

OPINION OF ADVOCATE GENERAL
MENGOZZI

delivered on 6 September 2011¹

1. It is common practice in the United Kingdom, unlike most of the other Member States of the European Union, for a vehicle insurance policy, while including the details of the vehicle insured, to be a *personal* policy, covering damage caused by the policyholder and by other persons expressly authorised in that policy to drive the vehicle. In the event of an accident caused by an unauthorised driver, the insurance must compensate the victims, as required by European Union ('EU') law, but may then seek reimbursement from the insured person who allowed the unauthorised person to drive.

reimburse the insurer the amount paid to the victims. That means, in actual fact, that he receives nothing from the insurer, for the sum that he must obtain as victim is set off against the sum that he must pay the insurer as a 'negligent' insured. The national court asks the Court of Justice whether such a situation can be reconciled with EU law.

I — Legislative background

2. This case arises out of that particular system of insurance. More especially, the specific feature of the two cases before the court making the reference is that one person is at one and the same time the victim and the insured who has given permission to drive to an unauthorised person who has caused an accident. As victim, he is, as a general rule, entitled to compensation. As an insured person who has given permission to drive to a person who could not [properly] do so, he may, in accordance with national law, be bound to

A — EU law

3. The questions referred to the Court for a preliminary ruling are formulated with reference to Directive 2009/103/EC of the European Parliament and of the Council of

1 — Original language: Italian.

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 ('the Directive').² This directive was not yet in force at the time of the facts on which the national court must rule. It is, however, a consolidating directive that recasts in a single text the provisions of four earlier directives,³ without altering their substance. For convenience, I too shall refer to the consolidated text, every time indicating the corresponding provisions of the earlier texts.

4. Recitals 3,⁴ 14⁵ and 15⁶ in the preamble to the Directive are worded as follows:

'(3) Each Member State must 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 insurance cover are to be determined on the basis of those measures.

...

(14) It is necessary to make provision for a body to guarantee that the victim will not remain without compensation where the vehicle which caused the accident is uninsured or unidentified.

...

2 — OJ 2009 L 263, p. 11.

3 — These are [First] 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); 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); 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), and Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (Fourth motor insurance Directive) (OJ 2000 L 181, p. 65).

(15) It is in the interest of victims that the effects of certain exclusion clauses be limited to the relationship between the insurer and the person responsible for the accident. However, in the case of

4 — Corresponds to recital 2 in the preamble to Second Directive 84/5.

5 — The part reproduced is identical to recital 6 in the preamble to Second Directive 84/5.

6 — Practically identical to recital 7 in the preamble to Second Directive 84/5.

vehicles stolen or obtained by violence, Member States may specify that compensation will be payable by the above-mentioned body.’

of claims by third parties who have been victims of an accident where that statutory provision or contractual clause excludes from insurance the use or driving of vehicles by:

5. Article 3 of the Directive lays down the general duty to ensure that vehicles are insured in respect of civil liability for both damage to property and personal injuries.

(a) persons who do not have express or implied authorisation to do so;

6. Article 12(1)⁷ of the Directive provides:

‘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.’

...

7. The second paragraph of Article 12(3)⁸ of the Directive provides that ‘[t]his Article shall be without prejudice either to civil liability or to the quantum of damages’.

However, the provision or clause referred to in point (a) of the first subparagraph may be invoked against persons who voluntarily entered the vehicle which caused the damage or injury, when the insurer can prove that they knew the vehicle was stolen.

8. Article 13(1)⁹ of the Directive provides that:

...’

‘Each Member State shall take all appropriate measures to ensure that any statutory provision or any contractual clause contained in an insurance policy issued in accordance with Article 3 shall be deemed to be void in respect

9. Article 10¹⁰ of the Directive refers to situations in which the vehicle causing damage or injury is uninsured or unidentifiable. For such cases, the Directive provides that the States are to set up or authorise a body with the task

7 — Corresponds to Article 1(1) of Third Directive 90/232.

8 — Corresponds to the second paragraph of Article 1a of Third Directive 90/232.

9 — The part quoted here corresponds to Article 2(1) of Second Directive 84/5.

10 — Corresponds to Article 1(4) to (7) of Second Directive 84/5.

of providing compensation for the victims of accidents. Article 10(2) is worded as follows:

instance by two different courts with contrary results.

‘Member States may, however, exclude the payment of compensation by that body in respect of persons who voluntarily entered the vehicle which caused the damage or injury when the body can prove that they knew it was uninsured.’

B — *National law*

10. The relevant domestic legislation in this case is the Road Traffic Act 1988 (‘the RTA’). In particular, section 151(8) thereof provides that, when an insurer has become liable to pay an amount in respect of the liability of a person not insured by a policy, he is entitled to recover that amount from the insured person who caused or permitted the use of the vehicle that gave rise to that liability.

II — Facts and questions referred for a preliminary ruling

11. The proceedings pending before the court making the reference arise from the joinder of two separate cases, decided at first

12. The two cases differ in part, but share the essentials from the legal point of view. In both cases, the insured person gave permission to drive the vehicle – a motorcycle in one case and a car in the other – to a person not named in the insurance contract as authorised to drive and, moreover, not covered by insurance of his own. In both cases there occurred an accident in which the insured person, travelling as a passenger, suffered personal injuries.

13. In both cases, the insurance companies concerned refused to pay compensation to the victims, relying on the right given by section 151(8) RTA to recover from the insured person the sums paid in respect of damage or injury caused by an unauthorised person whom the insured person had allowed to use the vehicle. According to the insurers, in cases such as those on which the court making the reference must adjudicate, the duty to compensate victims and the right to seek reimbursement from the insured person cancel out one another, for the victim and the person from whom reimbursement may be sought are one and the same.

14. In that situation, the court making the reference, finding a possible problem of compatibility with EU law, has stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

In particular:

- ‘(1) Are Articles 12(1) and 13(1) of the ... Directive to be interpreted as precluding national provisions the effect of which, as a matter of the relevant national law, is to exclude from the benefit of insurance a victim of a road traffic accident, in circumstances where:
- (a) that accident was caused by an uninsured driver; and
 - (b) that uninsured driver had been given permission to drive the vehicle by the victim; and
 - (c) that victim was a passenger in the vehicle at the time of the accident; and
 - (d) that victim was insured to drive the vehicle in question?
- (i) is such a national provision one which “excludes from insurance” within the meaning of Article 13(1) of the ... Directive?
- (ii) in circumstances such as arising in the present case, is permission given by the insurer¹¹ to the non-insured “express or implied authorisation” within the meaning of Article 13(1)(a) of the ... Directive?
- (iii) is the answer to this question affected by the fact that, pursuant to Article 10 of the ... Directive, national bodies charged with providing compensation in the case of damage caused by unidentified or uninsured vehicles may exclude the payment of compensation in respect of persons who voluntarily enter the vehicle which caused the damage or injury when the body can

11 — The question refers to permission given by the “insurer”. This must, however, be a lapsus calami.

prove that those persons know that the vehicle was uninsured?

victims. As we have seen when considering the applicable provisions, EU law is without prejudice to the domestic legislation of the Member States relating to civil liability and the quantum of damages.

- (2) Does the answer to question 1 depend on whether the permission in question (a) was based on actual knowledge that the driver in question was uninsured or (b) was based on a belief that the driver was insured or (c) where the permission in question was granted by the insured person who had not turned his/her mind to the issue?’

16. In general, analysis of the legal consequences of any event causing damage or injury and linked to the use of a motor vehicle must include two stages. In the first, it must be ascertained whether civil liability has been incurred. If it has, then it is necessary to undertake the second stage of the analysis, regarding the actions of the insurer. It is with this second stage alone that EU law¹² is concerned, on principle and without prejudice to the duty to ensure the effectiveness of the Directive. I may not, however, fail to observe that the distinction between the two stages can, in practice, present certain difficulties, and it is conceivable that the Court may, in the future, be called upon to give further clarification on this point.

III — Concerning the first question referred

A — Preliminary remarks

15. It is to be noted that it is not, in these proceedings, disputed that civil liability has been incurred for the injuries sustained by the

17. The questions raised by the referring court in these proceedings, as their content demonstrates, are more specifically concerned with the second stage mentioned above. The problem to be settled here is not whether civil liability has been incurred,

12 — For two recent cases in which the Court has drawn a distinction, not always easily made, between the provisions of EU law on insurance cover and provisions of domestic law on civil liability, see Case C-484/09 *Carvalho Ferreira Santos* [2011] ECR I-1821, and Case C-409/09 *Ambrósio Lavrador e Olival Ferreira Bonifácio* [2011] ECR I-4955.

but whether the insurer is obliged, and if so within what limits, to pay the amount due by way of compensation. It is, therefore, beyond doubt that the answer to the questions must be sought in the interpretation of the Directive, for the material facts fall within its ambit.

case, to recover from the insured the sums paid to the victims of the accident. Given that insured and victim are one and the same person, non-payment is, according to the insurers, merely the consequence of the immediate offsetting of the sum paid to the victim against the sum that may be recovered from the 'negligent'¹³ insured.

B — *Consideration of the question referred*

18. By its first question, the court making the reference asks the Court of Justice, in essence, whether it is compatible with EU law for provisions of national law to permit an insurer not to pay any compensation to a victim when the three following conditions are met: (a) the accident was caused by a vehicle driven by a person not covered by any insurance; (b) the victim is the insured, and (c) the insured gave the uninsured person permission to drive the vehicle.

19. It must at the outset be observed that the insurers concerned present the situation in terms different from those used by the court making the reference. They stress the fact that the present case does not concern a refusal to pay out or to recognise insurance cover: quite simply, the national legislation authorises insurers, in the particular circumstances of the

20. On the contrary, according to the court making the reference, such a distinction is artificial, and the domestic law is to be interpreted as having the effect – merely – that the insurer pays no compensation to the victim of the accident.

21. Without prejudice to the principle that it is for the court making the reference to interpret its domestic law, I am convinced that, in this case, the reply to be given to the questions is not significantly altered by the adoption of either of the two approaches described above. In any event, in situations such as that brought before the court making the reference, it is contrary to EU law for an insurer to be able to refuse all compensation to the

13 — I would, by the way, observe that, by so construing the facts of the matter, the insurers accept that no problem arises concerning civil liability, but only a problem concerning insurance cover. If civil liability had not been incurred, the insurers could simply refuse payment in reliance on that fact.

victim of an accident for injuries sustained. I shall endeavour below to explain why.

afforded the Member States in the sphere of civil liability: in any case, as I have observed above, the problem of civil liability lies outside the confines of this dispute.

22. As I noted above, it is not the purpose of the EU legislation on civil liability in respect of the use of motor vehicles to harmonise the rules on civil liability of the Member States. That legislation has a more circumscribed, though twofold, object, inasmuch as it is designed to guarantee, on the one hand, the free movement of vehicles and their passengers and, on the other, comparable treatment for the victims of accidents caused by those vehicles, irrespective of where those accidents occurred.¹⁴ In other words, the directive, while leaving, as we have seen, the national legislature some leeway in laying down the rules governing civil liability, at the same time requires victims of accidents to be guaranteed, in any event, if not the same treatment in every Member State (that would have required harmonisation of the rules on liability too, which the legislature preferred instead to avoid), at least a ‘comparable’ standard throughout the territory of the Union. It is not at all clear whether that principle of the Directive can have any effect on the latitude

23. In the present case, the circumstances giving rise to the dispute clearly fall within the situation governed by Article 13(1)(a) of the Directive. The insurers seek to exclude their duty to pay, relying on statutory provisions or contractual clauses based on the fact that the person driving was not authorised to do so. In accordance with the provision cited above, such provisions or clauses are incompatible with EU law.¹⁵ For the purposes of compensation for damage or injury, an owner/insured who was not the driver of the vehicle is indeed to all intents and purposes a ‘third party’ protected by that provision. When an accident occurs, all persons other than the driver who caused it are to be regarded as ‘third parties’.¹⁶ In the words of Advocate General Geelhoed, in that situation ‘the legal relationship between the insured person and the insurer passes to the person causing the loss or injury’.¹⁷

24. What I have just observed is borne out and confirmed by examination of the case-law.

14 — Case C-129/94 *Ruiz Bernáldez* [1996] ECR I-1829, paragraphs 13 and 14; Case C-348/98 *Mendes Ferreira and Delgado Correia Ferreira* [2000] ECR I-6711, paragraphs 23 and 24; and Case C-537/03 *Candolin and Others* [2005] ECR I-5745, paragraph 17.

15 — See also in this regard, point 42 et seq. of this Opinion.

16 — See *Candolin and Others*, cited at footnote 14 (paragraph 33).

17 — Opinion delivered on 10 March 2005 in *Candolin and Others*, cited at footnote 14 (paragraph 54).

25. The court making the reference correctly notes that the events in this case bear a strong resemblance to those in *Candolin and Others*, decided by the Court in 2005.¹⁸ In that case, the Finnish domestic legislation permitted the refusal or limitation of compensation to be paid by insurers to victims of an accident, when the latter had contributed to the causing of the damage or injury: in particular, in *Candolin and Others*, the question concerned several persons, including the owner of the vehicle, who entered that vehicle even though aware that the driver was intoxicated.

27. In that case, it is irrelevant that one of the victims is the owner of the vehicle, travelling as a passenger. The only person to whom the Directive does not in principle give the right to be compensated by the insurer is the driver, whereas all passengers must be covered.²⁰ Consequently, the Court's case-law teaches us that, unless one of the exceptions laid down by the Directive is applicable, the victims of an accident are *always* entitled to be compensated by the insurer. Given that in the present case it is established that the facts are not caught by any of the exceptions expressly provided for by the Directive, application of the *Candolin and Others* case-law tends to confirm that the two insured persons who gave unauthorised persons permission to drive their vehicles are none the less entitled to be compensated for their personal injuries.

26. On that occasion the Court held that domestic legislation of that nature may not be considered compatible with EU law. That is because the EU legislation applicable in a general manner requires victims to be compensated by insurers, and expressly lays down certain exceptions to that obligation that have to be interpreted strictly.¹⁹ As a result, the Court declared that all situations that do not fall within the exceptions provided for by the Directive must lead to compensation for damage or injury sustained by the victims of the accident.

28. It could be objected that in *Candolin and Others* the Court did not indicate who the holder of the insurance policy was, a factual circumstance that is however at the heart of the present case. It is nevertheless to be noted that this aspect does not appear in practice to be relevant, the Court having expressly stated that *the only distinction permitted by the Directive*, when none of the exceptional circumstances mentioned therein that permit

18 — Judgment cited above at footnote 14.

19 — *Candolin and Others*, cited at footnote 14 (paragraph 21).

20 — *Candolin and Others*, cited at footnote 14 (paragraphs 31 to 33).

cover to be excluded applies, *is that between driver and passengers*, and that persons other than the driver are therefore, for the purposes of the Directive, ‘third parties’ entitled to compensation. At all events, it is not clear that the factual circumstances on which the judgment in *Candolin and Others* is based may be distinguished from the typical case in which the owner of the vehicle is also the policyholder.²¹ Nor, moreover, is it to be forgotten that, as we have seen, in most Member States the insurance policy simply covers a vehicle, without specifying who is authorised to drive it.

– or rather, truth to tell, in order to explain its doubts as to the correctness of that judgment – relates to the different treatment that, if the Court’s interpretation is accepted, would be afforded to passengers involved in an accident in a situation like that in the present case, on the one hand, and to passengers who knowingly enter an uninsured vehicle, on the other. While in the present case, if *Candolin and Others* were to be applied, compensation would have to be paid to the insured who permitted an unauthorised person to drive his vehicle, in the case of persons entering a vehicle in the knowledge that it was uninsured Article 10(2) of the Directive allows compensation to be refused.

29. The court making the reference, although recognising the relevance of the Court’s case-law that I have just mentioned, none the less entertains some doubts on that score, which prompted it to refer its questions for a preliminary ruling. I consider, however, that those doubts are groundless, and that *Candolin and Others* constitutes a point of reference in this case too.

30. The main argument raised by the court making the reference in order to cast doubt on the applicability of *Candolin and Others*

31. As regards this alleged difference in treatment, I believe that two observations are called for. In the first place, as noted for example by the Commission too, the situation of an insured vehicle and that of an uninsured vehicle are not comparable. For the uninsured vehicle the Directive provides for obligatory action by bodies designated by the Member States, in order to guarantee in any event a certain level of cover for victims: the rules governing uninsured vehicles may well, therefore, be considered to be exceptional and may consequently differ from the rules applicable to vehicles that are regularly insured.

²¹ — Advocate General Geelhoed, in his Opinion in that case, cited at footnote 17, clearly took that premiss as his point of departure (see point 54 of his Opinion).

32. In the second place, it seems in general somewhat arguable, from the point of view of interpretation, to suggest that a difference in treatment should be made good by reducing the level of protection afforded in the 'privileged' situation, so as to render it equivalent to the level of protection afforded in the 'disadvantaged' situation. Usually, it will happen the other way round, and the interpreter will, if need be, tend if possible to afford treatment, even in the less well protected situation, similar to that afforded in the situation in which the level of protection is higher.

33. In consequence, if the approach proposed by the court making the reference were accepted, that is to say, that the domestic law applicable to the circumstances of the case provides that in cases such as the present the insurer is not bound to compensate the victims, the legislation and the Court's case-law show, clearly and immediately, that EU law precludes any such provisions of domestic law.

34. On the other hand, as I anticipated above, that conclusion would not have to be altered even if the argument, rejected by the referring court but proposed by the insurers, were to be upheld, to the effect that the point at issue is not a refusal to compensate but merely an offsetting of compensation against recovery from the 'negligent' insured.

35. As a matter of fact it is to be borne in mind that, according to the case-law, although in general EU law permits national law to allow the insurer to claim reimbursement from the insured in certain circumstances,²² the laws of the Member States may not negate the effectiveness of the Directive,²³ which is constructed on the foundation of the principle that insurers must always compensate victims other than the driver.²⁴

36. Given that the Directive does not harmonise national rules governing civil liability, it is plain that the circumstances of individual accidents may be taken into consideration, for example in determining the amount of compensation. In any case, any reduction of compensation, in addition to being an exceptional event, must be appraised case by case, and may not be determined according to general, abstract criteria.²⁵ In extreme cases, as the Commission observed at the hearing, the result could be a reduction of the compensation equal to the amount of that compensation, and thus the amount paid would be zero. This must, however, take place on the basis of an appraisal of all the circumstances of the case, and merely permitting an unauthorised

22 — *Ruiz Bernáldez*, cited at footnote 14 (paragraph 23).

23 — *Candolin and Others*, cited at footnote 14 (paragraph 28). See also Case C-356/05 *Farrell* [2007] ECR I-3067, paragraph 34, and *Ambrósio Lavrador and Others*, cited at footnote 12 (paragraph 28).

24 — *Ruiz Bernáldez*, cited at footnote 14 (paragraph 18).

25 — *Candolin and Others*, cited at footnote 14 (paragraphs 29 and 30), and *Ambrósio Lavrador and Others*, cited at footnote 12 (paragraph 29).

person to drive is certainly not enough to reduce compensation to zero. It is to be borne in mind that, according to the Court, a passenger's contribution to the occurrence of his injuries may not authorise excessive reduction of compensation.²⁶

other hand, recover from that insured any sums paid to *other* victims of the same accident. That situation does not, however, seem to me out of keeping with the spirit of the Directive, particularly in the light of the intention of protecting victims.

37. In other words, the necessary consequence of the Court's decisions in this sphere is that Article 12(1) of Directive 2009/103, in conjunction with Article 13(1) thereof, must be held to mean that, when one and the same person is both victim and negligent insured, the first status – that of victim – must prevail over the second. Unless one of the hypotheses applies in which the Directive expressly provides that payment may be refused, the victims of an accident must be compensated.

38. It cannot be denied that that interpretation of EU law, while the only interpretation consonant with the legislation and the case-law, leaves open some areas of inconsistency. It must in particular be acknowledged that although an insurer may not claim reimbursement from a negligent insured of the sums paid to the latter as a victim, it may, on the

C — Concerning the degree of latitude enjoyed by the Member States in the sphere of rules governing civil liability

39. Moreover, it is also to be noted that recent judgments of the Court²⁷ recognising the compatibility with the Directive of the Portuguese legislation regulating civil liability in respect of motor vehicles do not militate against the solution that I have proposed. In certain cases, the Portuguese system of civil liability permits all compensation for victims of road traffic accidents to be excluded: this may happen, in particular, when all fault on the part of the drivers of the vehicles has been excluded.

40. As the Court of Justice pointed out in the judgments in question,²⁸ the point at issue

²⁶ — *Candolin and Others*, cited at footnote 14 (paragraph 29).

²⁷ — I refer to *Carvalho Ferreira Santos and Ambrósio Lavrador and Others*, both cited at footnote 12.

²⁸ — *Carvalho Ferreira Santos*, cited at footnote 12 (paragraph 39), and *Ambrósio Lavrador and Others*, cited at footnote 12 (paragraph 34).

in those cases was whether civil liability had actually been incurred. The issue fell, therefore, within a field that is still to this day, on principle, left to the discretion of the Member States. In contrast, in the present case we start, as I have remarked, from the premiss that liability has been incurred, and that the questions referred relate only to the actions of the insurers: we therefore find ourselves, not within the ambit of a question of civil liability, but within the ambit – regulated by the Directive – of the rules governing the role played by insurers.

to be swiftly dealt with concerns the argument, put forward by the insurers and by the United Kingdom in their written observations, that the ‘authorisation’ mentioned in Article 13(1) of the Directive is authorisation given, not by the insurer but by the insured. In consequence, the contractual clauses of an insurance policy deemed to be void in accordance with Article 13 are, in their opinion, those excluding cover in the case of driving by a person not authorised by the owner. Conversely, the clauses excluding cover when the driver was a person not authorised by the insurer, as in the instant case, would still be applicable.

41. It is also timely to observe that, in the judgments I have just mentioned, the exclusion of civil liability was the result of an appraisal carried out case by case by the national courts. Contrariwise, in the events giving rise to the present case, national law allows insurers to refuse payment generally in all cases in which a person not authorised in the policy has been permitted to drive. A generalised exclusion of this kind would therefore seem to be contrary also, as we have seen, to the duty, set forth in the case-law, to carry out an appraisal case by case.²⁹

43. In my view, that interpretation cannot be accepted.

D — Concerning the ‘authorisation’ referred to in Article 13(1) of the Directive

42. Before I conclude my examination of the first question referred, one last aspect calling

44. In the first place, as has rightly been observed, driving without the owner’s permission usually amounts to theft, and the Directive makes specific provision in Article 13 to cover the field of theft. In particular, in respect of stolen vehicles the States may decide that victims are to be compensated by the national body provided for in Article 10 to guarantee compensation for loss and injuries caused by unidentified or uninsured vehicles, instead of by the insurer. The fact that those

²⁹ — See above, point 36 of this Opinion.

specific provisions relating to theft exist gives grounds for believing that, if the legislature had had in mind only that situation when drafting Article 13(1)(a), it would have indicated it more clearly.

simply covers a vehicle without indicating authorised drivers: in that case, there is ‘implied’ authorisation by the insurer for all potential drivers of the vehicle.

45. In my opinion, in a purposive interpretation of the Directive, having regard to the objective of protecting victims, the provision requiring contractual clauses to be deemed void for excluding insurance cover for want of ‘authorisation’ has to be interpreted broadly, as referring to all situations in which the person driving a vehicle might not drive it, because he had not been authorised by the insurer, or by the owner of the vehicle, or by the insured. In all those cases, insurance cover must none the less be guaranteed, in order to protect the victims, and in principle the insurer may not avoid the duty to make payment.

47. It must also be observed that, as noted by the Commission at the hearing, the clauses referred to in Article 13(1)(a) to (c) of the Directive seem to be mentioned by way of example rather than absolutely, having regard in particular to the case-law holding that the provisions permitting payment by the insurer to be excluded in certain circumstances are derogating provisions to be strictly interpreted.³⁰ On this view, the fact that one type of clause is not expressly mentioned in Article 13 does not mean that it is automatically compatible with the Directive.

E — Conclusion regarding the first question

46. That construction is not shaken by the statement that the authorisation in question may be ‘express or implied’. Contrary to what is maintained by the United Kingdom Government, authorisation given by an insurer, and not only that given by an insured, may be implied. It is to be borne in mind that, as we have seen, in most Member States insurance

48. Bringing my consideration of the first question referred to a conclusion, I suggest that the Court should answer that question by declaring that Articles 12(1) and 13(1) of

³⁰ — *Candolin and Others*, cited at footnote 14 (paragraph 19).

Directive 2009/103 must be interpreted as precluding provisions of domestic law on the basis of which, in circumstances such as those of the present case, an insurer can refuse to compensate a victim if he is an insured carried as a passenger in his own vehicle, which he has permitted a person not covered by the insurance policy to drive.

founded on the idea that the insurer must, in principle, *always* compensate the victims, unless one of the exceptions expressly mentioned in the Directive is applicable. In other words, the insured's psychological situation is irrelevant so far as concerns the necessity of compensating the victims in any case, even when one of them is the 'negligent' insured person.

IV — Concerning the second question referred

49. By its second question, the court making the reference asks the Court of Justice to clarify whether, for the purpose of the answer given to the previous question, the psychological situation of the insured who permitted an unauthorised person to drive is of any relevance: in particular, whether the fact that the insured was, or was not, aware that the person to whom he gave permission to drive the vehicle was uninsured is of any significance.

51. This of course in no way prevents Member States, within the limits described above, from taking into account every factor within the ambit of civil liability, for example, for the purpose of determining the amount that the victims can receive or, in the case of injuries caused to third parties, for the purpose of determining the insurer's right to seek reimbursement.

50. As I have already stated above, the Directive, as interpreted by the case-law, is

52. I therefore propose that the Court should answer the second question referred by declaring that the reply to the first question is not altered by the fact that the insured was or was not aware that the person to whom he gave permission to drive the vehicle was uninsured.

V — Conclusion

53. On the basis of the foregoing considerations, I suggest that the Court should reply as follows to the questions referred by the Court of Appeal:

‘Articles 12(1) and 13(1) 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 precluding provisions of domestic law on the basis of which, in circumstances such as those in the case in the main proceedings, an insurer can refuse to compensate a victim if he is an insured carried as a passenger in his own vehicle, which he has given a person not covered by the insurance policy permission to drive.

It is irrelevant for the purpose of replying to the first question that the insured was or was not aware that the person to whom he gave permission to drive the vehicle was uninsured.’