Reports of Cases

OPINION OF ADVOCATE GENERAL
BOBEK
delivered on 23 February 2021 [1]

Case C-923/19

Van Ameyde España SA
v
GES, Seguros y Reaseguros, SA

(Request for a preliminary ruling from the Tribunal Supremo (Supreme Court, Spain))

(Reference for a preliminary ruling – Directive 2009/103/EC – Motor vehicle civil liability insurance – Concept of the movement of vehicles – Scope of the obligation to insure – Accident involving a towing vehicle and a semi-trailer insured with different insurers)

I. Introduction

1. Is property damage caused to a semi-trailer which, at the moment of a road traffic accident, was being operated as part of an articulated vehicle, with the accident apparently being the fault of the driver of the truck tractor, to be covered by the compulsory insurance of the truck tractor or that of the semi-trailer, in a situation where both the truck tractor and the semi-trailer are covered by separate civil liability insurance contracts taken out with different insurers?

2. By that question, the Court is invited to further develop its (by now) rich case-law on the concept of the 'use of vehicles' contained in the first subparagraph of Article 3 of Directive 2009/103/EC. [2] In the past, the Court has already been invited to confirm whether that concept covers, inter alia, 'the manoeuvre of a tractor in the courtyard of a farm in order to bring the trailer attached to that tractor into a barn'; [3] 'the situation in which an agricultural tractor has been involved in an accident when its principal function, at the time of that accident, was not to serve as a means of transport but to generate, as a machine for carrying out work, the motive power necessary to drive the pump of a herbicide sprayer'; [4] 'a situation in which the passenger of a vehicle parked in a car park, in opening the door of that vehicle, scraped against and damaged the vehicle parked next to it'; [5] or a 'situation … in which a vehicle parked in a private garage of a building, used in accordance with its function as a means of transport, has caught fire, giving rise to a fire which originated in the electrical circuit of that vehicle and caused damage to that building, even though that vehicle has not been moved for more than 24 hours before the fire occurred'. [6]

1 Original language: English.

2 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).

3 Judgment of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146, paragraph 59 and the operative part of that judgment).

4 Judgment of 28 November 2017, *Rodrigues de Andrade* (C-514/16, EU:C:2017:908, paragraph 42 and the operative part of that judgment).

5 Judgment of 15 November 2018, *BTA Baltic Insurance Company* (C-648/17, EU:C:2018:917, paragraph 48 and the operative part of that judgment).

6 Judgment of 20 June 2019, *Línea Directa Aseguradora* (C-100/18, EU:C:2019:517, paragraph 48 and the operative part of that judgment).

3. Much like the truck tractor that veered off the road in the main proceedings, I am afraid that certain elements of the case-law outlined above appear to have deviated somewhat from the proper scope of Directive 2009/103. My suggestion in the present Opinion is therefore that, first, in *structural* terms, it is not the role of this Court to engage in effectively applying EU law to particular cases by the means of such 'factual jurisprudence'. Second, with regard to the *specific* legislative framework at hand, the concept of 'use of vehicles', as well as other indeterminate legal concepts contained in Article 3 of Directive 2009/103, concern the general obligation to take out civil liability insurance. Their aim and purpose is not to decide on whether a particular accident is to be covered by that insurance.

II. Legal framework

A. EU law

4. Article 1 of Directive 2009/103 sets out the following definitions:

'…

1. "vehicle" means any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled;

2. "injured party" means any person entitled to compensation in respect of any loss or injury caused by vehicles;

…'

5. Article 3 of Directive 2009/103, entitled 'Compulsory insurance of vehicles', provides as follows:

'Each Member State shall, subject to Article 5, 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 the measures referred to in the first paragraph.

…

The insurance referred to in the first paragraph shall cover compulsorily both damage to property and personal injuries.'

6. Article 12 of Directive 2009/103, entitled 'Special categories of victim', provides:

'1. Without prejudice to the second subparagraph of Article 13(1), the insurance referred to in Article 3 shall cover liability for personal injuries to all passengers, other than the driver, arising out of the use of a vehicle.

…

3. The insurance referred to in Article 3 shall cover personal injuries and damage to property suffered by pedestrians, cyclists and other non-motorised users of the roads who, as a consequence of an accident in which a motor vehicle is involved, are entitled to compensation in accordance with national civil law.

This Article shall be without prejudice either to civil liability or to the quantum of damages.'

B. National law

7. The Ley sobre responsabilidad civil y seguro en la circulación de vehículos a motor (Law on civil liability and insurance for the use of motor vehicles) ('the Law on Vehicle Insurance') was approved by Royal Legislative Decree 8/2004 of 29 October 2004.[7] Its Article 1 is entitled 'Civil liability' and provides as follows:

'1. In view of the risk posed by the use of motor vehicles, drivers of motor vehicles are liable for loss or injury to persons or damage to property by such use.

…

3. Where the owner is not the driver, he or she shall be liable for loss or injury to persons and damage to property caused by the driver if he or she is connected to the driver under any of the relationships referred to in Article 1903 of the Código Civil (Civil Code) and Article 120(5) of the Código Penal (Criminal Code). The owner shall cease to have any such liability if he or she demonstrates that he or she exercised all the care expected of a prudent person to prevent the loss or injury.

…'

8. Article 2 of the Law on Vehicle Insurance, entitled 'Requirement to have insurance', provides in paragraph 1:

'Owners of motor vehicles that are normally based in Spain shall be required to take out and maintain in force a contract of insurance for each vehicle they own. The contract must cover the civil liability referred to in Article 1 up to the limits established for compulsory insurance. …'

9. Article 5 of the Law on Vehicle Insurance, entitled 'Scope and exclusions', provides as follows in paragraph 2:

'The compulsory insurance shall not cover material damage to the insured vehicle, to the items being transported in it or to goods owned by the policy-holder, the insured, the owner or the driver [of the vehicle], or by the spouse or relatives of the aforesaid persons up to the third degree of consanguinity or affinity.'

10. Article 1(1) of the Reglamento del seguro obligatorio de responsabilidad civil en la circulación de vehículos a motor (Regulation on compulsory civil liability insurance for the use of motor vehicles), approved by Royal Decree 1507/2008 of 12 September 2008,[8] provides as follows:

'For the purposes of civil liability for the use of motor vehicles and the requirement for insurance, "motor vehicle" means any vehicle intended for travel on land and powered by an engine, including mopeds, special-purpose vehicles, trailers and semi-trailers …'

11. In addition, the Reglamento General de Vehículos (General Vehicle Regulation), approved by Royal Decree 2822/1998 of 23 December 1998,[9] includes in Annex II a list of the classes and categories of vehicles and, in Article 5 of that regulation, classes tractor units and semi-trailers as independent vehicles, even though they can be combined to form an articulated vehicle.

7 BOE No 267 of 5 November 2004, p. 36662.

8 BOE No 222 of 13 September 2008, p. 37487.

9 BOE No 22 of 26 January 1999, p. 3440.

12. According to the case-law of the Tribunal Supremo (Supreme Court, Spain), the vehicles forming an articulated vehicle are jointly and severally liable to the third parties for damage caused by that articulated vehicle. Article 19(2) of the Regulation on compulsory civil liability insurance for the use of motor vehicles then further determines how liability is to be allocated between them:

'Where the two vehicles involved are a tractor unit and the trailer or semi-trailer that is coupled to it, or two trailers or semi-trailers, and it is not possible to determine the extent of their respective liability, each insurer shall contribute to the said obligations in accordance with the provisions established in the agreements between insurance companies; failing that, the insurers' contributions shall be proportional to the amount of the annual insurance premium for each vehicle listed in the insurance policy that has been taken out.'

III. Facts, national proceedings and the question referred

13. On 3 April 2014, a road traffic accident occurred when an articulated vehicle composed of a truck tractor (or tractor unit),[10] and a semi-trailer veered off the road and overturned. The accident was the fault of the driver for having driven the truck tractor without due care.

14. At the time of the accident, the semi-trailer had been leased to Primafrío SL. It was covered for damage to the vehicle under an insurance policy with Ges, Seguros y Reaseguros, SA ('GES'). Third party civil liability cover was provided by Seguros Bilbao. Conversely, the tractor unit belonged to the Portuguese company Doctrans Transportes Rodoviarios de Mercadería Lda. The third party civil liability cover of the tractor unit was provided by the Portuguese company Acoreana, represented in Spain by Van Ameyde España SA ('Van Ameyde' or 'the applicant').

15. Following the accident, GES paid Primafrío EUR 34 977.33 in compensation for the damage to the semi-trailer. Thereafter, on 13 March 2015, GES initiated the main proceedings by lodging a claim against the insurer of the tractor unit, Van Ameyde. By that action, it requested that that insurer be ordered to pay GES the sum of EUR 34 977.33 plus statutory interest. GES claimed that the truck tractor and the semi-trailer were separate vehicles belonging to different owners, each with their own compulsory insurance. Therefore, the semi-trailer could not be considered an item being transported by the truck tractor. It was instead a third party for the purposes of the truck tractor's compulsory civil liability insurance.

16. By decision of 14 July 2016, the Juzgado de Primera Instancia n.º 1 de La Palma del Condado (Court of First Instance No 1, La Palma del Condado, Spain) rejected that claim. That court considered that the circumstances of the case fell within the second of the cover exclusions for compulsory motor vehicle insurance listed in Article 5(2) of the Law on Vehicle Insurance, namely damage to items being transported by the truck tractor. The semi-trailer ought to be deemed 'a load or an item being transported'.

17. GES lodged an appeal before the Audiencia Provincial de Huelva, sección 2.ª (Provincial Court, Huelva, Section 2, Spain). On 22 December 2016, that court allowed the appeal and upheld the claim in full. It held, in essence, that the coverage exclusion in question provided for in Article 5(2) of the Law on Vehicle Insurance referred only to damage suffered by items being transported *in* the insured vehicle rather than to items being transported *by* the insured vehicle. The semi-trailer in this case was being transported 'by' the insured vehicle. It was thus a separate vehicle from the truck tractor itself.

10 Throughout this Opinion, I use the terms 'truck tractor' and 'tractor unit' interchangeably as referring to the same type of device. I acknowledge that, in its question, the referring court refers to 'truck tractor or tractor unit'. However, since it has not been suggested or explained what ought to be the difference, if any, between these two terms, I shall simply assume that they mean the same.

18. The applicant challenged that decision before the Tribunal Supremo (Supreme Court). The applicant maintains that there had been an infringement of Article 5(2) of the Law on Vehicle Insurance. Pursuant to that provision, the damage to the semi-trailer is excluded from the truck tractor's compulsory cover.

19. According to the referring court, Directive 2009/103 does not contain express provisions relating to the manner in which liability must be determined in the event of an accident involving an articulated vehicle composed of separate vehicles. Moreover, national law does not describe either how the insurers of the various vehicles, constituting an articulated vehicle, must allocate liability when damage suffered by one of the vehicles is entirely the fault of the other.

20. Harbouring doubts as to the correct interpretation of Article 5 of the Law on Vehicle Insurance and its effect vis-à-vis the application of Article 3 of Directive 2009/103, the Tribunal Supremo (Supreme Court) decided to stay proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does the final paragraph of Article 3 of [Directive 2009/103], read in conjunction with Article 1 of that directive, preclude an interpretation of national law (Article 5(2) of the [Law on Vehicle Insurance]) which, in cases such as that in the main proceedings, treats damage to the semi-trailer as being excluded from the cover provided by the compulsory insurance for the truck tractor or tractor unit, on the grounds that the semi-trailer is equated with items being transported in the truck tractor or tractor unit, or even that, for the purposes of damage to property, the semi-trailer forms a single vehicle with the truck tractor or tractor unit?'

21. Written observations have been submitted by the applicant, the defendant, the Spanish Government, as well as the European Commission.

IV. Analysis

22. I am perplexed. It is not because I fail to understand that, if a driver of a truck tractor does not drive with due care, he or she is likely to veer off the road and overturn the vehicle, thereby causing damage to property or personal injuries. It is also not because I fail to grasp the underlying legal issue set out with helpful clarity by the referring court: which insurer is supposed to pay for the damage to property caused to the attached semi-trailer in a case where that semi-trailer was being operated as part of an articulated vehicle, where the fault for the overturning of the entire vehicle apparently lies with the driver of the truck tractor, and where each of the elements of the articulated vehicle has a different insurer?

23. I understand that the question raised is certainly inspired by the existing line of case-law of the Court. However, I have difficulty in understanding how exactly the provisions of EU law invoked, or, for that matter, any other provision of Directive 2009/103, would have anything useful to say on the issues raised by the referring court. That difficulty is a result of two fundamental, yet intertwined, factors: the proper scope of that legal instrument and the role of this Court with regard to preliminary rulings.

24. It is fair to admit that, so far, the case-law of the Court in this area has not always remained within those confines. I shall therefore start this Opinion with that latter point, briefly setting out some of the recent case-law in this area and illustrating how, through the apparent interpretation of indeterminate legal concepts contained in Directive 2009/103, in particular the 'use of vehicles', the Court's assessment became gradually more and more factual (A). Next, I shall outline what is, at least in my view, the proper scope of Article 3 of Directive 2009/103, which is concerned with the obligation to insure, and not with deciding on liability in individual cases (B). I will then place those observations in

the broader constitutional context, recalling that the function of this Court is to provide, pursuant to Article 267 TFEU, an *interpretation* of EU law (C). I will conclude with suggesting that, in view of all those elements, EU law does not regulate the specific issue before the national court in the main proceedings (D).

A. The 'use of vehicles'

25. There have been a number of cases in which various provisions of Directive 2009/103, or rather one of its five predecessors,[11] have been the subject of interpretation over the years. However, the specific strand of case-law concerning the interpretation of the concept of 'use of vehicles', contained in the first subparagraph of Article 3 of Directive 2009/103,[12] for the purposes of determining whether a given manoeuvre or use of a vehicle may be subsumed under that concept in a specific case so as to then decide on the liability of a given insurer, started in 2014 with *Vnuk*.[13]

26. Mr Vnuk was storing bales of hay in a loft barn when a tractor, to which a trailer was attached, reversed into the courtyard and struck the ladder on which he was standing. Mr Vnuk fell. Although national law in that case defined the scope of compulsory motor vehicle civil liability insurance in general, the referring court harboured doubts, *given the specific context* of the situation, as to whether it was in fact for the insurance company of the owner of the tractor to compensate Mr Vnuk. The Court was therefore asked whether the concept of 'use of vehicles' needed to be interpreted as 'not extending to the circumstances of [that case], in which the person insured by the defendant struck the applicant's ladder with a tractor towing a trailer while hay was being stored in a hayloft, on the basis that the incident did not occur in the context of a road traffic accident'.[14]

27. The Court held that the concept of 'use of vehicles' covers any use of a vehicle that is consistent with the normal function of that vehicle. Therefore, that concept may cover the manoeuvre of a tractor in the courtyard of a farm in order to bring the trailer attached to that tractor into a barn, as was the case in the main proceedings, which was a matter for the referring court to determine.[15]

28. In *Rodrigues de Andrade*,[16] an agricultural tractor was parked, with its engine running, in order for agricultural workers to use a spray pump as a means of applying herbicide to vines in the vineyard of Mr and Mrs Rodrigues de Andrade. The weight of the tractor, the vibrations produced by the engine and the heavy rainfall caused a landslip. As a consequence, the tractor fell down the terraces and overturned, crushing and killing a worker. The dispute arising out of those unfortunate events was, in essence, focused on determining whether the outstanding compensation to be paid to the spouse of the killed worker was to come from the civil liability insurance of the tractor (the vehicle's insurance) or the civil liability insurance of the owner of the farm covering her liability for occupational accidents. Invoking *Vnuk*, the referring court asked whether the obligation to take out insurance applied solely in cases in which vehicles are moving, or also in cases in which they are stationary but with the engine running.

11 For the list of the five directives that Directive 2009/103 incorporated, consolidated, and repealed, see Article 29 of and Annex I to Directive 2009/103. See also Annex II, containing a correlation table concerning individual provisions.

12 Or previously in Article 3(1) of Council Directive 72/166/EEC of 24 April 1971 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).

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

14 Ibid., paragraph 25.

15 Ibid., paragraph 59 and the operative part of that judgment.

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

29. The Court recalled that the concept of 'use of vehicles' is not limited to road use, in other words, to travel on public roads. Rather, that concept covers any use of a vehicle that is consistent with its normal function.[17] The scope of that concept also does not depend on the characteristics of the terrain on which it was used,[18] and covers any use of a vehicle as a means of transport.[19] The Court then concluded that the concept of 'use of vehicles' did not cover a situation in which an agricultural tractor had been involved in an accident when its principal function, at the time of that accident, was not to serve as a means of transport but to generate, as a machine for carrying out work, the motive power necessary to drive the pump of a herbicide sprayer.[20]

30. *Núñez Torreiro*[21] concerned an officer in the Spanish army who was taking part in night-time military manoeuvres at a military exercise area in Spain. He was a passenger in an all-terrain military vehicle fitted with 'Anibal' wheels, which was travelling in an area for tracked vehicles. The vehicle overturned, causing the officer to suffer various injuries. The referring court queried whether national law provisions that allowed for the exclusion of liability arising from the use of motor vehicles in that situation were compatible with Article 3 of Directive 2009/103.

31. The Court held that the vehicle at issue was being used, at the time when it overturned, in a military exercise area and the fact that access was prohibited to all non-military vehicles in a part of that area which was not suitable for the use of wheeled vehicles did not affect the concept of 'use of vehicles'.[22] Therefore, the Court concluded that Article 3 of Directive 2009/103 needed to be interpreted as precluding national legislation, which specifically made it possible to exclude from compulsory insurance cover injuries and damage that result from the driving of motor vehicles on roads or terrain that are not 'suitable for use by motor vehicles', with the exception of roads or terrain which, although not suitable for that purpose, are nonetheless 'ordinarily so used'.[23]

32. In *BTA Baltic Insurance Company*,[24] the Court was asked whether the concept of 'use of vehicles' also covers a situation where the passenger of a vehicle had opened its door in a supermarket car park and damaged the vehicle parked next to it.

33. In its judgment, the Court explained that the concept of 'use of vehicles' is not limited to the driving of the vehicle, but includes actions which are also normally carried out by passengers.[25] The act of opening the door of a vehicle itself amounted to the use of the vehicle. It was therefore consistent with the function of the vehicle as a means of transport, in so far as it allows persons to get in or out of the vehicle or to load and unload goods which are to be transported in the vehicle or which have been transported in it.[26] Moreover, the fact that a vehicle at the time of an accident is stationary does not, in itself, preclude the use of that vehicle, nor preclude it from falling within the scope of its function as a means of transport.[27] The Court therefore concluded that the concept of 'use of vehicles' covers a situation in which the passenger of a vehicle parked in a car park, in opening the door of that vehicle, scraped against and damaged the vehicle parked next to it.[28]

17 Ibid., paragraph 34.
18 Ibid., paragraph 35.
19 Ibid., paragraph 38.
20 Ibid., paragraph 42 and the operative part of that judgment.
21 Judgment of 20 December 2017, *Núñez Torreiro* (C-334/16, EU:C:2017:1007).
22 Ibid., paragraph 34.
23 Ibid., paragraph 36.
24 Judgment of 15 November 2018, *BTA Baltic Insurance Company* (C-648/17, EU:C:2018:917).
25 Ibid., paragraphs 45.
26 Ibid., paragraph 36.
27 Ibid., paragraph 38.
28 Ibid., paragraph 48 and the operative part of that judgment.

34. In *Línea Directa Aseguradora*,[29] the owner of a new vehicle parked it in a private car park. When he turned on the motor the next day, the car did not move. Later that night, the electric circuit of the vehicle caused it to catch fire. The fire caused damage to the building it was parked in. The issue that arose before the referring court was whether the damage done to the building was to be covered by the car insurance policy (civil liability contracted by the owner of the car in respect of the use of motor vehicles) or by the home insurance policy (civil liability contracted by the owner of the building).

35. In reply, the Court explained that a vehicle is still considered to be used in accordance with its function as a means of transport when it moves and while it is parked between two journeys. Thus, parking a vehicle in a private garage also constitutes use of a vehicle. Therefore, the first paragraph of Article 3 of Directive 2009/103 must be interpreted as meaning that a situation such as that at issue in those proceedings, in which a vehicle parked in a private garage of a building, used in accordance with its function as a means of transport, has caught fire, giving rise to a fire which originated in the electrical circuit of that vehicle and caused damage to that building, even though that vehicle has not been moved for more than 24 hours before the fire occurred, falls within the concept of 'use of vehicles' referred to in that provision.[30]

36. *Bueno Ruiz and Zurich Insurance*[31] involved a car in an apparently poor technical state. It leaked oil and other slippery fluids onto the parking space in a private car park, where it was habitually parked. On 19 September 2015, a large pool of oil gathered on that parking space, apparently spilling over into the surrounding area. The owner of the car parked in the neighbouring parking space slipped on the oil when she was attempting to get into her car. She brought proceedings against both the insurer of the leaking car and the owner of the car personally. With reference to the previous case-law of the Court on the matter, but uncertain as to how far the concept of the 'use of vehicles' in fact reaches, and thus fostering doubts as to who was the liable party in a case such as the present one (the insurer, the car owner, or potentially the car park manager), the national court asked whether Article 3 of Directive 2009/103 precludes an interpretation whereby the compulsory insurance cover includes the loss or injury caused by the dangerous situation created by the leakage of fluid from a vehicle onto the parking space in which it is parked or while the vehicle is being parked, in a private parking space situated in a housing complex, in respect of third-party users of that complex.[32]

37. In reply, the Court recalled that the first subparagraph of Article 3 of Directive 2009/103 is to be interpreted to the effect that a vehicle is used in accordance with its function as a means of transport when it moves and also, in principle, while it is parked between two journeys. The fact that the accident was caused by an oil spill which was produced not only while the car was stationary, but apparently also when it was being started and moved, is not relevant. The movement of a car and its parking in a private car park constitute uses of that vehicle consistent with its function as a means of transport.[33]

38. The examples set out above are merely an illustrative selection of cases delivered by this Court over the past few years on the concept of 'use of vehicles' under Article 3 of Directive 2009/103.[34] The chosen examples are remarkable at two levels. First, with regard to *the specific area of law*, the Court took the term 'use of vehicles' – contained in Article 3 of Directive 2009/103 – albeit in a rather different context and for a different purpose, in order effectively to decide on whether a specific use at the moment of an accident is to be covered by the compulsory insurance of a vehicle

29 Judgment of 20 June 2019, *Línea Directa Aseguradora* (C-100/18, EU:C:2019:517).

30 Ibid., paragraph 48 and the operative part of that judgment.

31 Order of 11 December 2019, *Bueno Ruiz and Zurich Insurance* (C-431/18, not published, EU:C:2019:1082).

32 Ibid., paragraphs 16 to 26.

33 Ibid., paragraphs 40 to 43.

34 See also, for example, judgments of 7 September 2017, *Neto de Sousa* (C-506/16, EU:C:2017:642); of 4 September 2018, *Juliana* (C-80/17, EU:C:2018:661); or my recent Opinion in *Ubezpieczeniowy Fundusz Gwarancyjny* (C-383/19, EU:C:2020:1003), which is currently pending.

(B). Second, at the more *structural and systemic level*, the Court started issuing decisions at a level of abstraction which may call into question whether what the Court is engaged in is in fact uniform *interpretation* of EU law, to be provided by this Court pursuant to Article 267 TFEU, as opposed to the *application* of EU law to concrete cases, which ought to be the role of national courts (C).

B. The proper scope of (Article 3 of) Directive 2009/103

39. Directive 2009/103 is perhaps not the most structurally comprehensive piece of EU legislation. This is due to the fact that that instrument merged five previous directives into one. In this way, the consolidated directive begins directly with 'definitions' rather than setting out, as is usually the case, its own subject matter, aim or scope in an Article 1. Among the opening provisions, the directive first lays down the insurance obligation for civil liability in respect of the use of vehicles (Article 3), which is then supposed to allow the Member States to refrain from making systematic checks on such insurance a condition for entering their territories (Article 4).

40. Directive 2009/103 then goes on to provide for a number of other rules on several issues in its individual chapters. Those chapters largely reflect the previous and now repealed directives:[35] on the one hand, there are provisions relating to the scope of the compulsory insurance of vehicles, exemptions from the obligation to insure, and protection afforded to third parties and victims. On the other hand, most of the other provisions are concerned with institutional and procedural issues: setting up national compensation bodies, linking the EU system to the green card system and the network of national insurers' bureaux, establishing information centres, and procedures for cooperation and settlement procedures amongst those bodies.[36]

41. However, the two key (substantive) provisions of Directive 2009/103, namely Articles 3 and 4, read in the light of recital 2 thereof, in a way set out the overall aim of that instrument: ensuring a high level of protection for victims of motor vehicle accidents and (thereby) the promotion of free movement within the European Union. In other words, in order to require that Member States refrain from carrying out systematic checks on insurance against civil liability vis-à-vis vehicles entering their territory from other Member States,[37] it was considered essential to ensure a high level of protection for potential victims of traffic accidents.[38]

42. Therefore, what ought to be harmonised in the Member States under the first subparagraph of Article 3 of that directive is the *obligation to take out* civil liability insurance in respect of the vehicles normally based in the territory of that Member State. For that purpose, the directive provides a common definition as to what is a 'vehicle' in Article 1(1), outlines what is meant by 'territory' in Article 1(4), and sets out instances in which a Member State may derogate from the obligation to insure in Article 5 for certain categories of vehicles. Moreover, the directive sets out the appropriate documentation required in Article 8, ultimately linking the scope of the duty to insure under Article 3 to the system of compensation by the national compensation body in Article 10. There are also provisions on the minimum amounts to be covered by compulsory insurance (Article 9), special categories of victims (Article 12), exclusion clauses in insurance contracts (Article 13), and single premiums and their coverage (Article 14).

35 See the correlation table in Annex II to Directive 2009/103.

36 See, further, on the complex interaction between the EU system and the green card system, my Opinion in *Lietuvos Respublikos transporto priemonių draudikų biuras* (C-587/15, EU:C:2017:234, points 32 to 53).

37 See Article 4 of Directive 2009/103. See also judgments of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146, paragraph 49), or of 20 June 2019, *Línea Directa Aseguradora* (C-100/18, EU:C:2019:517, paragraph 33 and the case-law cited).

38 The Court has repeatedly pointed out the aim of providing a high level of protection for victims of motor vehicle accidents when interpreting the directives – see, in particular, judgment of 4 September 2018, *Juliana* (C-80/17, EU:C:2018:661, paragraph 47), or, most recently, order of 11 December 2019, *Bueno Ruiz and Zurich Insurance* (C-431/18, not published, EU:C:2019:1082, paragraphs 33 to 34).

43. Thus, it emerges from the purpose and the structure of the directive that what was supposed to be harmonised, in a rather minimalist way,[39] is the *obligation* to take out civil liability insurance in respect of the use of vehicles. In that regard, it has not been, and continues not to be, the aim of that directive to start harmonising the way in which *liability* in individual cases of motor vehicle accidents will be assigned.

44. That said, I readily acknowledge that the two issues are, in a way, interconnected. After all, it is usually in an individual case, often involving the issue of assigning the civil liability in that case, that broader, structural questions as to whether there was a duty to insure in the first place, or whether the national legislation or insurance policies in general comply with other requirements of the directive, may arise. However, these are still two distinct issues. The obligation to take out insurance against civil liability in respect of the use of vehicles is much broader and *general*. It is to be set *ex ante*, based on general and objective criteria, and relatively stable over time. Whether or not the exact circumstances in which a vehicle caused damage, and the function or role it was fulfilling at that very moment, may be covered by a given insurance policy is an *ex post* decision on liability for a given accident.[40]

45. The cases set out in the previous section provide a good illustration in this regard. In those cases, the question that had to be settled was not whether the vehicle which caused the accident was under an obligation to be insured. It would appear that in all those cases the vehicle was in fact insured, and thus the obligation set out in the first subparagraph of Article 3 of Directive 2009/103 was satisfied. Rather, the actual issue was whether the damage caused should be compensated by the compulsory vehicle insurance with regard to the specific accident and the type of activity carried out in the given moment, or whether compensation for that damage should be provided by another insurance or as a matter of personal liability of the person who had caused the damage.

46. However, that type of decision is not governed by Article 3 of Directive 2009/103. In other words, the obligation under Article 3 of that directive is satisfied once there is insurance and, thus, a safety net for victims. Provided that the express, minimal, and general standards set out in other provisions of Directive 2009/103 are complied with, who exactly is responsible for providing the compensation in an individual case for the damage caused, and how, is not an issue regulated by that directive.

47. That is, in my view, the proper scope of the obligation set out in the first subparagraph of Article 3 of Directive 2009/103. Thus, the issues that are potentially to be discussed under that heading, and indeed in particular when interpreting the concepts of 'use' (of vehicles), 'territory' (of a Member State), 'normally based' (in that territory), or the minimum scope and coverage of 'civil liability' contained in that provision, are those connected to the scope and extent of the duty to take out civil liability insurance in general. It is not whether, in the 'particular context' of a given accident, the use of a vehicle in specific factual settings is or is not to be covered by a certain vehicle insurance. That is not only a matter concerning the application of the law, an issue to which I turn in the next section, but equally (or above all) not a matter regulated by Directive 2009/103.

48. In summary, indeterminate legal concepts of EU law, although they might very well be autonomous, are not to be applied outside their proper context, as set out in its text, structure, and purpose. The concept of 'use of vehicles', contained in the first subparagraph of Article 3 of Directive 2009/103, is just an element of the general duty for the Member States to make sure that civil liability in respect of the use of vehicles normally based in their territory is covered by insurance. Neither that

39 For case-law emphasising the minimum harmonisation dimension of the previous and current motor vehicle insurance directives with regard to various elements not expressly covered by the directives, see, for example, judgments of 23 October 2012, *Marques Almeida* (C-300/10, EU:C:2012:656, paragraph 29); of 21 January 2016, *ERGO Insurance and Gjensidige Baltic* (C-359/14 and C-475/14, EU:C:2016:40, paragraph 40); or of 14 September 2017, *Delgado Mendes* (C-503/16, EU:C:2017:681, paragraph 47).

40 See judgment of 4 September 2018, *Juliana* (C-80/17, EU:C:2018:661, paragraph 39). For a detailed discussion, see also my Opinion in *Ubezpieczeniowy Fundusz Gwarancyjny* (C-383/19, EU:C:2020:1003, points 39 and 48).

provision, nor a fortiori one term alone taken out of the context of that provision as a whole, is supposed to provide harmonised guidance for deciding on liability for individual incidents, particularly not once the default obligation to take out civil liability insurance in accordance with that provision is satisfied, and there is no clear conflict with any of the other express provisions of Directive 2009/103.

C. Interpretation versus application of EU law

49. There is another issue which is connected to the previous point and is worth recalling. Pursuant to the first subparagraph of Article 267 TFEU, the Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning the *interpretation* of the Treaties, or the validity or *interpretation* of acts of the institutions, bodies, offices or agencies of the Union. By contrast, the *application* of EU law, be it following the guidance issued by this Court pursuant to Article 267 TFEU, or naturally and in the vast majority of cases without it, is primarily the task of the national courts.

50. Admittedly, application of the law is likely to include certain elements relating to its interpretation. Conversely, interpretation of the law can hardly be carried out in an abstract manner, with no regard for the circumstances of an individual case or individual cases, when assessing the soundness of the interpretation proposed. Thus, it is impossible to state, in abstract terms and in general, exactly where interpretation of the law stops and application of the law begins (and vice versa).

51. Nonetheless, I would suggest that the present case and the cases discussed in section A of this Opinion provide a good and concrete illustration as to when the intervention of this Court is not necessary, certainly not at such level of factual detail previously provided.

52. First and above all, in view of the observations made in section B of this Opinion, any need for interpretation of an indeterminate legal concept provided for in EU law, including the concept of 'use of vehicles' contained in Article 3 of Directive 2009/103, is naturally delimited by the text, context and the purpose of the provision at issue. There is in fact no need to interpret the concept of 'use of vehicles' in order to decide on whether the liability of a given insurer was triggered in the context of a specific accident in the first place.

53. Second, even if one were to assume that the concept of 'use of vehicles' were also to provide for the settlement of individual liability cases and were used to determine whether, in a given moment, the specific use was a normal use of a vehicle, there is only so far (or so low in the level of abstraction) any (normative) legal rule can go in view of the infinite variety of possible factual scenarios. In this sense, the Court has already stated on a number of occasions that the concept of 'use of vehicles' includes *any normal use* of the vehicle which is consistent with its function as a means of transport.[41] Whether such a definition is too broad, too narrow, or somewhat circular, and how exactly it should be refined, may certainly be open to debate. However, unless such a discussion concerning the scope of an EU law notion is expressly and clearly triggered by an order for reference, it is difficult to see how yet another confirmation that the specific situation at issue indeed amounts to another 'use of vehicles' contributes to securing uniform interpretation of EU law across the Union, envisaged by the drafters of the Treaties.

54. It may certainly be suggested that any pronouncement of this Court will secure some degree of uniform interpretation and application of EU law across the Union. That is certainly correct. Indeed, following the Court's judgment in *Línea Directa Aseguradora* for example, it is to be hoped that all situations 'in which a vehicle parked in a private garage of a building, used in accordance with its

41 See already with judgment of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146, paragraph 59), subsequently repeated in all of the judgments outlined above in Section A of this Opinion.

function as means of transport, has caught fire, giving rise to a fire which originated in the electrical circuit of that vehicle and caused damage to that building, even though that vehicle has not been moved for more than 24 hours before the fire occurred',[42] will be treated uniformly across the Union.

55. However, one may reasonably wonder whether this is the kind and level of uniform interpretation that the Court of Justice ought to be concerned with under Article 267 TFEU. It is rather reminiscent of narrow casuistic decision-making a national civil court of first instance would be properly engaged in. Moreover, as experience has shown, such 'factual jurisprudence' cannot but invite additional questions and further need for distinctions:[43] what if the vehicle was parked in a public street and not in a private garage? What if the car has not been moved for a considerably longer period, thus making it, in effect, stationary? What if the fire did not originate in the electrical circuit of the car but somewhere else?[44]

56. Third, the primary role of the Court ought to be the articulation or the refinement of normative, legal *premissa maior* stemming from EU law, to be applied by national courts. The subsumption of the facts of the individual case, the *premissa minor*, and the *conclusion* as to the application of EU law in that particular case, is the task of national courts.

57. Naturally, pursuant to Article 267 TFEU, a national court or tribunal may always make a request for a preliminary ruling. However, as a rule of thumb, with regard to issues already interpreted, the question ought to relate properly to the potential refinement of the EU-law-based *premissa maior* to be applied in the main proceedings (its clarification, narrowing, broadening, providing for an exception and so on). Yet another confirmation that the same, previously articulated *premissa maior* applies to another set of facts, without in any way inviting the re-consideration of the extant *premissa maior*, is a matter of application of EU law, a task entrusted to the national courts.

58. It is fair to admit that those ideal boundaries become somewhat blurred when narrow factual elements are made part of the EU-law-defined *premissa maior*. In such cases, a referring court might in fact be entirely correct in making sure whether new and different factual elements are indeed part of the legal rule that the Court wished to formulate.[45]

59. In order to identify the appropriate level of abstraction, it appears crucial to accept two elements as the starting point: judicial self-restraint and an acceptance towards some degree of permissible diversity. Certainly, the imperative of uniformity and the uniform application of EU law across the whole of the Union has always occupied a central place in the case-law of the Court. However, and rather naturally, it is important to discriminate in that regard between the issues that do in fact matter for that purpose and those that do not, particularly in view of the (by definition) finite judicial resources of the EU Courts.

60. For example, one may imagine a situation in which a passenger of a taxi, in getting out of the taxi from the back seat after having been transported therein, opens the back door without properly checking first and scratches a car passing by at that very moment. Does that amount to a 'use of vehicle' pursuant to Article 3 of Directive 2009/103? Should compensation for the property damage caused be paid by the civil liability insurance of the taxi, and not by the civil liability insurance of the passing car? Or is the passenger of the taxi the one who should be personally liable since he or she did not bother to look properly before opening the door?

42 Judgment of 20 June 2019, *Línea Directa Aseguradora* (C-100/18, EU:C:2019:517, paragraph 48 and the operative part of that judgment).

43 See already Advocate General Jacobs in his Opinion in *Wiener SI* (C-338/95, EU:C:1997:352, point 50), wisely noting that 'detailed answers to very specific questions will not always promote such uniform application. Such answers may merely provoke further questions'.

44 See order of 11 December 2019, *Bueno Ruiz and Zurich Insurance* (C-431/18, not published, EU:C:2019:1082, paragraph 44).

45 See, on this point, in relation to an issue indeed pertaining to Article 3 of Directive 2009/103, namely when the duty to take out civil liability insurance under that provision ends, my Opinion in *Ubezpieczeniowy Fundusz Gwarancyjny* (C-383/19, EU:C:2020:1003).

61. I fail to see how a potential diversity across civil courts in the Union as to how such a case ought to be settled – provided that there would even be an identical case in that regard given the non-exhaustive factual variations and nuances that might justify different results – would be anything this Court should be concerned about. Such a case, unless it incidentally opens up a broader issue of normative incompatibility of national law or practice with any other express provision of EU law, properly pertains to the realm of application of the law. In addition, such a degree of uniformity in terms of homogeneity in outcomes in individual cases is, I would dare to say, a myth. In fact, such uniformity is not even achieved in highly centralised national judicial systems which, in contrast to the role of this Court with regard to preliminary rulings, carry out extensive review of the decisions of the lower courts as to the correct application of the law in individual cases.

62. In sum, there is and there will always be some degree of diversity in the national *application* of EU law, even in harmonised areas. Not only is this permissible, but it is also reasonable and natural. The Court of Justice, seised on a request for a preliminary ruling concerning the interpretation of EU law pursuant to Article 267 TFEU, is called to set the outer limits of that diversity by providing for uniform *interpretation* of EU law, including the indeterminate legal concepts contained therein. However, that interpretation is to remain at an appropriate level of abstraction. Put differently, the task of the Court of Justice under Article 267 TFEU is ensuring uniform interpretation of EU law, aiming at the level of applicable legal rules, not at the level of outcome of each case. That logically entails that even while there is a reasonable degree of uniformity of legal rules, there might be diversity in terms of concrete outcomes.

D. The present case

63. For the reasons set out in the preceding two sections of this Opinion, I essentially agree with the primary argument put forward by the Spanish Government and the submissions of the Commission: Article 3 of Directive 2009/103 *does not preclude* any of the (opposing national) interpretations of Article 5(2) of the Law on Vehicle Insurance, *simply because* the decision on whether, in the circumstances of an individual case, the damage caused to a semi-trailer operating as part of an articulated vehicle will be covered by the civil liability insurance of the truck tractor, or potentially by the civil liability insurance of the semi-trailer, *is not regulated* by the provisions of EU law invoked.

64. That being said, I believe it is appropriate to add three case-specific points in conclusion.

65. First, the fact that Article 5(2) of the Law on Vehicles Insurance is the provision of national law nominally invoked by the referring court in its question, which indeed regulates the 'scope and exclusions' from the compulsory insurance (in general), is of little relevance when placed in the context of the case in the main proceedings. As pointed out by the Spanish Government, national law does contain a specific provision on the distribution of liability with regard to the individual elements of an articulated vehicle in the case of a collision, namely Article 19 of the Regulation on compulsory civil liability insurance for the use of motor vehicles.[46] However, that provision only governs the division of liability in cases of damage caused *to third parties*. Thus, doubts and interpretative divergences in individual cases arose at national level with regard to another situation not provided for in that national (derived) legislation: what if the damage is not caused to a third party, but instead to one unit of the articulated vehicle by another?

66. However, that merely emphasises the fact that the interpretative doubts raised by the referring court, reinforced apparently by the different outcomes reached in national regional courts, relate to the interpretation and application of national rules. I fail to see how anything contained in Article 1 or Article 3 of Directive 2009/103 could assist the referring court in settling that issue of national law.

46 Quoted above, in point 12 of this Opinion.

67. Second, it is not clear how that conclusion would be altered by the reference made to the final subparagraph of Article 3 of Directive 2009/103 in the question submitted by the referring court. That provision reads: 'the insurance referred to in the first paragraph shall cover compulsorily both damage to property and personal injuries'. Similarly to the Commission, I do not see (and the referring court does not explain) how the coverage for damage to property could in any way be compromised or limited by either of the possible interpretations of the national provisions at issue. As far as I understand it, the possibility to recover damage to property in cases such as the present one clearly exists. The obligation to take out civil liability insurance under Article 3 of Directive 2009/103 appears satisfied. It is also not suggested that that coverage would in general terms fall short of any of the other provisions of that directive. The issue is rather who will ultimately be obliged to pay that bill, be it the insurer of the truck tractor or the insurer of the semi-trailer.

68. Third, the same is true if the attention were to shift from Article 3 to Article 1 of the directive, and to the definitions of what is a 'vehicle' and who might be an 'injured party' contained therein, as the question of the referring court implies. In fact, in its submissions, the Commission engaged in such a discussion, wondering whether a semi-trailer, or perhaps rather the owner of such a semi-trailer, could possibly be an 'injured party' within the meaning of Article 1(2) of Directive 2009/103. Those reflections led the Commission to suggest that a damaged semi-trailer is perhaps not the type of victim the protection of which the directive constantly sought to reinforce,[47] thus again wondering how any such exclusion, not even expressly provided for in national law,[48] could compromise the scope of coverage for damage to property required under the final subparagraph of Article 3 of Directive 2009/103.

69. I am much obliged to the Commission for this reflection. It helps to emphasise in actual terms the general point already made above:[49] such issues and considerations fall outside the proper scope of Directive 2009/103. That is evidenced by the logical dissonance (bordering on the bizarre) which reveals itself once one tries to squeeze a situation outside a given legislative framework into that framework. The extant concept and logic simply do not provide for and thus do not fit that situation at all.[50]

70. In summary, provided that the key purpose of Directive 2009/103 is met, namely that in line with the obligation set out in Article 3 of that directive, a Member State has provided for the duty to take out civil liability insurance in respect of the use of vehicles, thereby protecting potential victims of road traffic accidents and thus encouraging free movement across the European Union, the specific conditions of that obligation, and a fortiori the realisation of that liability in individual cases of motor vehicle accidents, remains a matter of application of EU law or, a fortiori, of national law, entrusted to the national courts.

47 The Commission pointed to recitals 21 and 22 of Directive 2009/103 in this regard, indicating that the more likely victims of traffic accidents (intended to be protected by that directive) are in fact physical persons, be it passengers, pedestrians, cyclists, or any other users of the road, but not vehicles as such.

48 Again, in order to arrive at the conclusion that Article 5(2) of the Law on Vehicle Insurance, in a case such as the one in the main proceeding, *excludes* the damage to the semi-trailer to be covered by the insurance policy of the truck tractor, one has to interpret that national provision first. See above, point 9 and points 16 to 17 of this Opinion, outlining the opposing interpretations of that national provision.

49 See above, points 39 to 48 of this Opinion.

50 For another recent illustration of the same phenomenon, see, for example, the judgment of 10 December 2020, *J & S Service* (C-620/19, EU:C:2020:1011).

V. Conclusion

71. I propose that the Court answer the question referred for a preliminary ruling by the Tribunal Supremo (Supreme Court, Spain) as follows:

– Neither the final subparagraph of Article 3 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, nor Article 1(1) or (2) of that directive, provide for any rules regulating the issue of whether national law should treat damage to property caused to a semi-trailer, while it was being operated as part of an articulated vehicle with a truck tractor, as an incident to be covered by the compulsory insurance against civil liability taken out for that truck tractor. That matter is, together with all the other issues not specifically governed by Directive 2009/103, for national law to regulate and for national courts to decide.