Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

7 August 2018*

(Reference for a preliminary ruling — Approximation of laws — Insurance against civil liability in respect of the use of motor vehicles — Third Directive 90/232/EEC — Article 1 — Liability for personal injury caused to all passengers other than the driver — Compulsory insurance — Direct effect of directives — Obligation to disapply national legislation contrary to a directive — Non-application of a contractual clause contrary to a directive)

In Case C-122/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Court of Appeal (Ireland), made by decision of 2 March 2017, received at the Court on 9 March 2017, in the proceedings

David Smith

v

Patrick Meade,

Philip Meade,

FBD Insurance plc,

Ireland,

Attorney General,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, T. von Danwitz, J.L. da Cruz Vilaça, A. Rosas and J. Malenovský, Presidents of Chambers, E. Juhász, A. Borg Barthet, A. Arabadjiev (Rapporteur), A. Prechal, E. Jarašiūnas, K. Jürimäe and C. Lycourgos, Judges,

Advocate General: Y. Bot,

Registrar: M.-A. Gaudissart, Deputy Registrar,

having regard to the written procedure and further to the hearing on 5 February 2018,

after considering the observations submitted on behalf of:

– FBD Insurance plc, by M. Feeny, Solicitor, F.X. Burke, Advocate, F. Duggan, Barrister-at-Law, J. O'Reilly, Senior Counsel, J. Corcoran, Advocate, and M. Collins, Senior Counsel,

* Language of the case: English.

– Ireland, by S. Purcell, acting as Agent, and by C. Toland, Senior Counsel, T.L. Power, Barrister-at-Law, and H. Mohan, Senior Counsel,

– the French Government, by R. Coesme, acting as Agent,

– the Netherlands Government, by M.K. Bulterman and M.H.S. Gijzen, acting as Agents,

– the European Commission, by K.-P. Wojcik and N. Yerrell, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 April 2018,

gives the following

Judgment

1 This request for a preliminary ruling concerns the issue whether EU law must be interpreted as meaning that, in the context of litigation between private persons, a national court must disapply provisions of national law and a contractual clause based on those provisions which are contrary to Article 1 of 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; 'the Third Directive').

2 The request has been made in proceedings between Mr David Smith, on the one hand, and Mr Patrick Meade, Mr Philip Meade, FBD Insurance plc ('FBD'), Ireland and the Attorney General, on the other, concerning compensation for injuries suffered by Mr Smith as a result of a road traffic accident involving a vehicle driven by Mr Patrick Meade, owned by Mr Philip Meade and insured by FBD.

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) repealed 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'), 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; 'the Second Directive'), and the Third Directive. However, given the material time in the main proceedings, the Court must have regard to the repealed directives.

4 Article 3(1) of the First Directive provided:

'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 those measures.'

5 Article 1(4) of the Second Directive provided:

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

6 The first paragraph of Article 1 of the Third Directive provided:

'... the insurance referred to in Article 3(1) of [the First Directive] shall cover liability for personal injuries to all passengers, other than the driver, arising out of the use of a vehicle.'

7 On 19 April 2007 the Court delivered the judgment in *Farrell* (C-356/05, EU:C:2007:229), where the Court held that Article 1 of the Third Directive is to be interpreted as precluding national legislation, such as the Irish legislation at issue in the main proceedings, whereby compulsory motor vehicle liability insurance does not cover liability in respect of personal injuries to persons travelling in a part of a motor vehicle which has not been designed and constructed with seating accommodation for passengers, that that provision satisfies all the conditions necessary for it to produce direct effect and that it accordingly confers rights upon which individuals may rely directly before the national courts. The Court held however that it was for the national court to determine whether that provision might be relied upon against a body such as that concerned in the case that gave rise to that judgment.

8 In the judgment of 10 October 2017, *Farrell* (C-413/15, EU:C:2017:745), the Court held, in essence, that individuals may rely on the first paragraph of Article 1 of the Third Directive against a body on which Ireland has conferred the task in the public interest that arises from Article 1(4) of the Second Directive, and which, for that purpose, possesses, by statute, special powers beyond those which result from the normal rules applicable to relations between individuals.

Irish law

9 Section 56(1) of the 1961 Road Traffic Act, in the version in force at the material time in the main proceedings ('the 1961 Act'), provided that a motorist could not drive a mechanically propelled vehicle on a public road without an approved policy of insurance in force covering negligent use of the vehicle resulting in a liability to pay damages to any person, exclusive of the excepted persons.

10 Section 56(3) of the 1961 Act provided that the use of a vehicle in contravention of the prohibition contained in Section 56(1) constituted a criminal offence.

11 Under Section 65(1)(a) of the 1961 Act, an 'excepted person', within the meaning of Section 56(1) of that act, was:

'Any person claiming in respect of injury to himself sustained while he was in or on a mechanically propelled vehicle (or a vehicle drawn thereby) to which the relevant document relates, other than a mechanically propelled vehicle, or a drawn vehicle, or vehicles forming a combination of vehicles, of a class specified for the purposes of this paragraph by regulations made by the Minister, provided that such regulations shall not extend compulsory insurance in respect of civil liability to passengers to:

(i) any part of a mechanically propelled vehicle, other than a large public service vehicle, unless that part is designed and constructed with seating accommodation for passengers, or

(ii) a passenger seated in a caravan attached to a mechanically propelled vehicle while such a combination of vehicles is moving in a public place.'

12 Article 6 of the Road Traffic (Compulsory Insurance) Regulations, 1962, in the version in force at the material time in the main proceedings ('the 1962 Regulations'), provided that:

'The following vehicles are hereby specified for the purpose of [Section 65(1)(a) of the 1961 Act]:

(a) all vehicles, other than cycles, designed and constructed with seating accommodation for passengers;

...'

The dispute in the main proceedings and the question referred for a preliminary ruling

13 On 19 June 1999 Mr Smith was very seriously injured when the van in which he was travelling, as a passenger in the rear of the vehicle, collided with another vehicle also travelling on a public road, near Tullyallen (Ireland). At the time of the accident, that van was being driven by Mr Patrick Meade and was owned by Mr Philip Meade. The van was not fitted with fixed seating accommodation for passengers travelling in the rear of the vehicle.

14 Mr Philip Meade's motor insurance policy with FBD was in force at the time of the accident and was approved in accordance with the applicable Irish legislation. That policy contained a clause which stated that the insurance covered solely the one passenger seated on the fixed seat in the front of the vehicle, excluding, consequently, cover for passengers travelling in the rear of the van.

15 Mr Smith brought proceedings before the High Court (Ireland) against Mr Patrick Meade and Mr Philip Meade for negligence and breach of duty. With the consent of the parties, that court joined FBD, Ireland and the Attorney General in the case as defendants.

16 Following notification of the claim for compensation made by Mr Smith, FBD, by letter of 13 August 2001, refused to provide an indemnity to Mr Philip Meade in respect of the personal injuries suffered by Mr Smith. The insurance company invoked the exclusion clause contained in the insurance policy and maintained that that policy did not cover personal injuries to persons being carried as passengers in a part of the vehicle not designed and constructed with seating accommodation for passengers.

17 In a judgment of 5 February 2009, the High Court held that it follows from the case-law of the Court of Justice, in particular from the judgment of 13 November 1990, *Marleasing* (C-106/89, EU:C:1990:395), that the obligation to interpret national law in conformity with EU law means that, in this case, it is necessary to disregard the exclusion of insurance cover laid down in Section 65 of the 1961 Act with respect to physical injuries sustained by persons travelling in a part of a motor vehicle which was not designed and constructed with seating accommodation for passengers. By that judgment and an order of 18 January 2010, the High Court, inter alia, declared the exclusion clause in the insurance contract taken out by Mr Philip Meade to be void.

18 On 10 February 2009 the High Court approved a settlement agreed between FBD and Mr Smith following the judgment of 5 February 2009. Pursuant to that settlement, FBD paid to Mr Smith the sum of EUR 3 million. FBD has a right of subrogation with respect to that payment.

19 The proceedings against, on the one hand, Mr Patrick Meade and Mr Philip Meade and, on the other, Ireland and the Attorney General were adjourned.

20 FBD brought an appeal against the judgment and order of the High Court before the Court of Appeal (Ireland), claiming that the High Court had misapplied the case-law arising from the judgment of 13 November 1990, *Marleasing* (C-106/89, EU:C:1990:395), and that the effect of that judgment and

that order was to confer on the Third Directive a form of direct horizontal effect given that FBD has the status of a private person. FBD stated, moreover, that, if its appeal was upheld, it would seek to recover from the Irish State the amount that it paid to Mr Smith.

21 The referring court states that, at the material time in the main proceedings, persons travelling in a van without fixed seating accommodation were 'excepted persons' for the purposes of both Section 65(1)(a)(i) of the 1961 Act and the 1962 Regulations, and that there was no legal obligation to insure them under Irish law. That court also states that motorists who had an approved insurance policy were not committing any criminal offence by driving a vehicle with no insurance cover for persons travelling in the rear of that vehicle, without fixed seats.

22 The referring court further observes that, in the main proceedings, and as distinct from the case that gave rise to the judgment of 19 April 2007, *Farrell* (C-356/05, EU:C:2007:229), the insurer, namely FBD, is a private body.

23 According to the referring court, Section 65(1)(a) of the 1961 Act and Article 6 of the 1962 Regulations expressly and wholly unambiguously exclude, from compulsory insurance cover against civil liability in respect of the use of motor vehicles, situations such as that in the main proceedings, where the passenger is travelling in a part of a mechanically propelled vehicle that is not fitted with fixed seats. Those provisions reflected a deliberate legislative policy choice and were plainly not the result of error on the part of the national legislature.

24 The referring court states that it is, consequently, impossible to interpret those provisions in a way that is compatible with the provisions of the Third Directive, since to interpret them so as to contradict their clear wording would amount to adopting a *contra legem* interpretation.

25 In those circumstances, the referring court is uncertain as to the obligations that fall, under EU law, on a national court, hearing a dispute between private persons, where the applicable national legislation is manifestly incompatible with the provisions of a directive that satisfy all the conditions necessary for them to produce direct effect and where it is impossible to interpret that national legislation in a way that is compatible with that directive.

26 In that regard, the referring court considers that it follows from the case-law of the Court, in particular from the judgment of 19 April 2016, *DI* (C-441/14, EU:C:2016:278), that, in such a situation, the national court must disapply national law.

27 The referring court considers that it must therefore disapply Section 65(1)(a) of the 1961 Act and Article 6 of the 1962 Regulations, in so far as those provisions comprise an exclusion from insurance cover with respect to the passengers in a motor vehicle who are not travelling in a fixed seat.

28 In the view of the referring court, the disapplication of those provisions would have a retroactive effect. It would follow that the insurance policy at issue in the main proceedings ought no longer to be considered an 'approved policy', within the meaning of Section 56(1) of the 1961 Act. According to the referring court, the driver and the owner of the vehicle at issue in the main proceedings would, under those circumstances, have been committing, in theory, a criminal offence, the first by driving that vehicle on a public road without an approved insurance policy, and the second by allowing that vehicle to be so driven.

29 The referring court considers, however, that, if the exclusion clause with respect to the passengers in a motor vehicle who are not travelling in a fixed seat were itself removed from the insurance policy at issue in the main proceedings on the ground that it is incompatible with EU law, that policy would automatically revert to being an approved policy, within the meaning of Section 56(1) of the 1961 Act, and the problem of criminal liability on the part of Mr Patrick Meade and Mr Philip Meade would disappear. The referring court is uncertain, in that context, whether it follows from the judgments of

28 March 1996, *Ruiz Bernáldez* (C-129/94, EU:C:1996:143), of 30 June 2005, *Candolin and Others* (C-537/03, EU:C:2005:417), and of 19 April 2016, *DI* (C-441/14, EU:C:2016:278), that that clause must itself be removed on the ground of its incompatibility with EU law.

30 The question that arises, however, is whether the non-application of that exclusion clause would amount, in essence, to conferring on Article 1 of the Third Directive a form of direct horizontal effect.

31 The referring court states, last, that the question whether it is obliged to disapply the exclusion clause in the insurance policy at issue in the main proceedings has not become devoid of purpose following the settlement agreed between FBD and Mr Smith. According to that court, if, in this case, it were to disapply that clause, it would follow that Mr Smith could properly have obtained compensation by bringing proceedings against Mr Patrick Meade and Mr Philip Meade and that FBD was obliged to indemnify the latter. The referring court considers that, if, on the other hand, that exclusion clause were not to be disapplied, it would be open to FBD to seek reimbursement from the Irish State of the sum that it paid to Mr Smith pursuant to the settlement.

32 In those circumstances, the Court of Appeal decided to stay the proceedings and to refer to the Court the following question for a preliminary ruling:

'Where:

(a) the relevant provisions of national law provide for an exclusion for compulsory motor insurance in respect of persons for whom no fixed seats in a mechanically propelled vehicle have been provided,

(b) the relevant insurance policy provides that cover will be confined to passengers travelling in fixed seating and this policy was, factually, an approved policy of insurance for the purposes of that national law at the time of the accident,

(c) the relevant national provisions providing for such an exclusion from cover have already been adjudged to be contrary to EU law in an earlier decision of the Court [judgment of 19 April 2007, *Farrell*, C-356/05, EU:C:2007:229] and, accordingly, required to be disapplied, and

(d) the language of the national provisions is such that it does not permit of an interpretation conforming to the requirements of EU law,

then, in litigation between private parties and a private insurance company concerning a motor accident involving a serious injury to a passenger in 1999 who was not travelling in a fixed seat, where, by consent of the parties, the national Court joined the private insurance company and the State as defendants, is the national court when disapplying the relevant provisions of national law also obliged to disapply the exclusion clause contained in the motor insurance policy or otherwise preclude an insurer from relying on the exclusion clause which was in force at the time so that the injured victim could then have recovered directly as against the insurance company on foot of that policy? Alternatively, would such a result amount in substance to a form of horizontal direct effect of a directive against a private party in a manner prohibited by EU law?'

33 By letter lodged at the Court Registry on 14 September 2017, Ireland requested, pursuant to the third paragraph of Article 16 of the Statute of the Court of Justice of the European Union, that the Court sit in a Grand Chamber.

Consideration of the question referred

34 It should be noted as a preliminary point that, according to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it. The Court may also find it necessary to consider provisions of EU law which the national court has not referred to in its questions (judgments of 13 October 2016, *M. and S.*, C-303/15, EU:C:2016:771, paragraph 16 and the case-law cited, and of 31 May 2018, *Zheng*, C-190/17, EU:C:2018:357, paragraph 27).

35 In that regard, it is clear from the order for reference that the question referred for a preliminary ruling rests on the premiss that it follows from the Court's case-law, in particular from the judgment of 19 April 2016, *DI* (C-441/14, EU:C:2016:278), that the referring court must, in the main proceedings, disapply Section 65(1)(a) of the 1961 Act and Article 6 of the 1962 Regulations, on the grounds that, first, the Court held, in the judgment of 19 April 2007, *Farrell* (C-356/05, EU:C:2007:229), that those provisions are contrary to Article 1 of the Third Directive, which fulfils all the conditions required for it to produce direct effect, and, second, that it is impossible to achieve an interpretation of those provisions that is compatible with EU law without resorting to a *contra legem* interpretation of those provisions.

36 In order to give a useful answer to the referring court, the Court must examine whether EU law, in particular Article 288 TFEU, must be interpreted as meaning that a national court, hearing a dispute between private persons, which finds that it is unable to interpret provisions of its national law in a manner that is compatible with a directive, is obliged to disapply the provisions of its national law and a contractual clause that are contrary to the provisions of that directive and which fulfil all the conditions required for them to produce direct effect.

37 It must be recalled in that context that, according to settled case-law, where national courts are called on to give judgment in proceedings between individuals in which it is apparent that the national legislation at issue is contrary to EU law, it is the responsibility of the national courts to provide the legal protection which individuals derive from the rules of EU law and to ensure that those rules are fully effective (see, to that effect, judgments of 5 October 2004, *Pfeiffer and Others*, C-397/01 to C-403/01, EU:C:2004:584, paragraph 111; of 19 January 2010, *Kücükdeveci*, C-555/07, EU:C:2010:21, paragraph 45; and of 19 April 2016, *DI*, C-441/14, EU:C:2016:278, paragraph 29).

38 The Court has held on more than one occasion that the Member States' obligation arising from a directive to achieve the result envisaged by the directive, and their duty to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation, is binding on all the authorities of Member States, including, for matters within their jurisdiction, the courts (see, to that effect, inter alia, judgments of 10 April 1984, *von Colson and Kamann*, 14/83, EU:C:1984:153, paragraph 26; of 19 January 2010, *Kücükdeveci*, C-555/07, EU:C:2010:21, paragraph 47; and of 19 April 2016, *DI*, C-441/14, EU:C:2016:278, paragraph 30).

39 It follows that, in applying national law, national courts called upon to interpret that law are required to consider the whole body of rules of law and to apply methods of interpretation that are recognised by those rules in order to interpret it, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by the directive and consequently to comply with the third paragraph of Article 288 TFEU (see, inter alia, judgments of 5 October 2004, *Pfeiffer and Others*, C-397/01 to C-403/01, EU:C:2004:584, paragraphs 113 and 114; of 19 January 2010, *Kücükdeveci*, C-555/07, EU:C:2010:21, paragraph 48; and of 19 April 2016, *DI*, C-441/14, EU:C:2016:278, paragraph 31).

40 However, the Court has held that the principle of interpreting national law in conformity with EU law has certain limits. Thus, the obligation on a national court to refer to EU law when interpreting and applying the relevant rules of domestic law is limited by general principles of law and cannot serve as the basis for an interpretation of national law that is *contra legem* (see, to that effect, judgments of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraph 25; of 15 January 2014, *Association de médiation sociale*, C-176/12, EU:C:2014:2, paragraph 39; and of 19 April 2016, *DI*, C-441/14, EU:C:2016:278, paragraph 32).

41 In that regard, it is true that the question whether a national provision must be disapplied in so far as it conflicts with EU law arises only if no interpretation of that provision in conformity with EU law proves possible (judgments of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraph 23, and of 10 October 2013, *Spedition Welter*, C-306/12, EU:C:2013:650, paragraph 28).

42 The fact remains that the Court has also consistently held that a directive cannot of itself impose obligations on an individual and cannot therefore be relied upon as such against an individual (see, inter alia, judgments of 26 February 1986, *Marshall*, 152/84, EU:C:1986:84, paragraph 48; of 14 July 1994, *Faccini Dori*, C-91/92, EU:C:1994:292, paragraph 20; and of 5 October 2004, *Pfeiffer and Others*, C-397/01 to C-403/01, EU:C:2004:584, paragraph 108). If the possibility of relying on a provision of a directive that has not been transposed, or has been incorrectly transposed, were to be extended to the sphere of relations between individuals, that would amount to recognising a power in the European Union to enact obligations for individuals with immediate effect, whereas it has competence to do so only where it is empowered to adopt regulations (see, to that effect, judgment of 14 July 1994, *Faccini Dori*, C-91/92, EU:C:1994:292, paragraph 24).

43 Accordingly, even a clear, precise and unconditional provision of a directive seeking to confer rights on or impose obligations on individuals cannot of itself apply in a dispute exclusively between private persons (judgments of 5 October 2004, *Pfeiffer and Others*, C-397/01 to C-403/01, EU:C:2004:584, paragraph 109; of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraph 42; and of 15 January 2014, *Association de médiation sociale*, C-176/12, EU:C:2014:2, paragraph 36).

44 The Court has expressly held that a directive cannot be relied on in a dispute between individuals for the purpose of setting aside legislation of a Member State that is contrary to that directive (see, to that effect, judgment of 27 February 2014, *OSA*, C-351/12, EU:C:2014:110, paragraph 48).

45 A national court is obliged to set aside a provision of national law that is contrary to a directive only where that directive is relied on against a Member State, the organs of its administration, such as decentralised authorities, or organisations or bodies which are subject to the authority or control of the State or which have been required by a Member State to perform a task in the public interest and, for that purpose, possess special powers beyond those which result from the normal rules applicable to relations between individuals (see, to that effect, judgments of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraphs 40 and 41; of 25 June 2015, *Indėlių ir investicijų draudimas and Nemaniūnas*, C-671/13, EU:C:2015:418, paragraphs 59 and 60; and of 10 October 2017, *Farrell*, C-413/15, EU:C:2017:745, paragraphs 32 to 42).

46 As regards the judgment of 19 April 2016, *DI* (C-441/14, EU:C:2016:278), to which the referring court makes reference, the Court stated, in paragraphs 35 to 37 of that judgment, that it is the general principle prohibiting discrimination on grounds of age, and not the directive that gave concrete expression to that general principle in the area of employment and occupation, namely Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16), which confers on private persons a right which they may rely on as such and which, even in disputes between private persons, requires the national courts to disapply national provisions that do not comply with that principle where they consider that it is impossible to interpret those provisions in a manner that is consistent with EU law.

47 In support of that interpretation, the Court stated in particular, in paragraph 22 of the judgment of 19 April 2016, *DI* (C-441/14, EU:C:2016:278), that the source of the principle of non-discrimination on grounds of age is to be found in various international instruments and in the constitutional traditions common to the Member States and that that principle, now enshrined in Article 21 of the Charter of Fundamental Rights of the European Union, must be regarded as a general principle of EU law.

48 However, the situation in the main proceedings can be distinguished from that which gave rise to the judgment of 19 April 2016, *DI* (C-441/14, EU:C:2016:278), since, as stated by the Netherlands Government and by the European Commission, Article 1 of the Third Directive cannot be regarded as giving concrete expression to a general principle of EU law.

49 It follows from the foregoing considerations that a national court, hearing a dispute between private persons, which finds itself unable to interpret provisions of its national law in a manner that is compatible with a directive, is not obliged, solely on the basis of EU law, to disapply the provisions of its national law which are contrary to those provisions of that directive that fulfil all the conditions required for them to produce direct effect and thereby to extend the possibility of relying on a provision of a directive that has not been transposed, or that has been incorrectly transposed, to the sphere of relationships between private persons.

50 That conclusion is not called into question by the judgments of 28 March 1996, *Ruiz Bernáldez* (C-129/94, EU:C:1996:143), and of 30 June 2005, *Candolin and Others* (C-537/03, EU:C:2005:417), that are cited by the referring court. In those judgments, the Court gave a ruling on the interpretation of the applicable provisions of EU law but did not have to examine whether a directive could be relied on against an individual.

51 Nor is the conclusion reached in paragraph 49 of the present judgment called into question by the judgments of 30 April 1996, *CIA Security International* (C-194/94, EU:C:1996:172), and of 26 September 2000, *Unilever* (C-443/98, EU:C:2000:496), to which Ireland refers.

52 In the cases which gave rise to those judgments, what was at issue was a particular situation, namely the adoption of national technical regulations that did not comply with procedural obligations concerning notification and delayed adoption, set out in Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1983 L 109, p. 8).

53 In that particular situation, the Court held, in essence, that those national technical regulations were inapplicable in a dispute between individuals on the ground that non-compliance with the obligations stemming from Directive 83/189 constituted a ‘substantial procedural defect’ that had vitiated the adoption of those regulations by the Member State concerned, and that that directive, which created neither rights nor obligations for individuals, did not determine the substantive content of the legal rule on the basis of which the national court had to decide the case before it, meaning that the case-law to the effect that a directive that has not been transposed may not be relied on by one individual against another was not relevant in such a situation (see, to that effect, judgments of 30 April 1996, *CIA Security International*, C-194/94, EU:C:1996:172, paragraph 48, and of 26 September 2000, *Unilever*, C-443/98, EU:C:2000:496, paragraphs 44, 50 and 51).

54 However, the situation in the main proceedings is not comparable to that described in the two preceding paragraphs of the present judgment. Article 1 of the Third Directive, in providing that it is compulsory that insurance against civil liability in respect of the use of the motor vehicle at issue should cover personal injury to all the passengers, excluding the driver, that results from that use, defines the substantive content of a rule of law and falls, consequently, within the scope of the case-law to the effect that a directive that has not been transposed or has been incorrectly transposed may not be relied on by one individual against another.

55 In the light of all the foregoing, it must be concluded that, in the main proceedings, the referring court, which considers that it is unable to interpret Section 65(1)(a) of the 1961 Act and Article 6 of the 1962 Regulations in a manner that is compatible with Article 1 of the Third Directive, is not obliged, in order to determine whether Mr Smith was entitled to claim from FBD compensation for the harm suffered by him as a result of the road traffic accident that gave rise to those proceedings, to disapply, solely on the basis of that provision of the Third Directive, those provisions of national law as well as the exclusion clause to be found, as a consequence of those provisions of national law, in the insurance contract taken out by Mr Philip Meade, and thereby to extend the possibility of relying on a directive to the sphere of relationships between private persons.

56 That said, it must be recalled that, in a situation such as that at issue in the main proceedings, a party adversely affected by the incompatibility of national law with EU law or a person subrogated to the rights of that party could however rely on the case-law stemming from the judgment of 19 November 1991, *Francovich and Others* (C-6/90 and C-9/90, EU:C:1991:428), in order to obtain from the Member State, if appropriate, compensation for any loss sustained (see, by analogy, judgments of 19 April 2007, *Farrell*, C-356/05, EU:C:2007:229, paragraph 43, and of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraph 43).

57 In the light of all the foregoing, the answer to the question referred for a preliminary ruling is that:

– EU law, in particular Article 288 TFEU, must be interpreted as meaning that a national court, hearing a dispute between private persons, which finds that it is unable to interpret the provisions of its national law which are contrary to a provision of a directive that satisfies all the conditions required for it to produce direct effect in a manner that is compatible with that provision, is not obliged, solely on the basis of EU law, to disapply those provisions of national law and a clause to be found, as a consequence of those provisions of national law, in an insurance contract, and that

– in a situation such as that at issue in the main proceedings, a party adversely affected by the incompatibility of national law with EU law or a person subrogated to the rights of that party could however rely on the case-law arising from the judgment of 19 November 1991, *Francovich and Others* (C-6/90 and C-9/90, EU:C:1991:428), in order to obtain from the Member State, if justified, compensation for any loss sustained.

Costs

58 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 (Grand Chamber) hereby rules:

EU law, in particular Article 288 TFEU, must be interpreted as meaning that a national court, hearing a dispute between private persons, which finds that it is unable to interpret the provisions of its national law that are contrary to a provision of a directive that satisfies all the conditions required for it to produce direct effect in a manner that is compatible with that provision, is not obliged, solely on the basis of EU law, to disapply those provisions of national law and a clause to be found, as a consequence of those provisions of national law, in an insurance contract.

In a situation such as that at issue in the main proceedings, a party adversely affected by the incompatibility of national law with EU law or a person subrogated to the rights of that party could however rely on the case-law arising from the judgment of 19 November 1991, *Francovich and Others* (C-6/90 and C-9/90, EU:C:1991:428), in order to obtain from the Member State, if justified, compensation for any loss sustained.

Lenaerts	Bay Larsen	von Danwitz
Da Cruz Vilaça	Rosas	Malenovský
Juhász	Borg Barthet	Arabadjiev
Prechal	Jarašiūnas	Jürimäe
Lycourgos		

Delivered in open court in Luxembourg on 7 August 2018.

A. Calot Escobar Registrar	K. Lenaerts President