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NORMAL FUNCTION OF A VEHICLE AS A MEANS OF TRANSPORT OR A MACHINE FOR CARRYING OUT WORK IN MOTOR THIRD PARTY LIABILITY INSURANCE WITH SPECIAL REGARD TO THE LATEST RULINGS OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

ABSTRACT

The European law of motor third party liability (MTPL) insurance is based on six directives. The failure of the directives in defining the concept of “use of vehicles” and the transposition of relevant rulings into of the Member States national laws have resulted in different national case-laws. The “use of vehicles” is the main prerequisite for the incurrence of the insurer’s liability concerning the damages awarded to persons harmed and legal positions have been adopted according to which the concept in question refers only to the use of a vehicle that is consistent with its normal function, i.e. as a means of transport in road traffic. This paper discusses the rulings of the Court of Justice of the European Union (CJEU), the highest judicial authority in the EU, regarding their interpretation of the concept of the “use of vehicles” in the Case C-162/13 and generation of legal instability in the EU motor insurance law. In this paper the author analyses the latest rulings of the CJEU in the Case C-514/16 in relation to the contested question whether the concept of “use of vehicles” also covers the use of vehicle as a machine generating motive power when the vehicle itself is not travelling. Considering the justification, and pointing out to the grounds of the judgement of the CJEU in the Case C-514/16, the author considers it necessary to examine the legal aspects of insurance protection and legal consequences of the aforementioned interpretation according to which the compulsory MTPL insurance refers also to damages resulting from the use of a vehicle when the vehicle is out of traffic.

Keywords: *normal function of vehicles, use of a vehicle as a machine, CJEU case law*

1. INTRODUCTION

Civil liability in respect of the use of motor vehicle or the motor third party liability insurance (MTPL insurance) is the oldest and in practice the most widespread insurance in traffic. It's a compulsory¹ contractual property² insurance whose primary goal is to provide protection to third parties (injured parties) relating to the damages that may ensue from the use of a vehicle.³ The precondition for existence of the insurer's liability for damages that have arisen as a consequence of a traffic accident is that the insured person had caused damage to third parties by the use of a vehicle. The European legal framework of MTPL insurance was built with the adoption of the *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*,⁴ by defining the concept of "vehicles"⁵ and outlining the scope of insurance cover in such a way that the "use of vehicles" in EU Member States must be covered by the MTPL insurance. All five Directives on European MTPL insurance (adopted gradually over a period of 30 years)⁶ were consolidated in the codified *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*⁷ which was adopted

¹ More on compulsory liability insurance see Clarke, M. A., *The Law of Insurance Contracts*, Informa, London, 2009, pp. 808-809

² See more Radionov Radenković, N., *Zaštita prava putnika u cestovnom prometu i usluga osiguranja*, Zbornik Pravnog fakulteta u Zagrebu, Vol. 58, No. 1-2, 2008, p. 408; Pavić, D., *Ugovorno pravo osiguranja*, Tectus, Zagreb, 2009, p. 68

³ More on concerns about affordability and availability of compulsory MTPL insurance for most drivers in EU and USA see De Mot, J., Faure, M. G., *Special Insurance Systems for Motor Vehicle Liability*, The Geneva Papers on Risk and Insurance – Issues and Practice, 2014, pp. 569-584

⁴ 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 [1972] OJ L 103, beyond: Directive 72/166/EEC. Directive 72/166/EEC was repealed by the Directive 2009/103/EC (see more Art. 28 (1) of Directive 2009/103/EC)

⁵ "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 (Art.1(1) of Directive 72/166/EEC and Directive 2009/103/EC)

⁶ Mantrov, V., *Clarifying the Concept of Victim in the Motor Vehicle Drivers' Liability Insurance: The ECJ's Judgment in Case C-442/10*, European Journal of Risk Regulation, Vol.3, No. 2, 2012, p. 257. See more Williams, D. B., Johnson, M., *Guide to Motor Insurers' Bureau Claims*, The Law Society, UK, 2012, pp. 5-7

⁷ Council Directive 2009/103/EC 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, [2009] OJ L 263/11, beyond: Directive 2009/103/EC. Directive 2009/103/EC repeals all earlier Directives, yet Directive 72/166/EEC will still be applicable in the case of a traffic accident that occurred at the time it was in

on the legal basis for harmonization in the field of the internal market (Art. 114 TFEU).⁸ The European harmonized substantive rules on the MTPL insurance are embedded in the striving of the European legislator to establish an effective European internal market.⁹ Directive 2009/103/EC requires that each Member State 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,¹⁰ e.g. all motor vehicles in the EU must be covered by the MTPL insurance.¹¹ The starting point of this paper is the analysis of the Court of Justice of the European Union (CJEU) case-law on the interpretation of the rule of “use of vehicles” in accordance to the MTPL insurance cover.

2. CONCEPT OF “USE OF A VEHICLE” IN ACCORDANCE WITH ITS “NORMAL FUNCTION” OR AS A “MACHINE” IN THE CJEU CASE LAW

The issues of liability for damages to third parties by the use of a vehicle and the protection of the injured parties constitute the framework of a system of compulsory MTPL insurance. Since the adoption of Directive 72/166/EC more than 45 years have passed, but nevertheless regular adaptation of its provisions and the provisions of the successive directives continue indicating uncertainty regarding the interpretation of certain legal norms and differing interpretations¹² contributing to the creation of a legal uncertainty. Directive 2009/103/EC provides a minimum harmonization of the rules on compulsory civil liability insurance for road traffic accidents caused by motor vehicles¹³ and although the concept of the

force. See more Daves, J., *A compulsory diet of chicken and eggs: The EU Motor Insurance Directives as a shadow tort regime*, in: Research Handbook on EU Tort Law, Edward Elgar Publishing, UK-USA, 2017, pp. 244-246

⁸ Čapeta, T., *Prometno pravo i politika Europske Unije*, in: Europsko prometno pravo, Pravni fakultet Sveučilišta u Zagrebu, Zagreb, 2011, p. 36

⁹ Van Schoubroeck, C., *Compensation of road traffic accidents under the EU law*, in: 16. Conference Proceedings “Insurance law, Governance and Transparency: Basics of the Legal Certainty”, Palić, 2015, p. 220

¹⁰ Art. 3(1) of Directive 2009/103/EC. A member state may act in derogation of Art. 3 in respect of certain types of 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 European Commission (Art. 4, point (b)) of Directive 77/166/EEC)

¹¹ See more Metzler, M., *Europska načela osiguranja motornih vozila i prometnog prava*, Zbornik 19. Savjetovanja o obradi i likvidaciji automobilskih šteta, Opatija, 2011, pp. 93-104

¹² More on increasing number of errors in interpretation of “use of vehicles” see Marson, J., Ferris, K., Nicholson, A., *Irreconcilable Differences? The Road Traffic Act and the European Motor Vehicle Insurance Directives*, The Journal of Business Law, No. 1, 2017, p. 51, p. 68

¹³ Van Schoubroeck, *op.cit.* note 9, p. 221

“vehicle”¹⁴ is defined by its provisions, this definition does not limit interpretation of the vehicle in relation to the purpose for which the vehicle is used or can be used.¹⁵ The European legislator has not defined the concept of the “use of vehicles”, therefore it has remained unclear whether compulsory insurance could be considered to cover the damages caused by a vehicle in the context of road use alone or that it covers any damage, however connected to the use or the operation of a vehicle, irrespective of the fact whether the situation may be defined as a situation involving road use or not.¹⁶ Realising that the European legislator failed to define the concept “use of vehicles”, since he was unable to specify all the situations that should fall within the definition of that concept within the meaning of Directive 2009/103/EEC, practice has shown that new situations occur daily with regard to legal interpretation of this concept. In view of the fact that, according to some authors, the concept “use” should be interpreted as broadly as possible¹⁷, it is undisputed that the content of this concept should be evaluated by the courts depending on the circumstances of each separate case. Where there is a dispute as to the interpretation of the motor insurance law, in certain circumstances the court can look back at the terms in the Motor Insurance Directives.¹⁸ However, only the CJEU decides on the interpretation of the European law which contributes to the protection and exercise of subjective rights of individuals before the Member States national courts that are bound by that decision, thus ensuring the uniformity of the European law. Failure to give a normative definition of the concept of the “use of vehicles” in the context of the European compulsory MTPL insurance has resulted in different conceptions of the subject term within the national legislations of the EU Member States (e.g. Circulation of vehicle - France, Spain, Italy and Portugal; Use of vehicle - Germany, Austria, Great Britain, Finland, Slovenia, Croatia, etc.)¹⁹ which has directly caused the increasing number of proceedings by

¹⁴ See more, note 5

¹⁵ The broad scope of the term “vehicle” in Directive 2009/103/EC includes all sorts of motorized vehicles, including electric wheelchairs, with the exception of a train, tram or metro because these run on rails (Van Schoubroeck, *op.cit.* note 9, p. 223)

¹⁶ Grubišić Đogić, N., *Direktive EU-a o obveznome osiguranju od građanske odgovornosti za štete od motornih vozila u praksi suda EU-a*, Conference Proceedings Dani hrvatskog osiguranja, 2014, p. 76. See Proceedings from 2015, [http://www.poslovnaucinkovitost.eu/images/uploads/HGKdani_hr_osiguranja_2015.pdf] Accessed 20 March 2018

¹⁷ Ćurković, M., *Komentar Zakona o obveznim osiguranjima u prometu*, Inženjerski biro, Zagreb, 2013, p. 98

¹⁸ See Williams, Johnson, *op.cit.* note 6, p. 5

¹⁹ More on significant disconnect between national and EU law in MTPL insurance see Marson, Nicholson, *op.cit.* note 12, p. 51; Ćurković, M., *Postoji li razlika između pojmova „uporaba motornog vozila“ iz Zakona o obveznim osiguranjima u prometu i „motorno vozilo u pogonu“ iz Zakona o obveznim odnosima*, Hrvatska pravna revija, No. 3, 2012, pp. 26-27

the Member States national courts which made references for a preliminary ruling from the CJEU to interpret or examine validity of the EU laws. The CJEU aims to ensure the uniformity of the EU law appreciating the fact that the Member States national courts are bound by the meaning of its interpretation since it takes the *erga omnes* effect, without prejudging the content of the decision by the national courts in relation to a compensation claim.

2.1. “Use of a vehicle” – “Normal function” (Case C-162/13)

The interpretation of the concept of the “use of vehicles” within the meaning of Art. 3(1) of the Directive 77/166/EEC was considered by the CJEU in the Case C-162/13.²⁰ The aforementioned case is extremely important because it represents a legal void in the Union law that need to be solved by the CJEU because the directives failed to define what can be considered to be an accident caused on road or accident resulting from the use of a motor vehicle, and (at the same time) is covered by the obligation of the MTPL insurance.²¹ Namely, on 13 August 2007, while bales of hay were being stored in the loft of a barn, a tractor to which a trailer was attached, which was reversing in the farm courtyard in order to position the trailer in the barn, struck the ladder on which Mr. Vnuk had climbed, causing him to fall. Mr Vnuk brought an action seeking payment of the sum of EUR 15 944.10 in compensation for his non-pecuniary damage, plus the default interest, against Zavarovalnica Triglav, the insurance company with which the owner of the tractor had taken out compulsory insurance. The insurance company argued that in the case in question the tractor (vehicle) was not used in the context of performing its function in road traffic, but that the tractor was used as a machine inside a private courtyard (so, outside of road traffic).²² The first-instance court and the second-instance court dismissed Mr. Vnuk’s application because in the Slovenian case-law there is no compulsory insurance cover when a vehicle is used as a machine²³ (for example in a farming area), stating that a compulsory insurance policy in respect of the use of a motor vehicle covered damage caused by the use of a

²⁰ Case C-162/13 *Damijan Vnuk v Zavarovalnica Triglav d. d.* [2013] CJEU 2013/C 156/37, OJ C 156/24

²¹ Grubišić Đogić, *op.cit.* note 16, p. 76

²² The insurance company argued that the aforementioned compulsory insurance policy against civil liability does not cover damage caused by the use of a tractor as a machine

²³ It is important to note that Art. 4, point (b) of Directive 72/166/EEC made it possible for the Member State to exclude from insurance 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. It is an exception that provided for the possibility of derogation from provisions of Art. 3 of Directive 72/166/EEC which imposes an obligation of MTPL insurance

tractor as a means of transport, but not damage caused when a tractor is used as a machine or propulsion device.²⁴ Mr. Vnuk appealed to the Supreme Court of the Republic of Slovenia referring to an overly narrow interpretation of the concept of the “use of vehicles” by the Slovenian first-instance and second-instance courts limiting the concept of the “use of vehicles” only to means of travel. While there was no definition of the “use of vehicles” in the Slovenian legislation, the Supreme Court of the Republic of Slovenia was unable to estimate whether the MTPL insurance covers only the damage caused by a vehicle in the context of road use alone or any damage, however connected to the use or the operation of a vehicle, irrespective of whether the situation may be defined as a situation involving road use.²⁵ Therefore, the Supreme Court of the Republic of Slovenia decided to stay the proceedings and to refer the following question to CJEU for a preliminary ruling: “*Must the concept of “the use of vehicles” within the meaning of Article 3(1) of Directive 77/166/EEC be interpreted as not extending to the circumstances of the present 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?*” Until the judgement in the Case C-162/13, most of the European legal systems took the view that MTPL insurance covers only damage caused by the use of a vehicle in road traffic. Hence, the insurance policies taken out insofar have not provided an insurance cover relating to the damages caused as a result of the use of a motor vehicle on private land. But, on 4 September 2014, the Third Chamber of CJEU in the case C162/13 interpreted that it cannot be considered that the European legislature wished to exclude from the protection, granted by those directives, the parties injured in an accident caused by a vehicle in the course of its use, if that use is consistent with the normal function of that vehicle.²⁶ CJEU decided that the concept of “use of vehicles” in Art. 3(1) of Directive 72/166/EEC refers to “any use”²⁷ of a vehicle that is consistent with the normal function of that vehicle. Therefore, MTPL insurance must cover any motor vehicle in its normal use, in any location,²⁸ and reversing a tractor into a hay barn represents normal tractor behaviour and falls under “normal function”.²⁹ Therefore vehicles used in certain locations (also out-

²⁴ This refers to the explanation given by the insurer “...Zavarovalnica Triglav submits that the case in the main proceedings concerns the use of a tractor not in its function as a vehicle for road use, but for work in front of a barn on a farm” (so according to para. 22 Case C-162/13)

²⁵ See more para. 24 Case C-162/13

²⁶ See para. 56 Case C- 162/13

²⁷ It is not about limiting the use of a vehicle solely to its traffic purposes

²⁸ Even beyond a road or public place (Marson, Ferris, Nicholson, *op.cit.* note 12, p. 17)

²⁹ Wiseman, E., *New European ruling means changes to insurance law – but do I really need a policy for my lawnmower,*

side of road traffic) and/or certain activities which might not have been initially understood as being covered, now are clarified as covered by the obligation of insurance cover under the Motor Insurance Directives.³⁰ It is unquestionable what a vehicle is used for or can be used for, so the fact that a tractor to which a trailer is attached and can be used as an agricultural machine, has no effect on the finding that such a vehicle corresponds to the concept of “vehicle” in Art. 3(1) of Directive 72/166/EEC.³¹ Such a position regarding the concept of “vehicle” is considered to be justified by the author. Nevertheless, the author stresses that the main purpose of the use of a vehicle is – circulation, and the main goal of the introduction of compulsory MTPL insurance is to provide protection for victims in road traffic. Furthermore, the author gives support to the position of the modern insurance theory according to which MTPL insurance should provide an insurance cover only for damages caused by the use of a vehicle in road traffic. Consequently, the author considers the judgment in Case C-162/12 to be controversial since it is an accident that didn’t occur in the context of a road traffic and by this decision the concept “use of vehicle” applies beyond a road or public place. The author takes positive note of the parking procedure which can be considered as use that is consistent with normal function of that vehicle (according to Case C-162/13), since the normal use of that vehicle is – circulation. However, the author does not support the argument relating to the place where the damage occurred, i.e. the fact that it is a case of providing insurance cover for damages caused by the use of a vehicle in a private courtyard. This is a case of a broader interpretation of CJEU with respect to “use of vehicles” in Case C-162/13 by means of which the insurance cover is extended to damages caused by the use of a vehicle on private properties, in spite of the fact it is not in conformity with the existing legal provisions, nor with the case-law of most European legal systems. Likewise, according to ruling in Case C-162/13, under the obligation of the MTPL insurance fall all motor vehicles that are a source of danger to third parties, such as “working machines”.³²

[<http://www.telegraph.co.uk/cars/features/new-european-ruling-means-changes-insurance-law-do-really/>] Accessed 20 January 2018

³⁰ The European Consumer Organisation, *Consultation Response of the Review of the Motor Insurance Directive*, p.5,
[http://www.beuc.eu/publications/beuc-x-2017-149_review_of_the_motor_insurance_directive.pdf] Accessed 6 January 2018

³¹ See more explained in para. 37-38 Case C-162/13

³² Ćurković, M., “Uporaba vozila“ u obveznom osiguranju od automobilske odgovornosti – nova definicija pojma u presudi Suda pravde Europske unije od 4. rujna 2014. (C-162/13), Hrvatska pravna revija, No. 10, 2015, p. 43

2.2. “Use of a vehicle” as a machine (Case C-514/16)

The concept of the “vehicle” as defined by the directives does not stipulate using a vehicle for the purposes for which it is usually and/or rarely used or could be used. The definition of the “use of vehicle” in the Case C-162/13 according to which the use of a vehicle refers to the vehicle’s use in accordance with its “normal function” does not necessarily mean “use of a vehicle” for the purposes of circulation.³³ Although the judgement in the Case C-162/13 explained that the normal function of a vehicle is to be in motion, it did not indicate if the concept of the “use of vehicles” also covered the use of a vehicle as a machine generating motive power (machine for carrying out work) when the vehicle itself was not travelling. Addressing the scope of the Directive 2009/103/EC through the interpretation³⁴ in the Case C-162/13 raises challenges to the settled legal concepts in national legislations such as “use” or “circulation” of vehicles, particularly in the instances of vehicles which may also be used not for the transport, in traffic, of persons or goods, but instead as machines or tools of a commercial trade or business.³⁵ The judgement in the Case C-162/13 made possible providing insurance cover also for the damage made by a vehicle which is used as a machine for carrying out work in a private courtyard (!) e.g., it is a case of extension of the compulsory MTPL insurance to private land. It is important to point out that the CJEU in Case C-162/13 provided an explanation for the judgment on the extension of the insurance cover to damages caused by the use of a vehicle in a private courtyard by stating that the case in question was a case of the use of a vehicle in its normal function, i.e. use as a means of transport since the parking procedure of the vehicle should be considered its normal function.

The broad interpretation of the judgment in Case C-162/13 on compulsory MTPL insurance for “any use of a vehicle that is consistent with the normal function of that vehicle” has contributed to the need for a new interpretation before the CJEU already in 2016, namely with respect to dual use vehicles. The issue of dual use vehicles has been considered by the CJEU in the Case C-514/16.³⁶ On

³³ *Ibid.*

³⁴ More on effect of the application of judgement in Case C-162/13 within national law see Daves, *op.cit.* note 7, pp. 250-251

³⁵ BLM Response, *REFIT review of Directive 2009/103/EC relating to motor insurance third party liability*, p. 1, [https://ec.europa.eu/info/law/better.../090166e5b47c4b5a_en] Accessed 10 November 2017

³⁶ Case C-514/16 *Isabel Maria Pinheiro Vieira Rodrigues de Andrade and Fausto da Silva Rodrigues de Andrade v José Manuel Proença Salvador, Crédito Agrícola Seguros – Companhia de Seguros de Ramos Reais SA and Jorge Oliveira Pinto* [2016] CJEU 2018/C 032/04, OJ C 475. Proceeding concerns the fact that Mr. and Mrs. Rodrigues de Andrade were ordered to pay compensation for the loss suffered by Mr 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

23 June 2016, the Court of Appeal - Tribunal da Relação de Guimarães in Portugal made a request for a preliminary ruling concerning interpretation of Art. 3(1) of the Directive 72/166/EEC. In the trial the court concluded that on 18 March 2006 Mrs. Alves was applying herbicide to the vines in the vineyard of Mr. and Mrs. Rodrigues on land that was on a slope and terraced. The herbicide was in a drum with a spraying device mounted on the back part of an agricultural tractor. The tractor was stationary, on a flat track, but with the engine running to drive the spray pump for the herbicide.³⁷ The tractor in question fell down the terrace and Mrs. Alves was hit by the tractor and she died. The court of the first instance concluded “...*the tractor was not involved in a traffic accident capable of being covered by insurance against civil liability in respect of the use of motor vehicles since the accident had not occurred when the tractor at issue was being used as a means of travel*”. Against that judgement Mr. and Mrs. Rodrigues appealed to the Court of Appeal (Tribunal da Relação de Guimarães) arguing that the accident suffered by Mrs. Alves occurred while the tractor was operating in the course of agricultural work and therefore had to be covered by insurance irrespective of whether the tractor was stationary, parked or travelling along the track on farm. The Court of Appeal held that the first-instance judgment was consistent with the case law of the Portugal Supreme Court 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 the third parties must result from that movement. Also, the Court of Appeal observed judgement in the Case C-162/13³⁸ and held it could be considered that the normal function of a vehicle is its being in motion. But, CJEU has not yet ruled on the question whether the concept of the “use of vehicles” also covers the use of a vehicle as a machine generating motive power when the vehicle itself is not travelling.³⁹ The Court of Appeal decided to stay the proceedings and to refer the following questions to the CJEU for a preliminary ruling: 1. Does the obligation, laid down in Art. 3(1) of Directive 72/166/EEC 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 the use of vehicles, within the meaning of Art. 3(1) of Directive 72/166/EEC,

³⁷ The weight of the tractor, the vibrations produced by the engine and by the spray pump and the movement, including Mrs Alves, of the herbicide hose leading from the drum, together with the heavy rainfall that day, caused a landslide which carried the tractor away

³⁸ In Judgement of the CJEU (Third Chamber), 4 September 2014 (Case C-162/13), Digital reports, ECLI:EU:C:2014:2146, concerning a reversing manoeuvre by an agricultural tractor CJEU held that the concept of “use of vehicles” encompasses any use of a vehicle that is consistent with the normal function of that vehicle

³⁹ See Judgment of the CJEU (Grand Chamber), 28 November 2017 (Case C-514/16), Digital reports, ECLI:EU:C:2017:908, para. 20

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?

An agricultural tractor falls within the definition of “vehicle” in Art. 1(1) of the Directive 77/166/EEC since it corresponds to a motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails. In the Case C-162/13 the CJEU has ruled that Art. 3(1) must be interpreted as meaning that the concept of the “use of vehicles” is not limited to road use, e.g. to travel on public roads, but covers any use of a vehicle that is consistent with the normal function of that vehicle. So it is necessary to determine whether at the time of accident a vehicle was being used principally as a means of transport, in which case that use can be within the concept of the “use of vehicles” within the meaning of Art. 3(1), or a machine for carrying out work, in which case the use in question cannot be covered by that concept. In the Case C-514/16 of 28 November 2017 the Grand Chamber of the CJEU points out that Art. 3(1) of the Directive 77/166/EEC *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.*

Taking into account the foregoing explanation of the author’s position concerning the main purpose of the compulsory MTPL insurance and the fact that the damage caused by the use of vehicles in both cases before the CJEU is not a result of the vehicles’ use in road traffic, and in Case C-514/16 the author takes the view that for the abovementioned reasons the applicant’s claim for compensation must be rejected. With regard to the explanation of the decision adopted by the CJEU according to which in the case in question the vehicle used (a tractor) wasn’t used as a vehicle for purposes of circulation but as a machine the author considers this to be an addition to the position taken by the CJEU in Case C-162/13. More precisely, it was emphasised that for granting an insurance cover it was important that the damage occurred with “any use of vehicle that is consistent with the normal function of that vehicle”. In view of the fact that this was not a case of use of a vehicle as a means of transport but that the damage caused was a result of its use as a machine (while his principal function was using as a machine), the damages caused in such a way are not covered by the insurance policy from the compulsory MTPL insurance. The author concurs with that position.

With respect to the “use of a vehicle” as machine it is important to emphasize that the owners of all the vehicles used as machines for carrying out work (which we consider to be vehicles under Art. 3(1) of the Directive 77/166/EEC) shall be required to get an insurance cover in respect of the MTPL insurance if the vehicle in question is normally based in the territory of a Member State which has not excluded that type of vehicle from the scope of that provision.⁴⁰ However, it is also important to conclude that, in relation to the insurance cover for damage caused by the use of a vehicle as a machine for carrying out work, it is necessary to establish that the “normal function” of that vehicle is - circulation, and that vehicle was being used principally as a means of transport.⁴¹ If the vehicle (that is used exclusively as a machine) were to cause damages in road traffic – the author considers that damages caused in such a case would be covered by the insurance policy of compulsory MTPL insurance.

3. “USE OF A VEHICLE“ AND REVIEW OF THE DIRECTIVE 2009/103/EC

While the CJEU judgement in the Case C-162/13 has not defined whether the concept of the “use of vehicles” also covers the use of a vehicle as a machine generating motive power (when the vehicle is not travelling) – the question was raised on the compensation for damages caused by use of “mixed vehicles or dual use vehicles”⁴² when a stationary vehicle is being used in its normal function as a machine generating motive power, and not as a means of transport. In accidents involving dual use vehicles, in its judgement C-514/16 the CJEU concluded that the use of the tractor was principally connected with its function as a machine for carrying out work and that this use is not covered by the concept of the “use of vehicles” within the meaning of the Directive 2009/103/EC⁴³ so, insurer was not liable to pay the compensation for the damage.

Relying on the judgement in the Case C-162/13 and the clarification of the concept of the “use of vehicles” in accordance with its “normal function”, new judicial proceedings that have been brought before the CJEU regarding further interpreta-

⁴⁰ See more Art. 4, point (b) of Directive 72/166/EEC

⁴¹ Relevant is “normal function” of the tractor at the time of the accident. There is no definition what is use “as a means of transport”

⁴² “Mixed” vehicles can be used both as a means of transport and merely as machine generating 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 (see para. 21 Judgement of the CJEU in Case C-514/16)

⁴³ Court of Justice of the European Union, *Press Release No 124/17 - Judgement in Case C-514/16*, [<https://www.juridice.ro/wp-content/uploads/2017/11/CP170124EN.pdf>] Accessed 15 January 2018

tion of the abovementioned concepts indicate that there is still legal uncertainty in that area. It can be assumed that the judgment of the CJEU in the Case C-514/16 will contribute to achieving greater legal certainty, according to which the compulsory MTPL insurance does not provide insurance cover for damage caused by a vehicle whose principal function at the time of an accident was to operate as a machine for carrying out work (not to serve as a means of transport), which indicates that the CJEU wishes to restrict wide interpretation of Art. 3(1) of the Directive 2009/103/EC.

The European Commission is of the opinion that the provision of Art. 3(1) of the Directive 77/166/EEC applies to the use of vehicles, whether as a means of transport or as machines, in any area, both public and private, in which risks inherent in the use of vehicles may arise, whether those vehicles are moving or not.⁴⁴ Since the judgments in the Case C-162/13 and the Case C-514/16 have a significant impact on the insurers, the insurance industry, but also the Member States themselves - the European Commission has launched a public consultation regarding Inception Impact Assessment for reviewing the Directive 2009/103/EC. In these reviews (“Inception Impact Assessment” - REFIT review of Directive 2009/103/EC relating to MPLL insurance)⁴⁵ the European Commission set out 4 options for reviewing the Directive 2009/103/EEC: 1) Do nothing; 2) Create new guarantee schemes; 3) Limit the scope of the Directive 2009/103/EC to the use in traffic; 4) Exclude some types of vehicles from the Directive’s scope.⁴⁶ These reviews focus also on the scope of the Directive 2009/103/EC in relation to the CJEU judgement in the Case C-162/13 – which is the option 3). This is a special field of interest of the initiative which proposes a new provision to limit the Directive’s scope only to accidents caused by vehicles in the context of traffic (the use of traffic could mean where the use of a vehicle is for the transport of persons or goods, whether stationary or in motion, in areas where the public has access in accordance with national law).⁴⁷ Numerous insurers’ associations are against extending MTPL insurance cover to damages caused by the use of a vehicle on private property. More precisely, Insurance Europe and the Council of Bureaux support the proposal set out as option 3) while damage caused as a result of a vehicle being

⁴⁴ See para. 35 Case C-162/13

⁴⁵ Directorate-General for Financial Stability, Financial Services and Capital Markets Union, “*Inception Impact Assessment*” - REFIT review of Directive 2009/103/EC relating to motor insurance third party liability, [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3714481_en] Accessed 17 December 2017

⁴⁶ European Commission Initiative, *Adaptation of the scope of Directive 2009/103/EC on motor insurance*, [http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_fisma_030_motor_insurance_en.pdf] Accessed 3 December 2017

⁴⁷ *Ibid.* p. 3

used for such things as purely agricultural, construction, industrial, motor sports or fairground activities should not be included in the MTPL insurance mandatory cover.⁴⁸ But, the European Commission has still not decided whether it will adopt option 3). Regardless of the option to be chosen for the amendment of the Directive 2009/103/EC, in order to provide legal certainty to victims there must be a uniform interpretation of the scope of the Directive 2009/103/EC by different Member States.⁴⁹

4. CONCLUSION

The need to define the concept of “use of vehicles” within the European legal provisions was stressed by the CJEU judgement in the Case C-162/13 in which the CJEU extends the requirement for compulsory MTPL insurance cover to any use of vehicle irrespective of how or where it is used (even on private land) if that use is consistent with normal function of that vehicle. According to the CJEU ruling in the judgement C-162/13, if a tractor causes damage on private land this damage should be covered by the MTPL insurance because the action (the parking manoeuvre) that the tractor does in a private yard can be considered the “use of a vehicle” according to Art. 3(1) of the Directive 72/166/EEC. The author considers this to be a decision of the CJEU that unnecessarily extends the insurance cover (in addition to the insurance cover for damages caused by the use of a vehicle on public roads and other traffic areas) to damages that are caused by the use of a vehicle inside a private courtyard, i.e. in non-traffic areas that is not consistent with the purpose of introducing compulsory MTPL insurance. The wide interpretation in the judgement C-162/13 (“any use” of a vehicle that is consistent with the normal function of that vehicle) creates legal uncertainty and as a consequence of the aforementioned decision, insurers, as well as the courts, are obliged to change the existing insurance and court practice by extending the MTPL insurance cover also for damages caused by the use of a vehicle outside of road traffic.

Considering the *pro* and *contra* positions regarding the extension or reduction of the insurance cover in respect of the damages caused as consequence of the “normal function” of vehicle use (as a means of transport) or use of vehicle as a machine generating motive power (when the vehicle is stationary), it is undisputed that the

⁴⁸ Insurance Europe and the Council of Bureaux, *Common Response to the EC Inception Impact Assessment (IIA) on the REFIT Review of the Motor Insurance Directive*, p. 2, [https://www.insuranceeurope.eu/sites/default/files/attachments/Joint%20response%20to%20the%20European%20Commission%20inception%20impact%20assessment%20on%20the%20REFIT%20review%20of%20the%20Motor%20Insurance%20Directive_0.pdf] Accessed 10 January 2018

⁴⁹ The European Consumer Organisation, *op.cit.* note 30, p. 6

amendments to the Directive 2009/103/EC will go in the direction of providing insurance cover only in respect of the damages that may arise through the use of a vehicle in traffic (as a means of transport or as a machine) when a vehicle is in motion for the purposes of transport (i.e. in the context of circulation), as the last CJEU judgement in the Case C-514/16 indicates. The author has also taken this position given that the main purpose of introducing compulsory MTPL insurance is precisely the protection of victims in the context of traffic (road traffic). Moreover, the Directive 2009/103/EEC itself seeks to standardise the issues of insurance against civil liability in respect of the use of vehicles which are defined as any motor vehicle intended to travel on land. In both of the cases analysed in this paper the caused damage was not a result of the use of a vehicle in road traffic, therefore the author considers that the national courts should not have addressed the substance of the argument of the following legal issues: whether the parking procedure is considered to be circulation of a vehicle (Case C-162/13); whether the normal function of a vehicle at the moment of the accident was circulation or its use as a machine (Case C-514/16). However, since the contested case was a subject of discussion of the CJEU due to the raised issues regarding the interpretation of the concept “use of vehicle” as a legal standard, CJEU has analysed in detail each and every position taken by the parties to the proceedings. By accepting the CJEU’s view that parking a tractor represents a normal function of a vehicle (Case C-162/13), the author has elaborated the reasons for which she does not justify providing insurance cover for damages caused by the use of a vehicle inside a private courtyard and by the same analogy explaining the damages that can be caused by the use of a vehicle in a vineyard (Case C-514/16). In relation to the above analysed decisions of the CJEU the author concurs that it is important to establish the “principal function of the vehicle at the time of accident”, but considers it necessary to make amendments as soon as possible to Directive 2009/103/EC by defining the concept “use of vehicles” since this cannot be left to individual Member States to determine. Accordingly, this would contribute to achieve a uniform interpretation of the content of the Directive 2009/103/EC in the legal systems of various Member States ensuring legal certainty to victims.

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