

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

28 November 2017 (*)

(Reference for a preliminary ruling — Compulsory insurance against civil liability in respect of the use of motor vehicles — Directive 72/166/EEC — Article 3(1) — Concept of ‘use of vehicles’ — Accident on a farm — Accident involving an agricultural tractor that was stationary but with the engine running in order to drive a spray pump for applying herbicide)

In Case C-514/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal da Relação de Guimarães (Court of Appeal, Guimarães, Portugal), made by decision of 23 June 2016, received at the Court on 3 October 2016, in the proceedings

Isabel Maria Pinheiro Vieira Rodrigues de Andrade,

Fausto da Silva Rodrigues de Andrade

v

José Manuel Proença Salvador,

Crédito Agrícola Seguros — Companhia de Seguros de Ramos Reais SA,

Jorge Oliveira Pinto,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, M. Ilešič, L. Bay Larsen, T. von Danwitz, C.G. Fernlund and C. Vajda, Presidents of Chambers, J.-C. Bonichot, A. Arabadjiev (Rapporteur), C. Toader, M. Safjan, D. Šváby and A. Prechal, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Mrs Pinheiro Vieira Rodrigues de Andrade and Mr da Silva Rodrigues de Andrade, by L. Ferreira, advogado,
- the Portuguese Government, by L. Inez Fernandes, M. Figueiredo and S. Jaulino, acting as Agents,
- the Estonian Government, by N. Grünberg, acting as Agent,
- Ireland, by L. Williams, G. Hodge, M. Browne and A. Joyce, acting as Agents, and by C. Toland, Senior Counsel, and G. Gibbons and J. Buttimore, Barristers-at-Law,

- the Spanish Government, by V. Ester Casas, acting as Agent,
- the Latvian Government, by I. Kucina and G. Bambāne, acting as Agents,
- the United Kingdom Government, by G. Brown, acting as Agent, and by A. Bates, Barrister,
- the European Commission, by M. França and K.-P. Wojcik, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 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 to the enforcement of the obligation to insure against such liability (OJ, English Special Edition 1972 (II), p. 360; ‘the First Directive’).
- 2 The request has been made in proceedings between (1) Mrs Isabel Maria Pinheiro Vieira Rodrigues de Andrade and Mr Fausto da Silva Rodrigues de Andrade (together ‘Mr and Mrs Rodrigues de Andrade’), and (2) Mr José Manuel Proença Salvador, Crédito Agrícola Seguros — Companhia de Seguros de Ramos Reais SA (formerly Rural Seguros — Companhia de Seguros SA; ‘CA Seguros’) and Mr Jorge Oliveira Pinto concerning the fact that Mr and Mrs Rodrigues de Andrade were ordered to pay compensation for the loss suffered by Mr Proença Salvador as a result of the death of his wife following an accident involving an agricultural tractor, which occurred on the farm on which she was working.

Legal context

- 3 Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ 2009 L 263, p. 11) repealed the First Directive. However, given the date of the facts of the case in the main proceedings, the case is still governed by the First Directive.
- 4 Article 1 of the First Directive provided:

‘For the purposes of this Directive:

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;

...’
- 5 Under Article 3(1) of that directive:

‘Each Member State shall, subject to Article 4, 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 these measures.’
- 6 Article 4 of that directive provided:

‘A Member State may act in derogation of Article 3 in respect of:

...’

(b) certain types of vehicle or certain vehicles having a special plate; the list of such types or of such vehicles shall be drawn up by the State concerned and communicated to the other Member States and to the Commission.

...’

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

7 Mr and Mrs Rodrigues de Andrade have an agricultural holding in Sabrosa (Portugal).

8 The wife of Mr Proença Salvador, Mrs Maria Alves, was employed by them as a part-time agricultural worker. She was, on that basis, under the orders, direction and control of Mr and Mrs Rodrigues de Andrade.

9 On 18 March 2006, Mrs Alves was applying herbicide to the vines in the vineyard of Mr and Mrs Rodrigues de Andrade on land that was on a slope and terraced.

10 The herbicide was inside a drum with a spraying device mounted on the back part of an agricultural tractor (‘the tractor in question’) and suspended therefrom. The tractor in question was stationary, on a flat track, but with the engine running to drive the spray pump for the herbicide. The weight of the tractor, the vibrations produced by the engine and by the spray pump and the movement, including by Mrs Alves, of the herbicide hose leading from the drum, together with the heavy rainfall that day, caused a landslip which carried the tractor away. The tractor in question fell down the terraces and overturned, reaching the four workers who were applying herbicide to the vines below. Mrs Alves was hit and crushed by the tractor in question, and died as a result.

11 The tractor in question was registered in the name of Mrs Nair Morais da Silva Pinto, the wife of Mr Oliveira Pinto. The latter was Mr and Mrs Rodrigues de Andrade’s farm manager and, as such, Mrs Alves’ immediate superior.

12 Mrs Morais da Silva Pinto had concluded an insurance contract with CA Seguros covering the class of ‘tractors and agricultural machines’.

13 Mrs Pinheiro Vieira Rodrigues de Andrade had taken out insurance with another insurance company covering her liability for occupational accidents. That insurance company paid compensation to Mr Proença Salvador, Mrs Alves’ widower, in respect of the material loss resulting from the accident that caused her death.

14 Mr Proença Salvador also brought an action seeking an order either for Mr and Mrs Rodrigues de Andrade, Mr Oliveira Pinto and Mrs Morais da Silva Pinto, jointly and severally, or CA Seguros — should that company be obliged to cover the claim — to pay damages for non-material loss resulting from the accident.

15 The court of first instance granted Mr Proença Salvador’s application in part. It found Mr Oliveira Pinto and Mr and Mrs Rodrigues de Andrade jointly and severally liable to pay part of the sums claimed, but dismissed the claim against Mrs Morais da Silva Pinto and CA Seguros on the ground that the tractor in question was not involved in a traffic accident capable of being covered by insurance against civil liability in respect of the use of motor vehicles (‘compulsory insurance’), since the accident had not occurred when the tractor at issue was being used as a means of travel.

- 16 Mr and Mrs Rodrigues de Andrade appealed against that judgment to the referring court, the Tribunal da Relação de Guimarães (Court of Appeal, Guimarães, Portugal), arguing that the accident suffered by Mrs Alves occurred while the tractor in question was operating in the course of agricultural work, and therefore had to be covered by the insurance taken out by Mrs Morais da Silva Pinto, irrespective of whether the tractor was stationary, parked or travelling along the track on Mr and Mrs Rodrigues de Andrade's farm. Mr Oliveira Pinto, who also lodged an appeal against that judgment, submits, in particular, that the insurance contract concluded with CA Seguros covers civil liability for damage caused by implements attached to the insured vehicle and resulting from the operation of that vehicle.
- 17 The referring court observes that the first-instance judgment is consistent with the case-law of the Supremo Tribunal de Justiça (Supreme Court, Portugal), according to which, in order for an incident to be classified as a 'traffic accident', the vehicle involved in the accident must be moving when the accident occurs and the damage to third parties must result from that movement.
- 18 The Supremo Tribunal de Justiça (Supreme Court) held in a judgment of 17 December 2015, delivered in a case in which the agricultural tractor that caused the fatal accident was stationary at the material time and only the threshing machine attached to it was operating, that, in so far as that tractor was not travelling or being used for that purpose and, moreover, its only function at the time of the accident was to operate the threshing machine, such an accident could not be classified as a 'traffic accident'.
- 19 The referring court also observes that, in the judgment of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146), concerning a reversing manoeuvre by an agricultural tractor, the Court of Justice held that the concept of 'use of vehicles' encompasses any use of a vehicle that is consistent with the normal function of that vehicle. The circumstances of the case that gave rise to that judgment are such that it may be concluded that the normal function of a vehicle is to be in motion.
- 20 However, the referring court notes that the Court of Justice has not yet ruled on the question whether the concept of 'use of vehicles' also covers the use of a vehicle as a machine generating motive power when the vehicle itself is not travelling.
- 21 The referring court points to the existence of 'mixed' vehicles which can be used both as a means of transport and merely as machines generating motive power, and which are capable, as such, of causing damage to third parties not only when the vehicles are travelling but also when they are being used while stationary as machines generating motive power.
- 22 The referring court therefore queries whether, in the light both of the objective of protecting victims that underlies EU legislation on compulsory insurance, and the need to ensure the uniform application of EU law, it would be justified to exclude from the scope of the concept of 'use of vehicles' cases in which a stationary vehicle is being used in its normal function as a machine generating motive power in order to carry out another task, when such use is capable of causing serious or even fatal accidents.
- 23 In those circumstances, the Tribunal da Relação de Guimarães (Court of Appeal, Guimarães) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Does the obligation, laid down in Article 3(1) of [the First Directive], to have insurance ... apply to the use of vehicles, in any place, be it public or private, solely in cases in which the vehicles are moving, or also in cases in which they are stationary but with the engine running?
- (2) Does the aforementioned concept of use of vehicles, within the meaning of Article 3(1) of [the First Directive], encompass an agricultural tractor, which was stationary on a flat mud track on a farm and was being used, as was usual, in the performance of agricultural work (herbicide spraying in a vineyard), with the engine running to drive the pump in the drum containing the herbicide, and which, in those circumstances, as the result of a landslide caused by the combination of the following factors:

- the weight of the tractor,
- the vibration produced by the tractor’s engine and by the spraying device mounted on the back of the tractor,
- heavy rain,

fell downwards hitting four workers who were carrying out the same task on the lower terraces, causing the death of a worker who was supporting the hose that was being used for spraying?

- (3) If questions 1 and 2 are answered in the affirmative, does this interpretation of the concept of “use of vehicles” in Article 3(1) of [the First Directive] preclude a rule of national law (Article 4(4) of [Decreto-Lei No 291/2007 que aprova o regime do sistema do seguro obrigatório de responsabilidade civil automóvel (Decree-Law No 291/2007 concerning the system of compulsory motor vehicle insurance against civil liability) of 21 August 2007 (“Decree-Law No 291/2007”)] which excludes the obligation to have insurance laid down in Article 3(1) [of that directive] in cases in which vehicles are used for purely agricultural or industrial purposes?

- 24 By letter lodged at the Court Registry on 18 April 2017, Ireland requested, pursuant to the third paragraph of Article 16 of the Statute of the Court of Justice of the European Union, that the Court sit in a Grand Chamber.

Consideration of the questions referred

The first and second questions

- 25 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 3(1) of the First Directive must be interpreted as meaning that the concept of ‘use of vehicles’, referred to in that provision, covers a situation in which a tractor that was stationary on a mud track of a farm and whose engine was running in order to drive the pump of a herbicide sprayer attached to that tractor was carried away by a landslide caused by the combination of several factors, that is to say, the weight of the tractor, the vibrations produced by its engine and by the pump, and heavy rainfall, causing the death of a person working on that farm.
- 26 Underlying those questions is the premiss that the insurance contract referred to in paragraph 12 of the present judgment, which was concluded by Mrs Morais da Silva Pinto and which relates to the tractor in question, is intended to cover only civil liability linked to the use (circulation) of that tractor. On that premiss, the referring court asks whether or not the situation described in the preceding paragraph may be classified as an accident linked to the use of the vehicle in question, within the meaning of Article 3(1) of the First Directive.
- 27 That said, it should be borne in mind that, under Article 3(1) of the First Directive, each Member State is, subject to Article 4 of that directive, to 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.
- 28 As a preliminary point, it should be stated that an agricultural tractor, such as the tractor in question, falls within the definition of ‘vehicle’ in Article 1(1) of that directive, since it corresponds to a ‘motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails’.
- 29 In that regard, it must be noted that that definition is unconnected with the use which is made or may be made of the vehicle in question. Consequently, the fact that a tractor may, in certain circumstances, be used as an agricultural machine has no effect on the finding that such a vehicle corresponds to the concept of ‘vehicle’ in Article 1(1) of the First Directive (judgment of 4 September 2014, *Vnuk*, C-162/13, EU:C:2014:2146, paragraph 38).

- 30 Furthermore, it is evident from the file submitted to the Court that the tractor in question is normally based in the territory of a Member State and is not covered by a derogation adopted pursuant to Article 4 of that directive.
- 31 As regards the concept of ‘use of vehicles’ within the meaning of Article 3(1) of that directive, it should be noted that this cannot be left to the assessment of each Member State but is an autonomous concept of EU law, which must be interpreted in the light, in particular, of the context of that provision and the objectives pursued by the rules of which it is part (see, to that effect, judgment of 4 September 2014, *Vnuk*, C-162/13, EU:C:2014:2146, paragraphs 41 and 42).
- 32 The First Directive is part of a series of directives which came progressively to define the obligations of Member States concerning insurance against civil liability in respect of the use of vehicles. It is apparent from the preambles to that directive and 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) that the aim of those directives is, first, to ensure the free movement of vehicles normally based in the territory of the European Union and of persons travelling in those vehicles and, second, to guarantee that the victims of accidents caused by those vehicles receive comparable treatment irrespective of where in the European Union the accident occurred (see, to that effect, judgments of 9 June 2011, *Ambrósio Lavrador and Olival Ferreira Bonifácio*, C-409/09, EU:C:2011:371, paragraph 23; of 23 October 2012, *Marques Almeida*, C-300/10, EU:C:2012:656, paragraph 26; and of 4 September 2014, *Vnuk*, C-162/13, EU:C:2014:2146, paragraph 50).
- 33 In addition, the development of EU legislation concerning compulsory insurance shows that that objective of protecting the victims of accidents caused by those vehicles has continuously been pursued and reinforced by the EU legislature (see, to that effect, judgment of 4 September 2014, *Vnuk*, C-162/13, EU:C:2014:2146, paragraphs 52 to 55).
- 34 The Court has ruled in that context, in essence, that Article 3(1) of the First Directive must be interpreted as meaning that the concept of ‘use of vehicles’ in that provision is not limited to road use, that is to say, to travel on public roads, but that that concept covers any use of a vehicle that is consistent with the normal function of that vehicle (see, to that effect, judgment of 4 September 2014, *Vnuk*, C-162/13, EU:C:2014:2146, paragraph 59).
- 35 It follows from the foregoing considerations, first, that the scope of the concept of ‘use of vehicles’ does not depend on the characteristics of the terrain on which the motor vehicle is used.
- 36 There is, moreover, nothing in the compulsory insurance directives that would limit the scope of the insurance obligation and of the protection which that obligation is intended to give to the victims of accidents caused by motor vehicles to the use of such vehicles on certain terrain or on certain roads.
- 37 Second, it must be pointed out that the motor vehicles referred to in Article 1(1) of the First Directive are, irrespective of their characteristics, intended normally to serve as means of transport.
- 38 It follows that the concept of ‘use of vehicles’ within the meaning of Article 3(1) of that directive covers any use of a vehicle as a means of transport.
- 39 In that regard, the fact that the vehicle involved in the accident was stationary when the accident occurred does not, in itself, preclude the use of that vehicle at that time from falling within the scope of its function as a means of transport and, therefore, within the scope of the concept of ‘use of vehicles’ within the meaning of Article 3(1) of the First Directive. Furthermore, whether or not its engine was running at the time when the accident occurred is not conclusive in that respect.
- 40 However, in the case of vehicles which, like the tractor in question, are intended, apart from their normal use as a means of transport, to be used in certain circumstances as machines for carrying out work, it is necessary to determine whether, at the time of the accident involving such a vehicle, that vehicle was being

used principally as a means of transport, in which case that use can be covered by the concept of ‘use of vehicles’ within the meaning of Article 3(1) of the First Directive, or as a machine for carrying out work, in which case the use in question cannot be covered by that concept.

41 In this instance, it is apparent from the information provided by the referring court that, at the time of the accident involving the tractor in question, that tractor was being used to generate the motive power required to drive the pump of the herbicide sprayer attached to it for the purpose of applying herbicide to the vines on a farm. Subject to verification, which is a matter for the referring court, it thus appears that such use is principally connected with the function of that tractor as a machine for carrying out work and not as a means of transport, and, therefore, is not covered by the concept of ‘use of vehicles’ within the meaning of Article 3(1) of the First Directive.

42 In the light of the foregoing considerations, the answer to the first and second questions is that Article 3(1) of the First Directive must be interpreted as meaning that the concept of ‘use of vehicles’, referred to in that provision, does not cover a 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.

The third question

43 By its third question, the referring court asks whether Article 3(1) of the First Directive must be interpreted as precluding a rule of national law, such as Article 4(4) of Decree-Law No 291/2007, which excludes from the obligation to have insurance civil liability arising from the use of vehicles ‘for purely agricultural or industrial purposes’.

44 In that regard, it should be noted that, according to settled case-law of the Court, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for the Court to determine enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling from a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 20 July 2017, *Piscarreta Ricardo*, C-416/16, EU:C:2017:574, paragraph 56 and the case-law cited).

45 In the present case, as is apparent from the order for reference, the accident that caused Mrs Alves’ death occurred on 18 March 2006, more than a year before Decree-Law No 291/2007 was adopted.

46 However, it is not apparent from the file submitted to the Court that that decree-law was to have retroactive effect or that the rule laid down in Article 4(4) thereof is applicable to the case in the main proceedings for a different reason. The referring court has not provided any explanation as to why, in this context, it considers that an answer to the third question referred for a preliminary ruling is necessary to enable it to resolve the dispute before it.

47 In addition, it is evident from the written reply from the Portuguese Government to a question put by the Court that it is not Decree-Law No 291/2007, but Decreto-Lei No 522/85 — Seguro Obrigatório de Responsabilidade Civil Automóvel (Decree-Law No 522/85 concerning compulsory motor vehicle insurance against civil liability) of 31 December 1985, as amended, that was applicable *ratione temporis* to the facts of the case in the main proceedings.

48 In those circumstances, it is quite obvious that the third question is hypothetical and, accordingly, inadmissible.

Costs

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

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

Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 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 to the enforcement of the obligation to insure against such liability, must be interpreted as meaning that the concept of ‘use of vehicles’, referred to in that provision, does not cover a 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.

[Signatures]

* Language of the case: Portuguese.