OPINION OF ADVOCATE GENERAL LENZ

delivered on 25 January 1996 *

A — Facts

1. This reference for a preliminary ruling from the Audiencia Provincial de Sevilla (Seville Provincial Court) [1] raises questions concerning the interpretation of the Community directives on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles. Three directives have so far been adopted in this area, Directive 72/166/EEC, [2] Directive 84/5/EEC [3] and Directive 90/232/EEC, [4] the present dispute principally concerning the interpretation of the first two directives. The Third Directive, which forms part of the regulatory scheme, may be used as an aid to interpretation, especially since it was adopted before the relevant period in this case and it was merely the period for its transposition which had not yet expired.

2. The national court asks the Court of Justice to rule on questions which have been raised in the course of applying the Spanish implementing legislation to a dispute concerning civil liability. In the main proceedings, the person responsible for a road-traffic accident involving damage to property was held at first instance to be civilly liable for the damage caused, while the insurance company concerned was absolved from liability. That decision was based on Article 3(4) of the Real Decreto Legislativo (Royal Decree) 1301/86 of 28 June 1986 and Article 12(3)(b) of the Royal Decree 2641/86 of 30 December 1986, which provide that property damage caused by an intoxicated driver is excluded from insurance cover against civil liability in respect of the use of motor vehicles.

3. The Public Prosecutor appealed against that judgment, seeking an order declaring the insurance company to be jointly liable with the person who had caused the damage. The latter person also joined in the appeal.

4. The Seville Provincial Court, hearing the appeal, makes no secret of its view — which it has also expressed in previous proceedings — that Spanish law must be interpreted in accordance with the directives, so that any exclusion of liability which is effective as

* Original language: German.

1 — Audiencia Provincial de Sevilla, Sección Primera (First Chamber).

2 — Council Directive 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 1972 L 103, p. 1).

3 — Second Council Directive 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).

4 — Third Council Directive of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1990 L 129, p. 33).

between insurer and insured should in any event be invalid as against the injured party. It believes that the insurer is therefore undoubtedly liable to the victim, but may have a right of recourse against the person who caused the injury.

5. The Provincial Court sets out in detail the reasons for its view of the law, but points out that another chamber of the same court [5] has already decided the relevant point of law differently, so that, in the interests of the uniform application of the law, it must be assumed that there is doubt regarding the correct interpretation of Community law.

6. In essence, the national court's arguments can be summarized as follows. According to the purpose and principles of the directives, victims of accidents must basically be guaranteed compensation in any event. To exclude cover on account of drunken driving would run counter to the scheme of the directives. Precisely in view of the increased potential risk to other road users, it cannot be held to be lawful to exclude cover for damage caused by an intoxicated driver. However, in no event should the victim be left empty-handed, which is why the national court raises, in the alternative, the question of the liability of the 'body' referred to in Article 1(4) of Directive 84/5.

5 — The Fourth Chamber.

7. The Provincial Court submits the following questions to the Court of Justice for a preliminary ruling:

'(1) Does the wording of Article 3(1) of the First Council Directive 72/166/EEC of 24 April 1972 allow the internal rules of the system of compulsory insurance against civil liability in respect of the use of motor vehicles in each Member State to lay down any exclusions deemed fit or, on the contrary, must exclusions from cover be limited to those expressly provided for in the Second Council Directive 84/5/EEC of 30 December 1983?

(2) Does the exclusion from compulsory insurance cover of damage to property caused by vehicles driven under the influence of alcohol comply with the abovementioned legislation?

(3) Must the cases referred to in Article 2(1) of the Second Council Directive 84/5/EEC be regarded as a precise and exhaustive enumeration of the statutory provisions and contractual clauses which may remove insurance cover but which are not valid as against a person who has suffered harm, so that any

other statutory or contractual exclusion would be valid as against him?

(4) If a statutory provision or contractual clause which excludes insurance cover where the driver responsible for the damage is intoxicated is valid in relations between the insurer and the insured, could its validity as against a third-party who has suffered harm be considered to be in compliance with the system laid down in Directives 72/166/EEC, 84/5/EEC and 90/232/EEC?

(5) If the provisions of the abovementioned directives, in particular Article 3(1) of Council Directive 72/166/EEC, allow exclusion of compulsory insurance cover against civil liability in respect of the use of motor vehicles which is valid as against the victim where the driver was intoxicated, may it be considered that such a case entails an absence of insurance as provided for in Article 1(4) of the Second Council Directive 84/5/EEC which would determine payment and cover by the body provided for in that article?'

8. The appellant in the main proceedings, together with the Spanish, Greek and United Kingdom Governments, and the Commission, have taken part in the proceedings before the Court of Justice. The Public Prosecutor, as plaintiff in the proceedings at first instance, merely submits, in essence, that the material questions of law could be resolved by applying Spanish law and that there is therefore no need for the reference for a preliminary ruling. I will discuss the views of all the participants in the course of my legal appraisal.

B — Analysis

9. The national court's questions seek to establish whether the permitted exclusions from insurance cover against civil liability in respect of the use of motor vehicles are laid down exhaustively in the directives, so that further exclusions are *per se* inadmissible. If the Member States still have the power to permit exclusions from cover other than those referred to in the directives, it must be established whether those exclusions are effective only in the contractual relationship between the insured and the insurer or whether they may also be enforced as against an injured third party. It is therefore a matter of the preconditions for and limits on any exclusions from cover. Only if exclusions other than those referred to in the directives are permissible and may be enforced as against the injured party does the question arise as to whether the guarantee body provided for in Article 1(4) of Directive 84/5 may be required to accept responsibility.

10. The Spanish, Greek and United Kingdom Governments, participating in the proceedings before the Court, all consider that a synoptic view of the directives shows that the purpose of the obligation on the Member States to introduce insurance against civil liability in respect of the use of motor vehicles is to achieve a high level of protection for the victim. They state that to permit the exclusion of liability as against an accident victim is incompatible with the aims of the directives. Although the Member States do have a wide discretion when drawing up the legal rules on insurance against civil liability in respect of the use of motor vehicles, so that exclusions are permissible as between the insured and the insurer, those rules must not, however, result in the victim's having no right to compensation.

11. The detailed views of these parties are as follows:

On the basis of the above premise the *Spanish Government* states that under Spanish law compensation must be paid to the victim, and grounds for exclusion as between the insurer and the insured cannot be enforced against the injured party. That situation is therefore in conformity with Community law. The view that *only* the exclusions referred to in Article 2 of Directive 84/5 are ineffective as against an injured third party is wrong, because the exclusion of liability as against the victim is not in conformity with the scheme of the directives. Exclusion from insurance cover as against the drunken driver who caused the accident is another matter.

12. Even in the legal situation with which the reference for a preliminary ruling is concerned, the insurance company would, after compensating the victim, have a right of recourse against the intoxicated driver who caused the accident. At the hearing the representative of the Spanish Government pointed out that in November 1994 a legislative amendment entered into force which, for the purposes of clarification, gave express statutory form to the already existing right of recourse.

13. Purely as a subsidiary point, the Spanish Government comments on the question of the duty incumbent on the national guarantee body. In its view, this is not relevant here. The body must intervene only if there is no other source of compensation for the victim.

14. The *Greek Government* emphasizes the importance which the directive places on the protection of the victim and points out that this protection was increased over the years, not just substantively, but also procedurally, so as to make it easier to obtain effective compensation. The Greek Government's view of the law largely corresponds to that taken by the Spanish Government. Exclusions in conformity with the scheme of the directive are generally permissible, but they may not be to the detriment of the victim. An exclusion on account of the driver's intoxication may take effect only as between insurer and insured. Finally, in cases such as the present, the national guarantee body is generally not liable, although it might

nevertheless be so if any exclusion of liability were also effective as against the victim. At the hearing the representative of the Greek Government again stated that liability should, in general, remain with the insurance companies and should not be shifted on to the national guarantee body.

15. The *United Kingdom Government* points out that the directives basically require all motor vehicles in the Community to be insured against civil liability to third parties. However, the Member States have a wide discretion regarding the extent of that liability. Article 3 of Directive 72/166 lays down minimum requirements in that regard. The exclusion of liability as against the victim of a road-traffic accident caused by a drunken driver would not satisfy those minimum requirements. The position must be the same in regard to exclusions from insurance cover on account of other physical deficiencies of the person causing the accident. The United Kingdom proposes that Questions 1 to 3 be answered as follows:

Measures excluding compensation in cases of drunken driving are incompatible with Community law. In more general terms, it could also be stated that Member States are free to determine the implementing measures, provided that the protection of the victim is not impaired and the requirements of the directives are complied with in other respects.

16. The United Kingdom Government further suggests that Questions 4 and 5 should be answered in the negative. In the alternative, it claims that the directives basically do not affect the relationship between the person causing the damage and his insurance company. Their purpose is merely to protect third parties. Article 2 of Directive 84/5 shows that exclusions should not have any effects as against the victim.

17. The *Commission* adopts a different approach from that taken by the three Governments. Although it agrees that the directives are intended to guarantee a high level of protection for the victim, it states that the directives can be seen to be pursuing two aims: first, to abolish frontier controls and, secondly, to ensure similar protection for accident victims in the Community. The latter aim is pursued in particular by the Third Directive. The Commission states that the exclusions which are not possible as against the victim are listed exhaustively in the Second Directive. In the case of other exclusions, the motor vehicle must be deemed to be uninsured, which results in the liability of the national guarantee body. However, it must be borne in mind that the Member States are free to take the view that the guarantee body has subsidiary liability. In view of the discretion as to the implementation of the directives, on the one hand, and the absolute guarantee of the protection of the victim, on the other hand, compensation must at least be guaranteed by the national body. If a permissible exclusion of liability

on account of the driver's intoxication is valid also as against the injured party, the body referred to in Article 1(1) of the Second Directive must therefore assume responsibility.

Preliminary remarks

18. There is no doubt that the answer to the questions must be sought in the context of the rules laid down in Directive 72/166, Directive 84/5 and Directive 90/232. The aims of the directives, and the relative importance of those aims, are of decisive importance when interpreting the rules in question here.

19. As the title of the German version suggests, the aim of the First Directive of 1972 was to abolish frontier controls of civil liability insurance cover. The reason for adopting rules in that area was stated, first of all, [6] to be the aim to create an internal market, an essential condition for which was the free movement of goods and persons. The fifth recital explains that the directive would also, *inter alia*, 'liberalize the rules regarding the movement of persons and motor vehicles travelling between Member States'. Moreover, the third recital in the preamble to Directive 84/5 indicates that approximation of the laws relating to insurance against civil liability in respect of the use of motor vehicles also assists in the creation and operation of a common market. At the hearing the Commission pointed out that the free movement of motor vehicle drivers is an autonomous freedom of Community law.

20. The Commission's reference in its written observations to what it claims is the dual nature of the directive's aims, namely, the abolition of frontier controls and, principally through the Third Directive, the creation of similar protection for victims in the Community, could result in the fundamental connection between those aims being ignored.

21. The second recital in the preamble to Directive 72/166 already clearly stated:

'The only purpose of frontier controls of compulsory insurance cover against civil liability in respect of the use of motor vehicles is to safeguard the interests of persons who may be the victims of accidents caused by such vehicles; ...'

22. 'Compulsory insurance cover against civil liability' in respect of the use of Community motor vehicles which is 'valid

6 — See the first recital in the preamble to Directive 72/166.

throughout Community territory' [7] is therefore an indispensable requirement for the protection of potential accident victims and so for the abolition of frontier controls.

23. Accordingly, the protection of victims does in fact enjoy the prominent position which the parties to the proceedings ascribe to it. The fact that the legal position of potential victims was improved by the Second and Third Directives does not mean that such protection was not already of fundamental importance under the First Directive. In any case, the purpose of the later directives was to remedy certain inadequacies in the system, some of which became apparent only in the course of time. For example, Article 2(1) of Directive 84/5 concerning the ineffectiveness of certain exclusion clauses as against victims was adopted in order to improve the position of persons suffering damage, as was the provision in Article 1(4) of Directive 84/5, expressly permitting 'any other practice which is more favourable to the victim'.

24. Consequently, the directives create the legal framework for ensuring that persons injured by a motor vehicle, wherever registered in the Community, can be certain of compensation. The guarantee of compensation for damage caused by vehicles normally based in another Member State, which the national insurers' bureau of the host country must assume, [8] and the creation of a body that must provide compensation for damage to property or personal injuries caused by an unidentified or uninsured vehicle [9] are both part of that context.

Question 1

25. The national court wishes to ascertain whether, on the basis of Article 3(1) of Directive 72/166, a Member State is generally free to lay down the exclusions from liability which it considers to be expedient or whether the permissible exclusions from cover are restricted to those provided for in Directive 84/5. Article 3(1) of Directive 72/166 provides:

'Each Member State shall ... 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.*' [10]

7 — See the eighth recital in the preamble to Directive 72/166.

8 — See the tenth recital in the preamble to Directive 84/5.

9 — See Article 1(4) of Directive 84/5.

10 — My emphasis.

All the parties acknowledge that the scope of this wording is clearly very wide. It leaves the Member States with a wide discretion and therefore necessarily accepts that there will be differences in the extent of the cover from Member State to Member State. The wording of the first indent of Article 3(2) also testifies to that potential difference, in providing that each Member State is to take all appropriate measures to ensure that the contract of insurance also covers, *according to the law in force in other Member States*, any loss or injury which is caused in the territory of those States.

26. Viewed solely on the basis of that provision, an exclusion from cover of the type at issue in the present proceedings appears to be unproblematical. However, it must be asked whether, and if so how, that freedom is restricted. Such a restriction might, for example, be discernible in Article 2(1) of Directive 84/5. Its first subparagraph provides:

'Each Member State shall take the necessary measures to ensure that any statutory provision or any contractual clause contained in an insurance policy issued in accordance with Article 3(1) of Directive 72/166/EEC, which excludes from insurance the use or driving of vehicles by:

— persons who do not have express or implied authorization thereto,

or

— persons who do not hold a licence permitting them to drive the vehicle concerned,

or

— persons who are in breach of the statutory technical requirements concerning the condition and safety of the vehicle concerned,

shall, for the purposes of Article 3(1) of Directive 72/166/EEC, be deemed to be void in respect of claims by third parties who have been victims of an accident.'

27. That provision might be regarded as containing an exhaustive list of permissible exclusions from insurance cover. However, it must also be viewed in its regulatory context and against the background of its legislative history. The freedom originally given to the Member States when drawing up the rules on insurance against civil liability proved, in the course of time, to be detrimental to the common market. The second to fifth recitals

of Directive 84/5 testify to that effect. They state:

'However, major disparities continue to exist between the laws of the different Member States concerning the extent of this obligation of insurance cover; ... These disparities have a direct effect upon the establishment and operation of the common market;

In particular, the extension of the obligation of insurance cover to include liability incurred in respect of damage to property is justified;

The amounts in respect of which insurance is compulsory must in any event guarantee victims adequate compensation irrespective of the Member State in which the accident occurred'.

28. Those requirements regarding the content of insurance contracts, with their corresponding provisions in the operative part of the directive, must be regarded as minimum requirements. In general, it can be stated that the legislative discretion allowed to the Member States under the First Directive was to an extent restricted by the increased provision for minimum requirements under the Second and Third Directives. Consequently, the discretion retained by the Member States is circumscribed by minimum requirements and by other conditions and structural principles laid down by the directive.

29. Viewed against that background, Article 2(1) of Directive 84/5 must also be regarded as a minimum requirement, in the sense that certain — generally lawful — exclusions from insurance cover may not be invoked, at least against an injured third party. [11] If the view is taken that the provision's purpose is primarily to prohibit any exclusions from insurance cover as against an injured person — an interpretation also supported by the statement in the seventh recital in the preamble to Directive 84/5 that 'it is in the interest of victims that the effects of certain exclusion clauses be limited to the relationship between the insurer and the person responsible for the accident' — then the abovementioned exclusions should not be understood to be an exhaustive list of possible exclusions from cover.

30. The answer to the Question 1 should therefore be as follows:

Exclusions from insurance cover which the Member States may determine in the exercise

11 — As regards the term 'may not be invoked' cf. the statement by the Commission's representative at the hearing that this term had been preferred to some extent in the negotiations preceding the adoption of the directive.

of their discretion under Article 3(1) of Directive 72/166 are not restricted by those provided for in Article 2(1) of Directive 84/5.

Question 2

31. The national court wishes to ascertain whether an exclusion from insurance cover on the ground that the driver who caused the accident was unfit to drive because he was under the influence of alcohol is compatible with the directives.

32. This question must be appraised in the light of the limits on the Member States' discretion, to which I have already referred. If the national rule is within those limits, the Court of Justice may not review it as to its content. On the other hand, it is for the Court of Justice to indicate what those limits are, so as to enable the national court to decide whether they have been observed.

33. First of all, I would like to turn my attention to the basic distinction between the legal relationship of insurer and insured, on the one hand, and of insurer and victim, on the other hand. That distinction is of fundamental importance also in regard to the statutory insurance rules. It is entirely conceivable for the insurer's liability as against the victim to be more extensive than as against the other party to the contract of insurance or the person causing the damage, who are not necessarily the same persons.

34. Upon reading the directives, one is struck by the fact that they do not lay down any specific requirements regarding the relationship between the parties to the contract of insurance. The directives are silent as to the consequences of a breach of a duty of care by the insured or by the person causing the damage. It can be concluded from this that the Member States or the contracting parties are relatively free to define the relationship between the parties to the contract of insurance, but their freedom may, of course, be exercised only in compliance with the other provisions of the directives.

35. Consequently, it seems to be wholly permissible for legal consequences to be linked to the failure of the insured party or the driver to observe a duty to take due care. Where the driver is intoxicated, I therefore consider it permissible for liability to be excluded as against the driver or for a right of recourse to be given.

36. The answer to the second question is therefore as follows:

An exclusion from insurance cover against civil liability with respect to a driver who,

whilst under the influence of alcohol, has caused material damage with a motor vehicle is compatible with the relevant legislation.

Question 3

37. The national court seeks to ascertain whether the statutory provisions and contractual clauses referred to in Article 2(1) of Directive 84/5, which exclude insurance cover but are void as against a third party who has suffered harm, are to be regarded as an exhaustive list, so that any other statutory or contractual provision excluding liability would be valid as against him.

38. In the course of answering the first question it was established that the list of possible exclusions in Article 2(1) of Directive 84/5 is not to be regarded as an exhaustive enumeration of permissible exclusions from insurance cover. Likewise, it has already been stated in connection with the answer to that question that Article 2(1) of Directive 84/5 lays down a minimum requirement to the effect that those exclusions from insurance cover are invalid *at any rate* as against the *victim*.

39. In my opinion, this approach justifies the further conclusion that any objections by the insurer, based on his contract with the insured, concerning any exclusions from cover are invalid as against the victim. If even the exclusions from cover listed in Article 2(1) of Directive 84/5, which are considered to be objectively justified, do not exempt the insurer, then still less should an exclusion from liability or a right of recourse permitted where a person's conduct is blameworthy — as discussed in connection with the second question — lead to the insurer's liability for damage being excluded as against the victim. Moreover, this conclusion is supported by the directives' overall objective, to which I have already referred, namely *the protection of victims*.

40. The answer to the third question must therefore be as follows:

Exclusions from liability that are basically possible and permissible but go beyond the exclusions from insurance cover referred to in Article 2(1) of Directive 84/5 may not be relied upon as against the victim.

Question 4

41. The national court seeks to establish whether, if a contractual clause excluding insurance cover where the driver responsible

for the accident is intoxicated, which is basically effective as between insurer and insured, may be relied upon as against a third party who has suffered harm, this is compatible with the system laid down in Directive 72/166, Directive 84/5 and Directive 90/232.

42. The answer to this question follows directly from my preceding remarks. It is therefore as follows:

If a contractual clause excluding insurance cover where the driver responsible for the damage is intoxicated, which is effective as between the insurer and the insured, may be relied upon as against a third party who has suffered harm, this is incompatible with the principles of Directive 72/166, Directive 84/5 and Directive 90/232.

Question 5

43. The national court's fifth and last question is intended to ascertain whether, if an exclusion of insurance cover where the driver is intoxicated is valid as against the victim, that may be regarded as an 'absence of insurance' for the purposes of Article 1(4) of Directive 84/5, leading to the involvement of and assumption of liability by the body provided for in that article.

44. As can be seen from its wording, the question is predicated on the hypothesis that a defence based on the driver's intoxication could be valid as against the accident victim. It follows from my previous comments that, on legal grounds, such a hypothesis could not arise. On the basis of the view for which I have contended, there would therefore be no need to consider Question 5. However, should the Court not adopt that line of argument and consider that it is possible for there to be a lawful exclusion of cover as against the victim on grounds of the driver's intoxication, Question 5 would be relevant. It should therefore be considered in the alternative.

45. It should, first, be emphasized again that the premise on which the question is based is a most unlikely one. Under the system established by the directive, a defence as against

the person who has suffered harm appears to be conceivable only if it can be proved that he was himself guilty of misconduct. That tends to be indicated, for example, by the second subparagraph of Article 2(1) of Directive 84/5, which states:

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

46. Apart from those highly exceptional cases of the victim's own blameworthy conduct, it must be assumed that there is a need to ensure that there are no gaps in the duty to compensate the victim. That principle can be seen to be the guiding principle of the directives. To that effect, the national guarantee body must be regarded as a means of covering accident victims who would otherwise be unprotected. The reason for requiring such a body to be established is the concern to protect victims.

47. How the duty to provide compensation is actually to be allocated lies, at least partially, in the discretion of the Member States. However, the directives themselves show that, as a rule, it is the insurer of the vehicle that has caused damage who is responsible for covering that damage. Only in cases in which the vehicle is uninsured or unidentified, that is to say, if the responsible insurer cannot be established, must the body referred to in Article 1(4) of Directive 84/5 act. [12] Furthermore, the Member States may provide that the 'body' is under a duty to pay compensation in the case of vehicles stolen or obtained by violence. [13]

48. It can be seen from the documents concerning the preparatory work on Directive 84/5 [14] that the Commission was originally in favour of placing the 'body' under a much

12 — See the sixth recital in the preamble to Directive 84/5.

13 — See Article 2(2) of Directive 84/5.

14 — Proposal for a Second Council Directive 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 C 214 1980, p. 9; Opinion of the Economic and Social Committee on the proposal, OJ C 138 1981, p. 15; text of the directive amended by the European Parliament, OJ C 287 1981, p. 44; amendment of the Proposal for a Second Directive, OJ C 78 1982, p. 17.

more extensive duty to pay compensation. The original proposal for Article 2 of the Directive stated:

'For the purposes of Article 1(3) of this Directive and Article 3(2) of Council Directive 72/166/EEC, when an insurer refuses to make payment by virtue of the law or the contractual provision authorized by the provision, the vehicle shall be treated as an uninsured vehicle.' [15]

49. The vehicle was to be deemed to be uninsured in the case of all statutory or contractual exclusions from cover. After objections from the Economic and Social Committee and a proposed amendment by the European Parliament, the Commission submitted an amended proposal for the directive, Article 2(1) of which corresponded largely to the first paragraph of Article 2(1) as finally adopted, but whose second paragraph still stated:

'Where an insurer refuses to make payment by virtue of the law or of *another* contractual provision authorized by law, the vehicle shall be treated as an uninsured vehicle.' [16]

50. As Directive 84/5 as finally adopted shows, the proposal did not survive in the Council. It was replaced by the first paragraph of Article 1(4), as now in force, which states:

'Each Member State shall set up or authorize a body with the task of providing compensation, at least up to the limits of the insurance obligation for damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which the insurance obligation provided for in paragraph 1 has not been satisfied. This provision *shall be without prejudice to the right of the Member States* to regard compensation by that body as *subsidiary or non-subsidiary* and the right to make provision for the *settlement of claims* between that body and the person or persons responsible for the accident and other insurers or social security bodies required to compensate the victim in respect of the same accident.' [17]

51. The wording finally adopted and the provision's legislative history show that the 'body' is in no way conceived as a general 'catch-all', providing compensation upon the occurrence of any excluded events. Nor does the provision simply refer to the 'absence of insurance' to which the national court alludes. Everything therefore indicates that, within the framework established by the directives, the person who has suffered harm

15 — See Article 2 of the proposal for a Second Directive, cited above.

16 — See the amendments of the proposal for a Second Directive, cited above.

17 — My emphasis.

as a result of an accident must recoup his loss from the insurer. *Only* if, for whatever reasons, he has no claim for compensation against an insurer, would the 'body' have to pay compensation in the interest of the extensive protection of victims. Furthermore, the Member States are free to extend the competence of the 'body' by statute, provided complete protection is ensured for victims. [18]

52. Question 5 should therefore be answered as follows:

If, on account of the driver's intoxication, an exclusion of insurance cover is valid as against the person suffering harm, the body referred to in Article 1(4) of Directive 84/5 is required to pay compensation.

C — Conclusions

53. Consequently, I propose that the Court should answer the national court's questions as follows:

(1) Exclusions from insurance cover which the Member States may determine in the exercise of their discretion under Article 3(1) of Directive 72/166 are not restricted by those provided for in Article 2(1) of Directive 84/5.

(2) An exclusion from insurance cover against civil liability with respect to a driver who, whilst under the influence of alcohol, has caused material damage with a motor vehicle is compatible with the relevant legislation.

(3) Exclusions from liability that are basically possible and permissible but go beyond the exclusions from insurance cover referred to in Article 2(1) of Directive 84/5 may not be relied upon as against the victim.

(4) If a contractual clause excluding insurance cover where the driver responsible for the damage is intoxicated, which is effective as between the insurer and the insured, may be relied upon as against a third party who has suffered harm,

18 — See the sixth subparagraph of Article 1(4) of Directive 84/5.

this is incompatible with the principles of Directive 72/166, Directive 84/5 and Directive 90/232.

(5) If, on account of the driver's intoxication, an exclusion of insurance cover is valid as against the person suffering harm, the body referred to in Article 1(4) of Directive 84/5 is required to pay compensation.