



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

15 December 2016 *

(Reference for a preliminary ruling — Insurance against civil liability in respect of the use of motor vehicles and enforcement of the obligation to insure against such liability — Directive 2000/26/EC — Article 4(5) — Insurance undertaking — Claims representative — Sufficient powers of representation — Notifications of proceedings before the courts)

In Case C-558/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal da Relação do Porto (Portugal), made by decision of 29 September 2015, received at the Court on 2 November 2015, in the proceedings

Alberto José Vieira Azevedo,

Maria da Conceição Ferreira da Silva,

Carlos Manuel Ferreira Alves,

Rui Dinis Ferreira Alves,

Vítor José Ferreira Alves,

v

CED Portugal Unipessoal Lda,

Instituto de Seguros de Portugal – Fundo de Garantia Automóvel

intervening parties:

Instituto de Seguros de Portugal — Fundo de Acidentes de Trabalho

THE COURT (Sixth Chamber),

composed of J.-C. Bonichot (Rapporteur), acting as President of the Chamber, A. Arabadjiev and S. Rodin, Judges

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: Portuguese.

after considering the observations submitted on behalf of

- the Instituto de Seguros de Portugal — Fundo de Garantia Automóvel, by G. Ribeiro and T. Andrade, advogados,
- the Portuguese Government, by L. Inez Fernandes and M. Figueiredo and by M. Rebelo, acting as Agents,
- the European Commission, by P. Costa de Oliveira and K.-P. Wojcik, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 October 2016,

gives the following

Judgment

- 1 The request for a preliminary ruling relates to the interpretation of Article 4(4), 4(5) and 4(8) of 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) as amended by Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 (OJ 2005 L 149, p. 14) ('Directive 2000/26').
- 2 The present application was brought in the course of proceedings between Alberto José Vieira de Azevedo and Maria da Conceição Ferreira da Silva as well as Carlos Manuel Ferreira Alves, Rui Dinis Ferreira Alves and Vítor José Ferreira Alves, of the one part, and CED Portugal Unipessoal Lda ('CED') and the Instituto de Seguros de Portugal — Fundo de Garantia Automóvel ('the Motor Vehicle Guarantee Fund'), of the other, concerning the possibility of bringing an action before the courts against CED, the representative of the insurer of the owner of the vehicle which caused a traffic accident.

Legal context

EU law

- 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), codified five directives which had been adopted in order to approximate the laws of Member States relating to compulsory motor insurance.
- 4 However, since the facts which gave rise to the dispute in the main proceedings occurred in the course of 2007, prior to the entry into force of Directive 2009/103, the relevant legal framework remains that constituted in particular by Directive 2000/26.
- 5 According to recital 8 of the preamble to Directive 2000/26, the EU legislature intended to guarantee injured parties suffering loss or injury as a result of a motor vehicle accident comparable treatment irrespective of where in the Community the accident occurred.

6 Moreover, Directive 2000/26 contains the following recitals:

- ‘(10) This entails giving the injured party a direct right of action against the insurance undertaking of the responsible party.
- (11) One satisfactory solution might be for injured parties suffering loss or injury as a result of a motor vehicle accident falling within the scope of this Directive and occurring in a State other than that of their residence to be entitled to claim in their Member State of residence against a claims representative appointed there by the insurance undertaking of the responsible party.
- (12) This solution would enable damage suffered by injured parties outside their Member State of residence to be dealt with under procedures which are familiar to them.
- (13) This system of having claims representatives in the injured party’s Member State of residence affects neither the substantive law to be applied in each individual case nor the matter of jurisdiction.
- (14) The existence of a direct right of action for the injured party against the insurance undertaking is a logical supplement to the appointment of such representatives and moreover improves the legal position of parties injured as a result of motor vehicle accidents occurring outside their Member State of residence.
- (15) In order to fill the gaps in question, it should be provided that the Member State where the insurance undertaking is authorised should require the undertaking to appoint claims representatives resident or established in the other Member States to collect all necessary information in relation to claims resulting from such accidents and to take appropriate action to settle the claims on behalf and for the account of the insurance undertaking, including the payment of compensation therefor; claims representatives should have sufficient powers to represent the insurance undertaking in relation to persons suffering damage from such accidents, and also to represent the insurance undertaking before national authorities including, where necessary, before the courts, in so far as this is compatible with the rules of private international law on the conferral of jurisdiction.
- (16) The activities of the claims representative are not sufficient in order to confer jurisdiction on the courts in the injured party’s Member State of residence if the rules of private international law on the conferral of jurisdiction do not so provide.
- (16a) Under Article 11(2) read in conjunction with Article 9(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [(OJ 2001 L 12, p. 1)], injured parties may bring legal proceedings against the civil liability insurance provider in the Member State in which they are domiciled.

...’

7 Under the first subparagraph of Article 1(1) of Directive 2000/26:

‘The objective of this Directive is to lay down special provisions applicable to injured parties entitled to compensation in respect of any loss or injury resulting from accidents occurring in a Member State other than the Member State of residence of the injured party which are caused by the use of vehicles insured and normally based in a Member State.’

8 Article 3 of that directive provides that each Member State is to ensure that injured parties referred to in Article 1 thereof in accidents within the meaning of that provision enjoy a direct right of action against the insurance undertaking covering the responsible party against civil liability.

9 Article 4 of that directive, entitled ‘Claims representatives’, provides:

‘1. Each Member State shall take all measures necessary to ensure that all insurance undertakings covering the risks classified in class 10 of point A of the Annex to [Council] Directive 73/239/EEC [of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJ 1973 L 228, p. 3)], other than carrier’s liability, appoint a claims representative in each Member State other than that in which they have received their official authorisation. The claims representative shall be responsible for handling and settling claims arising from an accident in the cases referred to in Article 1. The claims representative shall be resident or established in the Member State where he is appointed.

...

4. The claims representative shall, in relation to such claims, collect all information necessary in connection with the settlement of the claims and shall take the measures necessary to negotiate a settlement of claims. The requirement of appointing a claims representative shall not preclude the right of the injured party or his insurance undertaking to institute proceedings directly against the person who caused the accident or his insurance undertaking.

5. Claims representatives shall possess sufficient powers to represent the insurance undertaking in relation to injured parties in the cases referred to in Article 1 and to meet their claims in full. They must be capable of examining cases in the official language(s) of the Member State of residence of the injured party.

6. The Member States shall create a duty, backed by appropriate, effective and systematic financial or equivalent administrative penalties, to the effect that, within three months of the date when the injured party presented his claim for compensation either directly to the insurance undertaking of the person who caused the accident or to its claims representative,

- (a) the insurance undertaking of the person who caused the accident or his claims representative is required to make a reasoned offer of compensation in cases where liability is not contested and the damages have been quantified, or
- (b) the insurance undertaking to whom the claim for compensation has been addressed or his claims representative is required to provide a reasoned reply to the points made in the claim in cases where liability is denied or has not been clearly determined or the damages have not been fully quantified.

Member States shall adopt provisions to ensure that where the offer is not made within the three-month time-limit, interest shall be payable on the amount of compensation offered by the insurance undertaking or awarded by the court to the injured party.

...

8. The appointment of a claims representative shall not in itself constitute the opening of a branch within the meaning of Article 1(b) of [Council] Directive 92/49/EEC [of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ 1992 L 228, p. 1)] and the claims representative shall not be considered an

establishment within the meaning of Article 2(c) of [Council] Directive 88/357/EEC [of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC (OJ 1988 L 172, p. 1)] or:

...

— an establishment within the meaning of Regulation (EC) No 44/2001 ...'

Portuguese law

10 Directive 2000/26 was transposed into Portuguese law by Decreto-Lei No 72-A/2003 — Lei do Seguro Obrigatório (Decree-Law No 72-A/2003, enacting the Law on Compulsory Insurance) of 14 April 2003, amending, on the one hand, Decreto-Lei No 522/85 — Seguro Obrigatório de Responsabilidade Civil Automóvel (Decree-Law No 522/85 compulsory insurance against civil liability in respect of the use of motor vehicles) of 31 December 1985, and, on the other, Decreto-Lei No 94-B/98 — Regula as condições de acesso e de exercício da actividade seguradora e resseguradora no território da Comunidade Europeia (Decree-Law No 94-B/98, governing access to and exercise of the business of insurance and reinsurance within the territory of the European Community) of 17 April 1998.

11 Article 43 of Decree Law No 522/85, as amended by Decree Law No 72-A/2003, provides as follows:

'1. Insurance undertakings established in Portugal, as well as the branches in Portugal of undertakings with a seat outside the territory of the European Community, authorised to provide "motor vehicle insurance cover against civil liability, other than carrier's liability", shall be free to choose a representative in each of the Member States for the processing and settling, in the country in which the victim is resident, of claims arising in a State other than the victim's State of residence ("claims representative").

2. The claims representative, who must be resident or established in the Member State for which he has been appointed, may act on behalf of one or more insurance undertakings.

3. Claims representatives shall possess sufficient powers to represent the insurance undertaking in relation to injured parties in the cases referred to in Article 1 and to meet their claims in full. They must be capable of examining cases in the official language(s) of the Member State of residence of the injured party.

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

...'

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

12 On 17 October 2007, on a Spanish motorway, a road traffic accident involving a rental vehicle insured in Spain by Helvetia Companhia Suíza, S.A. de Seguros y Reaseguros ('Helvetia') resulted in the death of Mr Luis de Sousa Alves and personal injuries to Mr Vieira de Azevedo, both Portuguese nationals.

- 13 Mr Vieira de Azevedo and the wife and children of Mr de Sousa Alves brought actions for compensation for the damage suffered before the Instância Central Cível da Comarca do Porto-Este (Penafiel) (Regional Court of Penafiel, Portugal). The proceedings were brought against, on the one hand, CED, representative for Helvetia in Portugal, and, on the other, subsidiarily, the Motor Vehicle Guarantee Fund.
- 14 That court found that CED and, consequently, the Motor Vehicle Guarantee Fund, did not have capacity to be sued, and dismissed the actions.
- 15 Mr Vieira de Azevedo and the wife and children of Mr de Sousa Alves lodged an appeal against the decision dismissing those actions with the Tribunal da Relação do Porto (Court of Second Instance, Porto, Portugal). They submit that CED, as the representative of Helvetia in Portugal, did have capacity to be sued in the Portuguese courts for the purpose of the award of compensation for the damage suffered.
- 16 The referring court asks whether the representatives of insurance companies engaged in business abroad, as appointed under Article 4 of Directive 2000/26 and who must have sufficient powers for the management and settlement of claims are, moreover, entitled to be sued before a court by national citizens.
- 17 In those circumstances, the Tribunal da Relação do Porto (Court of Second Instance, Porto) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘1. Do recital 16a and [paragraphs 4, 5 and 8 of] Article 4 [of Directive 2000/26] ... permit a writ to be served on the representative of an insurance company which does not operate in the country in which an action for damages in respect of a road traffic accident is brought on the basis of compulsory civil liability motor insurance that has been taken out in another European Union Member State?
2. If the first question is answered in the affirmative, does the question whether such a writ may be served depend on the specific terms of the representation agreement between the representative and the insurer?’

Consideration of the questions referred

The first question

- 18 By its first question, the referring court asks, in essence, whether Article 4 of Directive 2000/26 must be interpreted as requiring Member States to provide that the claims representative appointed pursuant to that article may itself be sued, instead of the insurance undertaking which it represents, in the national court before which an action for damages was brought by an injured party falling within the scope of Article 1 of that directive.
- 19 As a preliminary point, it should be recalled that, in order to determine the scope of a provision of EU law, its wording, context and objectives must all be taken into account (judgment of 10 October 2013, *Spedition Welter*, C-306/12, EU:C:2013:650, paragraph 17).
- 20 According to Article 4(1) of Directive 2000/26, each Member State is to take all measures necessary to ensure that all insurance undertakings covering the risks of the use of motor vehicles operating on land designate, in each Member State other than the one in which they have received their official authorisation, a claims representative responsible for handling and settling claims arising from an

accident in the cases referred to in Article 1 of that Directive. Of themselves, those provisions do not entail that that representative may be sued in national courts instead of the insurance undertaking it represents.

- 21 Nor does the possibility of bringing an action against the claims representative follow from the provisions of Article 4(4) of Directive 2000/26, according to which the claims representative is to collect all necessary information in connection with the settlement of the claims in question and take all measures necessary to negotiate a settlement. By those provisions, the EU legislature merely set out the claims representative's tasks in the context of a negotiated settlement of claims, without referring to possible judicial proceedings.
- 22 Article 4(4) of Directive 2000/26, in also stating that the injured party or his insurance undertaking is not precluded, merely because a claims representative has been appointed, from instituting proceedings directly against the person who caused the accident or his insurance undertaking, simply entails that any proceedings brought against that representative are not exclusive in nature and does not contain, of itself, any acknowledgment that it may be possible to bring proceedings directly against that representative.
- 23 Whilst, according to the wording of Article 4(5) of Directive 2000/26, the claims representative possesses sufficient powers to represent the insurance undertaking in relation to injured parties and to meet their claims in full, that provision, which thus lays down the purpose of that representation, does not define the exact scope of the powers granted for that purpose (see, to that effect, judgment of 10 October 2013, *Spedition Welter*, C-306/12, EU:C:2013:650, paragraph 18).
- 24 Moreover, the first subparagraph of Article 4(6) of Directive 2000/26, which defines the rules for the processing of claims submitted to the insurance undertaking of the person who caused the accident or to its claims representative, refers only to the sole phase of the compensation procedure following which the offer of compensation or the refusal to make such an offer is finalised, without in any way governing a possible judicial phase. That provision does not therefore make it possible to determine the capacity that the claims representative may have in such a judicial phase.
- 25 It is important, in contrast, to note that under the second subparagraph of the same Article 4(6) of Directive 2000/26, Member States are to adopt provisions to ensure that where the offer is not made within the three-month time-limit, interest shall be payable on the amount of compensation offered by the insurance undertaking or awarded by the court to the injured party. It follows from that provision that, notwithstanding the possibility of bringing a claim for compensation against the representative of the insurance undertaking, the offer of compensation in short comes from that undertaking, subject to the award of compensation, where applicable, by the court.
- 26 It must therefore be noted that, in the non-judicial phase of that compensation scheme, the claims representative does not in any way act as a substitute for the undertaking it represents and merely acts as an intermediary, which is necessarily more limited in scope. Such an outcome in the judicial phase is inevitable unless the EU legislature provides otherwise; no alternative outcome is apparent from the provisions of Article 4(1) to (6) of Directive 2000/26.
- 27 Finally, Article 4(8) of Directive 2000/26, pursuant to which the appointment of a claims representative does not in itself constitute the opening of a branch of an insurance undertaking and according to which that representative is not regarded as an establishment of such an undertaking nor as an establishment within the meaning of Regulation No 44/2001, is not intended to and does not have the effect of making it possible to institute proceedings against that representative, instead of the insurance undertaking, before national courts.
- 28 Neither the context nor the objectives of Directive 2000/26 make it possible to consider that the EU legislature intended to require Member States to provide for that possibility.

- 29 While, according to Article 3 of Directive 2000/26, each Member State is to ensure that injured parties, referred to in Article 1 thereof, in accidents, within the meaning of that provision, enjoy a direct right of action against the insurance undertaking covering the responsible party against civil liability, neither that article nor any other provision of that directive entail that, in order to exercise that right, the possibility for those persons to bring proceedings against the claims representative directly before the national court should be recognised.
- 30 In those circumstances, it is important to bear in mind that Directive 2000/26 is intended to guarantee motor vehicle accident victims comparable treatment irrespective of where in the European Union accidents occur. To that end, those victims must be entitled to submit a claim in their Member State of residence to a claims representative appointed there by the insurance undertaking of the responsible party. That representative's role is to make the steps to be taken by accident victims easier, in particular to allow them to make a claim in their own language.
- 31 According to recital 15 in the preamble to Directive 2000/26, Member States must require claims representatives to have sufficient powers to represent the insurance undertaking in relation to victims, and also to represent it before national authorities including, where necessary, before the courts, in so far as this is compatible with the rules of private international law on the conferral of jurisdiction.
- 32 Thus, in the light of those objectives, the EU legislature has not only instituted a system in which injured parties in each Member State may submit a claim for compensation to the representative of the insurer of the responsible party, in accordance with the procedures with which they are familiar, but logically supplemented that system, as stated in recital 14 of Directive 2000/26, by recognising victims' direct right of action against that insurer, without being obliged to sue the responsible party.
- 33 It admittedly follows from those considerations that the Union legislature intended that, without being able to call into question observance of the rules of private international law, representation of insurance undertakings under Article 4(5) of Directive 2000/26 includes the duty to allow injured parties validly to bring proceedings before national courts for compensation for damage. In that context, the claims representative's sufficient powers must include the authority to accept service of judicial documents (see, to that effect, judgment of 10 October 2013, *Spedition Welter*, C-306/12, EU:C:2013:650, paragraphs 23 and 24).
- 34 As already noted by the Court, it is apparent from the drafting history of Directive 2000/26 that the legislature's intention was that the powers enjoyed by the representative of an insurance undertaking in the victim's State of residence should include, albeit to a limited extent, acceptance of service of judicial documents, since it was not to affect the rules of private international law relating to the conferral of jurisdiction (see, to that effect, judgment of 10 October 2013, *Spedition Welter*, C-306/12, EU:C:2013:650, paragraph 22).
- 35 On the other hand, it is apparent neither from the drafting history nor from the recitals in the preamble to Directive 2000/26 that the intention of the EU legislature was to extend those powers to allow injured parties to bring proceedings against that undertaking's representative, in order to seek compensation from the insurance undertaking of the responsible party, before the national court of their place of residence.
- 36 Since injured parties may notify judicial documents to the representative of the insurance undertaking, it does not appear that the objective of Directive 2000/26, whose purpose is to make the steps to be taken by those persons easier, is not therefore achieved and requires proceedings to be able to be brought against the representative itself before the national court.
- 37 The EU legislature also stated, in recital 13 of the preamble to Directive 2000/26, that the system of having claims representatives in the injured party's Member State of residence affects neither the substantive law to be applied in each individual case nor the matter of jurisdiction. Accepting that the

action for damages may be brought directly before the national court against that representative itself and not against the undertaking which it represents could interfere with the jurisdiction of the courts. In any event, recital 16 of the preamble to the directive also states that the activities of claims representatives are not sufficient in order to confer jurisdiction on the courts in the injured party's Member State of residence if the rules of private international law on the conferral of jurisdiction do not so provide.

- 38 In those circumstances it does not appear that the objective of improving the legal situation of parties injured as a result of motor vehicle accidents occurring outside their Member State of residence entails that Article 4 of Directive 2000/26, which does not explicitly provide that the claims representative may itself be sued instead of the insurance undertaking it represents, should be interpreted, although those injured parties may bring proceedings directly against such an undertaking before the national court, as implicitly but necessarily requiring Member States to provide for the possibility of that representative being sued.
- 39 In the light of the foregoing, the answer to the question referred is that Article 4 of Directive 2000/26 must be interpreted as not requiring Member States to provide that the claims representative appointed pursuant to that article may itself be sued, instead of the insurance undertaking which it represents, in the national court before which an action for damages was brought by an injured party falling within the scope of Article 1 of that directive.

The second question

- 40 In the light of the answer to the first question, there is no need to answer the second question.

Costs

- 41 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 (Sixth Chamber) hereby rules:

Article 4 of 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), as amended by Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005, must be interpreted as not requiring Member States to provide that the claims representative appointed pursuant to that article may itself be sued, instead of the insurance undertaking which it represents, in the national court before which an action for damages was brought by an injured party falling within the scope of Article 1 of Directive 2000/26, as amended by Directive 2005/14.

[Signatures]