



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

10 October 2013*

(Insurance against civil liability in respect of the use of motor vehicles and enforcement of the obligation to insure against such liability — Directive 2009/103/EC — Article 21(5) — Claims representative — Authority to accept service of judicial documents — National rule making the validity of that service conditional on the express grant of an authority to accept it — Interpretation in conformity with Union law)

In Case C-306/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Saarbrücken (Germany), made by decision of 1 June 2012, received at the Court on 26 June 2012, in the proceedings

Spedition Welter GmbH

v

Avanssur SA,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, J. L. da Cruz Vilaça, G. Arestis, J.-C. Bonichot (Rapporteur) and A. Arabadjiev, Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Avanssur SA, by M. Müller-Trawinski, Rechtsanwalt
- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the Portuguese Government, by L. Inez Fernandes and E. Pedrosa, acting as Agents,
- the European Commission, by G. Braun and K.-P. Wojcik, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 May 2013,

gives the following

* Language of the case: German.

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Articles 21(5) of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ 2009 L 263, p. 11).
- 2 The request has been made in proceedings between Spedition Welter GmbH ('Spedition Welter'), a transport company whose registered office is in Germany, and Avanssur SA ('Avanssur'), an insurance company whose registered office is in France, regarding the settlement of a claim.

Legal context

European Union law

- 3 Directive 2009/103 contains the following recitals:

'...

- (20) Motor vehicle accident victims should be guaranteed comparable treatment irrespective of where in the Community accidents occur.

...

- (34) Parties injured as a result of a motor vehicle accident falling within the scope of this Directive and occurring in a State other than that of their residence should be entitled to claim in their Member State of residence against a claims representative appointed there by the insurance undertaking of the responsible party. This solution would enable damage suffered by injured parties outside their Member State of residence to be dealt with under procedures which are familiar to them.

- (35) This system of having claims representatives in the injured party's Member State of residence affects neither the substantive law to be applied in each individual case nor the matter of jurisdiction.

...

- (37) It should be provided that the Member State where the insurance undertaking is authorised should require that undertaking to appoint claims representatives resident or established in the other Member States to collect all necessary information in relation to claims resulting from such accidents and to take appropriate action to settle the claims on behalf and for the account of the insurance undertaking, including the payment of compensation. Claims representatives should have sufficient powers to represent the insurance undertaking in relation to persons suffering damage from such accidents, and also to represent the insurance undertaking before national authorities including, where necessary, before the courts, in so far as this is compatible with the rules of private international law on the conferral of jurisdiction.'

- 4 Article 19 of Directive 2009/103, entitled 'Procedure for the settlement of claims', is worded as follows:

'Member States shall establish the procedure referred to in Article 22 for the settlement of claims arising from any accident caused by a vehicle covered by insurance as referred to in Article 3.

...'

- 5 Under Article 20 of that directive, entitled 'Special provisions concerning compensation for injured parties following an accident in a Member State other than that of their residence':

'1. The object of Articles 20 to 26 is to lay down special provisions applicable to injured parties entitled to compensation in respect of any loss or injury resulting from accidents occurring in a Member State other than the Member State of residence of the injured party which are caused by the use of vehicles insured and normally based in a Member State.

...

2. Articles 21 and 24 shall apply only in the case of accidents caused by the use of a vehicle:

(a) insured through an establishment in a Member State other than the State of residence of the injured party; and

(b) normally based in a Member State other than the State of residence of the injured party.'

- 6 Article 21 of that directive, entitled 'Claims representative', provides:

'1. Each Member State shall take all measures necessary to ensure that all insurance undertakings covering the risks classified in class 10 of point A of the Annex to Directive 73/239/EEC, other than carrier's liability, appoint a claims representative in each Member State other than that in which they have received their official authorisation.

The claims representative shall be responsible for handling and settling claims arising from an accident in the cases referred to in Article 20(1).

The claims representative shall be resident or established in the Member State where he is appointed.

...

4. The claims representative shall, in relation to such claims, collect all information necessary in connection with the settlement of the claims and shall take the measures necessary to negotiate a settlement of claims.

The requirement of appointing a claims representative shall not preclude the right of the injured party or his insurance undertaking to institute proceedings directly against the person who caused the accident or his insurance undertaking.

5. Claims representatives shall possess sufficient powers to represent the insurance undertaking in relation to injured parties in the cases referred to in Article 20(1) and to meet their claims in full.

They must be capable of examining cases in the official language(s) of the Member State of residence of the injured party.

...'

German law

- 7 Directive 2009/103 was transposed into German law by the Law on the supervision of insurance (Versicherungsaufsichtsgesetz) ('the VAG').

- 8 Under Paragraph 7b of the VAG, relating to the claims representative in the context of civil liability for motor vehicles:

‘1. ... [The] insurance undertaking shall designate a claims representative in all the other Member States of the European Union and in the other States which are parties to the Agreement on the European Economic Area. On behalf of the insurance undertaking, the claims representative shall process and manage claims for compensation for personal injury and property damage arising as a result of an accident which occurred in a Member State other than that in which the injured party resides that was caused by the use of a vehicle insured and normally based in a Member State.

2. The claims representative shall be resident or established in the Member State where he is appointed. That claims representative may act for one or more insurance undertakings. He shall possess sufficient powers to represent the insurance undertaking in relation to injured parties and to meet their claims in full. He must be capable of handling cases in the official language or official languages of the State where he is appointed.

3. The claims representative shall gather, in relation to accidents caused by a vehicle insured by that insurance undertaking, all necessary information relating to the settlement of the claims ...’

- 9 The Code of Civil Procedure (Zivilprozessordnung), in the version applicable to the dispute in the main proceedings, provides in Paragraph 171, concerning service via an authorised agent:

‘Service on a representative appointed by formal act shall have the same effect as service on the principal. The representative shall produce a written power of attorney.’

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

- 10 On 24 June 2011, a lorry owned by Spedition Welter was damaged in a motor vehicle accident in the outskirts of Paris (France) by another vehicle, insured by Avanssur.
- 11 At first instance, Spedition Welter sought from the German court compensation in the amount of EUR 2 382.89. Notice of those proceedings was served not on Avanssur, but on its designated representative in Germany, that is to say, AXA Versicherungs AG (‘AXA’).
- 12 That court declared the application inadmissible because it had not been validly served on AXA, which was not authorised to accept service.
- 13 Spedition Welter appealed against that decision before the Landgericht Saarbrücken (Regional Court, Saarbrücken).
- 14 The referring court is of the opinion that the outcome of that appeal depends upon the interpretation to be given of Directive 2009/103. The admissibility of the action brought by Spedition Welter against Avanssur depends on whether Article 21(5) of that directive may be interpreted as meaning that the claims representative is authorised to accept service on behalf of the defendant in the main proceedings. If so, it remains to be determined whether that provision of the directive is unconditional and sufficiently precise for Spedition Welter to rely on it in submitting that Avanssur had granted AXA authority to accept service.

- 15 In those circumstances, the Landgericht Saarbrücken decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘1. Is Article 21(5) of Directive [2009/103] to be interpreted as meaning that the powers of the claims representative include the authority to accept service on behalf of the insurance undertaking, with the result that, in the context of an action for compensation for accidental damage brought by the injured party against the insurance undertaking, service by the court on the claims representative appointed by the insurance undertaking is effective against the insurance undertaking?’

If the answer to Question 1 is in the affirmative:

2. Does Article 21(5) of Directive 2009/103 have direct effect in such a way that the injured party may rely on it before the national court, with the result that the national court must consider service on the claims representative acting as the insurance undertaking’s “representative” as valid service on that undertaking, even though the representative has not been granted authority to accept service by formal act and national law does not establish a statutory authority to accept service in such a case, though service otherwise satisfies all the conditions laid down by national law?’

The questions referred

The first question

- 16 By its first question, the referring court asks in essence whether Article 21(5) of Directive 2009/103 must be interpreted as meaning that the claims representative’s sufficient powers must include authority validly to accept service of judicial documents necessary for proceedings for settlement of a claim to be brought before the court having jurisdiction.
- 17 As a preliminary point, it should be borne in mind that, in determining the scope of a provision of European Union law, its wording, context and objectives must all be taken into account (see Case C-85/11 *Commission v Ireland* [2013] ECR, paragraph 35 and the case-law cited).
- 18 In the present case, whilst, according to the wording of Article 21(5) of Directive 2009/103, the claims representative possesses sufficient powers to represent the insurance undertaking in relation to injured parties and to meet their claims in full, that provision, which thus lays down the purpose of that representation, does not define the exact scope of the powers granted for that purpose.
- 19 In those circumstances, it is important to bear in mind that Directive 2009/103 is intended to guarantee motor vehicle accident victims comparable treatment irrespective of where in the Community accidents occur. To that end, those victims must be entitled to claim in their Member State of residence against a claims representative appointed there by the insurance undertaking of the responsible party.
- 20 According to recital 37 in the preamble to Directive 2009/103, Member States must require those claims representatives to have sufficient powers to represent the insurance undertaking in relation to victims, and also to represent it before national authorities including, where necessary, before the courts, in so far as this is compatible with the rules of private international law on the conferring of jurisdiction.

- 21 It therefore clearly follows from those considerations that the Union legislature intended that, without being able to call into question observance of the rules of private international law, representation of insurance undertakings under Article 21(5) of Directive 2009/103 includes allowing injured parties validly to bring proceedings before national courts for compensation for damage.
- 22 Indeed, as the Advocate General has pointed out in point 25 of his Opinion, it appears from the *travaux préparatoires* to the directives which preceded Directive 2009/103 which that directive consolidated in the field of insurance that the powers enjoyed by the representative of an insurance undertaking in the victim's State of residence had, in the legislature's mind, the objective of including the authority to accept service of judicial documents, albeit to a limited extent since it was not to affect the rules of private international law relating to the conferral of jurisdiction.
- 23 Consequently, within those limits, the claims representative's sufficient powers must include the authority to accept service of judicial documents.
- 24 Excluding that authority would indeed deprive Directive 2009/103 of one of its purposes. As noted by the Advocate General at point 32 of his Opinion, the purpose of the claims representative is specifically, in accordance with Directive 2009/103's stated aims, to make the steps to be taken by accident victims easier, in particular to allow them to make a claim in their own language. It would therefore be contrary to those objectives to deprive those victims, once the preliminary formalities have been carried out directly with the claims representative, and given that they have a direct right of action against the insurance undertaking, of the possibility of serving judicial documents on that representative in order to bring an action for compensation before the court which has international jurisdiction.
- 25 In the light of the foregoing considerations, the answer to the first question is that Article 21(5) of Directive 2009/103 must be interpreted as meaning that the claims representative's sufficient powers must include authority validly to accept service of judicial documents necessary for proceedings for settlement of a claim to be brought before the court having jurisdiction.

The second question

- 26 In the light of the answer given to the first question, an answer must be given to the second question, by which the referring court asks in essence whether, in circumstances such as those of the case in the main proceedings, an individual may rely on Article 21(5) of Directive 2009/103 to establish the validity of the service of a legal document on a claims representative, although that representative was not contractually authorised to accept such service and although national law does not provide statutory authority in such a case.
- 27 In the context of the case in the main proceedings, the referring court is thus seeking to ascertain whether, given the answer to the first question, it must, in order to grant the application of an individual relying on Article 21(5) of Directive 2009/103, decline to apply the provisions of national law which preclude the claims representative from accepting service of judicial documents where no authority has been contractually given.
- 28 In that regard, it should be noted that the question whether a national provision must be disapplied in as much as it conflicts with European Union law arises only if no interpretation of that provision in conformity with EU law proves possible (Case C-282/10 *Dominguez* [2012] ECR, paragraph 23).
- 29 The Court has consistently held that when national courts apply domestic law they are bound to interpret it, so far as possible, in the light of the wording and the purpose of the relevant directive in order to achieve the result sought by the directive and consequently to comply with the third paragraph of Article 288 TFEU. That obligation to interpret national law in a manner consistent with

European Union law is inherent in the system of the Treaty on the Functioning of the European Union, since it permits national courts, for matters within their jurisdiction, to ensure the full effectiveness of European Union law when they determine the disputes before them (see, *inter alia*, Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others* [2004] ECR I-8835, paragraph 114, and *Dominguez*, paragraph 24).

- 30 The principle that national law must be interpreted in a manner consistent with European Union law also requires national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, with a view to ensuring that the directive in question is fully effective and achieves an outcome consistent with the objective pursued by it (see, to that effect, *Dominguez*, paragraph 27, and Case C-42/11 *Lopes Da Silva Jorge* [2012] ECR, paragraph 56).
- 31 In the case in the main proceedings, it is not disputed that Paragraph 7b(2) of the VAG transposes, word for word, Article 21(5) of Directive 2009/103. Those provisions of national law therefore require an interpretation which is consistent with European Union law to the effect that the claims representative is authorised to accept service of judicial documents.
- 32 In the light of the foregoing, the answer to the second question is that, in circumstances such as those of the case in the main proceedings, where national legislation reproduced word for word the provisions of Article 21(5) of the directive, the referring court is required, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, to interpret national law in a way that is compatible with the interpretation given to the directive by the Court.

Costs

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

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

- 1. Article 21(5) of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, must be interpreted as meaning that the claims representative's sufficient powers must include authority validly to accept service of judicial documents necessary for proceedings for settlement of a claim to be brought before the court having jurisdiction.**
- 2. In circumstances such as those of the case in the main proceedings, where national legislation has reproduced word for word the provisions of Article 21(5) of Directive 2009/103, the referring court is required, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, to interpret national law in a way that is compatible with the interpretation given to the directive by the Court.**

[Signatures]