I Regulation, exist between the insurers and the owners or drivers of the tractor and the owners of the trailer respectively. However, there is no contractual undertaking between the two insurers.

48 In addition, the existence and extent of the obligation to compensate the victims at issue in the main proceedings depend, above all, on assessments relating to the road traffic accidents which gave rise to the damage concerned. Those assessments, concerning tort or delict, are foreign to the contractual relationship between the insurers and their respective insured.

49 As to whether the insurer of a tractor unit, which compensated a victim for all the harm sustained as a result of the accident involving both the tractor vehicle and the trailer coupled to it, may bring an action for indemnity against the insurer of the trailer, the following observations should be made.

50 First, the very existence of the right of the insurer of a tractor unit, the driver of which caused an accident, to bring an action for indemnity against the insurer of a trailer, once the victim has been compensated, cannot be inferred from the insurance contract, but is based on the premiss that the owner of the trailer will concomitantly incur liability in tort, delict or quasi-delict in relation to the same victim.

51 In that connection, it must be observed that such an obligation to pay compensation by the owner of the trailer must, therefore, be regarded as a 'non-contractual' obligation, within the meaning of Article 1 of the Rome II Regulation. Therefore, it is in the light of the provisions of that regulation that the law applicable to the obligation must be determined.

52 In accordance with Article 4 of that regulation, save as otherwise provided, the law applicable to such a non-contractual obligation is that of the country in which the harm was sustained, that is, in the cases in the main proceedings, the country in which the damage directly resulting from the accident is suffered (see, to that effect, judgment in *Lazar*, C-350/14, EU:C:2015:802, paragraph 24). According to Article 15(a) and (b) of the Rome II Regulation, that law will determine the basis and extent of liability and the grounds for any division of that responsibility.

53 Therefore, it is in the light of the law of the place of the direct harm, in the present case German law, that the debtors of the obligation to compensate the victim and, if appropriate, the respective contributions of the owner of the trailer and of the owner or driver of the tractor unit to the damage caused to the victim must be determined.

54 Second, it must be recalled that the obligation for an insurer to compensate the damage caused to a victim arises not from the damage caused to the latter but from the contract between it and the insured party who is liable. Such compensation is therefore based on a contractual obligation, since the law applicable to such an obligation must be determined in accordance with the provisions of the Rome I Regulation.

55 Therefore, it must be examined, in the light of the law applicable to the contract of insurance of the tractor units, such as those at issue in the main proceedings, and to that of the trailers coupled to them, respectively, whether the insurers of those two kinds of vehicle were in fact bound, in accordance with those contracts, to compensate the victims of an accident caused by those vehicles.

56 Third, regarding the issue whether the insurer of a tractor unit who has compensated a victim has, in some circumstances, a right to bring an action in subrogation against the insurer of the trailer, it must be observed that Article 19 of the Rome II Regulation distinguishes between matters subject to the tort/delict regime and those subject to the contractual regime. That provision applies in particular to the situation in which a third party, namely an insurer, has compensated the victim of an accident, the creditor of an obligation in tort/delict of damages owed by the driver or owner of a motor vehicle, in order to discharge the duty to satisfy that obligation.

57 More particularly, Article 19 of the Rome II Regulation provides that, in that case, the issue of any subrogation of the victim's rights is governed by the law applicable to the obligation of the third party, namely the civil liability insurer, to compensate that victim.

58 Thus, the insurer's obligation to cover the civil liability of the insured party with respect to the victim resulting from the contract of insurance concluded with the insured party and the conditions under which the insurer may exercise the rights the victim of the accident has against the persons responsible for the accident depend upon the national law governing that insurance contract, which are determined in accordance with Article 7 of the Rome I Regulation.

59 However, the law applicable to the determination of the persons who may be held liable and the allocation of responsibility between them and their respective insurers remains subject, in accordance with Article 19, to Article 4 et seq. of the Rome II Regulation.

60 In particular, it must be held that, if, according to the law applicable by virtue of those provisions of the Rome II Regulation, the victim of a road traffic accident caused by a tractor unit coupled with a trailer has rights against both the owner of the trailer and its insurer, the insurer of the tractor unit, after compensating the victim, has a right of action against the insurer of the trailer since the law applicable, in accordance with Article 7 of the Rome I Regulation, to the insurance contract provides for subrogation of the insurer to the victim's rights.

61 Therefore, it is for the referring courts to establish, first of all, how the damages to be paid to the victim are to be divided between the driver and the owner of the tractor unit, on the one hand, and the owner of the trailer, on the other, in accordance with the rules of national law applicable by virtue of the Rome II Regulation.

62 Second, in accordance with Article 7 of the Rome I Regulation, the law applicable to the insurance contract concluded between the insurers which are the applicants in the main proceedings and the respective insured parties must be determined, in order to ascertain whether and, if so, to what extent those insurers may, by subrogation, exercise the victim's rights against the insurer of the trailer.

63 In the light of all of the foregoing, the answer to the questions referred is that Article 14(b) of Directive 2009/103 must be interpreted as meaning that that provision does not contain any specific conflict-of-law rule intended to determine the law applicable to the action for indemnity between insurers in circumstances such as those at issue in the main proceedings.

64 The Rome I and Rome II Regulations must be interpreted to the effect that the law applicable to an action for indemnity between the insurer of a tractor unit, which has compensated the victims of an accident caused by the driver of that vehicle, against the insurer of the trailer coupled to it at the time

of that accident, is to be determined in accordance with Article 7 of the Rome I Regulation if the rules of liability in tort, delict and quasi-delict applicable to that accident by virtue of Article 4 et seq. of the Rome II Regulation provide for apportionment of the obligation to compensate for the damage.

Costs

65 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 14(b) of 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 must be interpreted as meaning that that provision does not contain any specific conflict-of-law rule intended to determine the law applicable to the action for indemnity between insurers in circumstances such as those at issue in the main proceedings.

Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations must be interpreted to the effect that the law applicable to an action for indemnity between the insurer of a tractor unit, which has compensated the victims of an accident caused by the driver of that vehicle, against the insurer of the trailer coupled to it at the time of that accident, is to be determined in accordance with Article 7 of Regulation No 593/2008 if the rules of liability in tort, delict and quasi-delict applicable to that accident by virtue of Article 4 et seq. of Regulation No 864/2007 provide for an apportionment of the obligation to compensate for the damage.

[Signatures]