JUDGMENT OF THE COURT (SECOND CHAMBER)
21 JUNE 1984 [1]

Asbl Bureau Belge des Assureurs Automobiles v Adriano Fantozzi and SA Les Assurances Populaires (reference for a preliminary ruling from the Cour d'Appel Mons)

(Compulsory insurance of motor vehicles)

Case 116/83

Approximation of laws — Civil liability motor insurance — Directive 72/166 — Settlement of claims — Settlement by the national bureau of the place in which the accident occurred — Conditions

(Council Directive 72/166, Art. 2 (2))

Article 2 (2) of Directive 72/166 must be interpreted as meaning that, with reference to the payment of compensation for damage caused in the territory of one Member State of the Community by a vehicle normally based in the territory of another Member State, if the driver of the vehicle obtained it by theft or duress, the national insurers' bureaux are under an obligation to settle such claims upon the terms laid down by their own national legislation.

In Case 116/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour d'Appel [Court of Appeal], Mons (Belgium), for a preliminary ruling in the proceedings pending before that court between

ASBL BUREAU BELGE DES ASSUREURS AUTOMOBILES, Brussels,

and

1. ADRIANO FANTOZZI, of Frameries,
2. SA LES ASSURANCES POPULAIRES, Brussels,

1 — Language of the Case: French.

on the interpretation of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and to the enforcement of the obligation to insure against such liability (Official Journal, English Special Edition 1972 (II), p. 360),

THE COURT (Second Chamber)

composed of: K. Bahlmann, President of Chamber, P. Pescatore and O. Due, Judges,

Advocate General: Sir Gordon Slynn
Registrar: D. Louterman, Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

On 21 August 1976, at Athis in Belgium, the car belonging to Mr Fantozzi, a Belgian national, which was insured against physical damage with Assurances Populaires in Belgium, was damaged through the established negligence of the driver of a stolen car which was registered in France. Civil liability in respect of that vehicle was covered by an insurance policy underwritten by Assurances Mutuelles of Niort (France). That company however refused to accept liability, relying on the terms of its policy which exclude theft from accident cover. Mr Fantozzi and Assurances Populaires therefore had recourse against the Bureau Belge des Assureurs Automobiles [Belgian Motor Insurance Bureau, hereinafter referred to as "Bureau Belge"] and requested the Tribunal de Première Instance [Court of first instance], Mons, to order it to pay damages in respect of the loss which they had sustained. The Tribunal allowed that claim by a judgment of 26 January 1979.

Bureau Belge appealed against that judgment maintaining that the Tribunal had incorrectly interpreted the Law of 4 July 1972 amending Article 2 (2) of the Law of 1 July 1956 on compulsory insurance against civil liability in respect of motor vehicles.

The Cour d'Appel [Court of Appeal], Mons, noted that that national provision had been adopted pursuant to Directive 72/166, whereby a more favourable status was to be granted to vehicles normally based within the territory of a Member State. Such vehicles were to be admitted into Belgium without an international insurance certificate, on condition that the bureau appointed for that purpose guaranteed the settlement, in accordance with the provisions of Belgian law, of the claims of persons to whom damage was caused in Belgium by such vehicles, irrespective of whether the obligation to effect insurance was complied with. Article 2 (2) of the aforementioned directive also provided for the conclusion of an agreement between the six national insurers' bureaux "under the terms of which each national bureau guarantees the settlement, in accordance with the provisions of its own national law on compulsory insurance, of claims in respect of accidents occurring in its territory caused by vehicles normally based in the territory of another Member State, whether or not such vehicles are insured". The agreement provided for by that directive was concluded on 16 October 1972. Finding that the provisions of Community law in question had been interpreted differently by the Belgian and French courts, the Cour d'Appel, Mons, referred the following question to the Court of Justice for a preliminary ruling:

"Does it follow from the rules of Community law that the duty imposed on national insurers' bureaux includes the duty to pay compensation for damage caused in the territory of one Member State of the EEC by a vehicle normally based in the territory of another Member State of the EEC if the driver of the vehicle acquired it by theft or duress?"

The order for reference was registered at the Court on 24 June 1983.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted on 14 September 1983 by the Government of the French Republic, represented by Jean-Paul Costes, a member of the general secretariat of the Inter-ministerial Committee for Questions of European Economic Cooperation, acting as Agent; on 20 September 1983 by the United Kingdom, represented by C. P. J. Muttukumaru of the Treasury Solicitor's Department, acting as Agent; and on 21 September 1983 by the Government of the Italian Republic, represented by Pier Giorgio Ferri, Avvocato dello Stato.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry and to assign the case to the Second Chamber.

II — Summary of written observations submitted to the Court

The *Government of the French Republic* refers to the observations which it submitted in Case 64/83. It first observes that, pursuant to the principles set out in

the directive itself, it is clear that the abolition of insurance checks at the frontier is linked to the fundamental guarantee, offered to a Member State into whose territory vehicles normally based in other Member States enter, that the victims of any damage caused by a vehicle will be compensated in accordance with the national law of the State upon whose territory the accident occurs, on the basis of an agreement between the national insurance bureaux, irrespective of whether such vehicles are insured.

The provisions of national law envisaged by the directive are those relating to the settlement of accident claims; more precisely, the provisions relating to the settlement of such claims within the limits of the compulsory insurance required by the Member State on whose territory the accident occurs, regard being had to the scope of such legislation, but without consideration of the exceptions from the cover which may be included in the contract under the relevant law.

That interpretation is in accordance with the principle of the directive; it predominated in the drafting of the relevant legislation on the subject. That was why the French Law of 21 December 1972 extended the territorial jurisdiction of the Fonds de Garantie Automobile [Motor vehicle guarantee fund] in order to enable it to meet the cost of compensation in respect of accidents caused abroad by uninsured vehicles registered in France, such compensation having previously been paid by the national bureau of the country where the accident occurred; by way of reciprocation, the Fonds de Garantie Automobile is not required to compensate the victims of accidents caused in France by uninsured vehicles registered in another Member State.

The French Government emphasizes that any other interpretation would deprive the directive of part of its purpose: the victims of accidents caused in France by vehicles registered in other Member States, in circumstances where a French insurer might be able to resist a claim, would be at risk of receiving compensation for the damage suffered neither from the Fonds de Garantie Automobile nor from the Bureau Central Français, acting on behalf of its counterpart in the State in which the vehicle was registered.

The *United Kingdom* first points out that Article 2 (2) of Directive 72/166 does not impose a duty, but merely specifies when the provisions of the directive other than Articles 3 and 4 are to take effect, that is if and when the nine national bureaux of the Member States conclude an agreement in accordance with the provision in question.

The United Kingdom further remarks that the supplementary agreement between national bureaux of 16 October 1972 is not an act of an institution of the Community and that therefore the Court does not have jurisdiction to interpret the effect of that agreement. The Court should therefore confine itself to intepreting Article 2 (2) of the directive.

In that regard, the United Kingdom points out that Directive 72/166 does not require any degree of harmonization of the Member States' national laws on compulsory insurance. The directive was adopted against the background of the

green card system, which envisages the settlement of claims required to be covered by compulsory insurance in accordance with the law of the Contracting State where the accident giving rise to the claim occurs. The words "in accordance with the provisions of national law on compulsory insurance" in Article 2 (2) therefore refer to "the laws of the Member State on compulsory insurance where the accident giving rise to the claim occurs." If those laws do not require insurance in certain circumstances, in particular in the case of theft of the vehicle, then claims arising out of the use of the vehicle in those circumstances are outside the scope of the agreement envisaged by the directive.

Consequently, the United Kingdom suggests that the Court should answer the question submitted by the national court as follows:

"Article 2 (2) of the directive as amended does not itself impose an obligation on the national bureaux of the Member States but it envisages that the national bureaux of the Member States would conclude an agreement guaranteeing settlement of claims arising out of the use of a vehicle required, by the law of the Member State where the accident occurs, to be covered by insurance and this would include claims in respect of a vehicle acquired by theft or duress if the national law of the Member State where the accident occurs requires claims arising out of the use of a vehicle acquired by theft or duress to be covered by compulsory insurance."

The *Italian Government* states that Article 2 of the agreement betwen the national insurance bureaux of 16 October 1972 states that when a vehicle normally based in the territory of one Member State enters the territory of another Member State and is there subject to compulsory third-party insurance, the "owner, use and/or driver shall be deemed to be insured within the meaning of the uniform agreement between bureaux and to be holders of a valid certificate of insurance issued by the bureau responsible for the territory in which such vehicle is normally based ...".

Article 1 (e) of the uniform agreement between bureaux provides that a policy of insurance issued to an insured to cover liability arising out of the use of a vehicle "shall be deemed to be a policy giving exactly the indemnity required by the compulsory motor insurance law of the country in which an accident occurs".

Being of the view that Article 2 of Directive 72/166 should be interpreted in the light of the supplementary agreement of 16 October 1972 and of the uniform agreement, the Italian Government maintains that the national bureau which deals with the claim is bound to act in the same way as the national insurers and therefore becomes guarantor in the conditions laid down by its own national legislation on compulsory insurance. The Community provision should therefore be interpreted as referring to the whole of the system of compulsory insurance in force in a country and not, in the limited sense, as referring only to the legal ceilings which are laid down or to other particular conditions.

Consequently, the Italian Government suggests that the question submited should be answered as follows:

"The 'provisions of its own national law on compulsory insurance' mentioned in Article 2 (2) of Council Directive 72/166/EEC of 24 April 1972 refer to the whole system of compulsory insurance in force in each country; those conditions include that relating to the effectiveness or otherwise of the guarantee of insurance for claims arising out of the use of a vehicle which the driver acquired by theft or duress."

III — Oral procedure

Asbl Bureau Belge des Assureurs Automobiles, represented by Mr Omneslaghe, of the Brussels Bar, the United Kingdom, represented by Mr Bellis of the Treasury Solicitor's Department, and the Commission of the European Communities, represented by J. Delmoly, acting as Agent, presented oral argument at the sitting on 12 April 1984.

Asbl *Bureau Belge des Assureurs Automobiles,* expressed the opinion that the question referred to the Court is not really answered by the decisions given by it in related fields, particularly the judgment of 9 February 1984 (Case 64/83, *Bureau Central Français* v *Fonds de Garantie Automobile.* [1984] ECR 689).

Bureau Belge stated that the directive in question sought to attain a modest objective of an essentially psychological character: that every European citizen could move from one Member State to another without being obliged to show a certificate of insurance.

To attain such an objective, three intermediate objectives had to be achieved:

Insurance against civil liability in respect of the use of motor vehicles had to be made compulsory;

Such compulsory insurance had to be made to cover accidents caused anywhere in the Community;

Vehicles normally based outside a Community country had to be prevented from entering it unless civil liability was insured against in the entire territory of the Community.

An additional element in the form of the insurers' bureaux was added to help motorists involved in accidents outside their country. These bureaux, set up in the six Member States of the period, were to guarantee settlement of claims in the territory of the State in which they had been established in accordance with the provisions of the national law in question.

In the view of Bureau Belge, the Court has no jurisdiction to interpret the contractual terms of the agreement between the insurers' bureaux and must confine its interpretation to the meaning of Article 2 (2) of the directive.

Having stated that the agreement between the insurers' bureaux had been concluded in accordance with the provisions of the directive, Bureau Belge considered the contested provision. In its view, the position of the French Government and of Mr Fantozzi, who argue that Bureau Belge is obliged to provide cover, implies that the words "in accordance with the provisions of its own national law" lose all meaning. In fact, that expression means that Bureau Belge is obliged to act only in so far as Belgian national law imposes an obligation to insure, even if the driver did not take out such compulsory insurance.

That analysis is reinforced by the new Community directive on this subject adopted on 30 December 1983.

Consequently, Bureau Belge suggests that the answer to be given to the Cour d'Appel, Mons, should be as follows:

"Article 2 (2) does not of itself create any obligation on the part of the insurers' bureaux; such an obligation derives exclusively from the agreement. In using the expression 'in accordance with the provisions of its own national law', the Community legislature was referring to the entire body of rules dealing with compulsory insurance in each country, and consequently, if those rules exempt from compulsory insurance cover vehicles which have been stolen or of which possession has been obtained by fraud, that exemption must also apply to the obligations undertaken by the national bureaux by virtue of the agreement."

The *Commission* considers essentially that the reply to be given to the question raised by the Cour d'Appel, Mons, should be identical to that given by the Court on 9 February 1984 in Case 64/83, *(Bureau Central Français* v *Fonds de Garantie Automobile),* that is to say, that regard should be had to the national law of the State in which the accident occurred.

The Commission adds that the second directive of 30 December 1983, applicable from 31 December 1987, will modify the existing system by removing the possibility of pleading theft against a third-party victim but allowing Member States, by way of derogation, to provide for a national formula which nonetheless eliminates all risk of disputes and legal proceedings at international level.

The Advocate General delivered his opinion at the sitting on 12 April 1984.

Decision

1 By an order of 7 June 1983, which was received at the Court on 24 June 1983, the Cour d'Appel, Mons (Belgium), referred to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 2 (2) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and to the enforcement of the obligation to insure against such liability (Official Journal, English Special Edition 1972 (II), p. 360).

2 That question was raised in the context of proceedings between Bureau Belge des Assureurs Automobiles, on the one hand, and Mr A. Fantozzi and Les Assurances Populaires, Brussels, on the other.

3 Bureau Belge des Assureurs Automobiles is one of the national bureaux set up in the framework of the international insurance card system ("green card

system"). One of the characteristics of the system is that it is based on private law agreements between the national insurers' bureaux, on the basis of a standard contract called the "Uniform Agreement between Bureaux". By virtue of those agreements, each national bureau undertakes, on the one hand, to settle, in its own country, claims in respect of accidents caused by vehicles registered in the other member countries, and on the other hand, to reimburse foreign bureaux which have settled claims in respect of accidents caused by vehicles insured in its own country.

4 On 21 August 1976, at Athis (Belgium), a car insured with Les Assurances Populaires in Belgium and owned by Mr Fantozzi, a Belgian national, was damaged through the proven negligence of the driver of a stolen car registered in France.

5 The French insurance company which had insured that car against civil liability denied liability on the basis of the terms of its policy which excluded cover in case of theft. Consequently, Mr Fantozzi and Les Assurances Populaires had recourse against Bureau Belge des Assureurs Automobiles and requested the Tribunal de Première Instance, Mons, to order it to pay damages in respect of the loss which they had sustained.

6 The Tribunal allowed that claim by a judgment of 26 January 1979. Bureau Belge des Assureurs Automobiles appealed, maintaining essentially that the Tribunal had incorrectly interpreted Belgian law.

7 The Cour d'Appel, Mons, noted that the national legislation, and in particular the Law of 4 July 1972, had been adopted pursuant to Directive 72/166 and that, in its view, that directive granted a more favourable status to vehicles normally based within the territory of a Member State, because such vehicles were to be admitted into Belgium without an international insurance certificate, on condition that the bureau appointed for that purpose guaranteed the settlement of claims in respect of damage caused in Belgium by those vehicles irrespective of whether the obligation to effect insurance

had ben complied with. Furthermore, Article 2 (2) of that directive also provided for the conclusion of an agreement between the six national insurers' bureaux; such an agreement was indeed concluded on 16 October 1972.

8 Noting that the Community provisions in question have been the subject of differing interpretations by the Belgian and French courts, the Cour d'Appel, Mons, asked the Court of Justice for a preliminary ruling on the following question:

"Does it follow from the rules of Community law that the duty imposed on national insurers' bureaux includes the duty to pay compensation for damage caused in the territory of one Member State of the EEC by a vehicle normally based in the territory of another Member State of the EEC if the driver of the vehicle acquired it by theft or duress?"

9 Before considering the problem raised by that question, it should be noted that Council Directive 72/166 established a system whose essential characteristics, clearly set out in the last three recitals in the preamble, may be summarized as follows:

Abolition of checks on green cards for vehicles normally based in a Member State entering the territory of another Member State by means of an agreement between the six national insurers' bureaux, whereby each national bureau guarantees compensation, in accordance with the provisions of national law, in respect of any loss or injury giving entitlement to compensation caused in its territory by such a vehicle, whether or not insured; and

A presumption that all Community motor vehicles travelling in Community territory are covered by insurance, implying that the national law of each Member State should provide for the compulsory insurance of vehicles against civil liability.

10 Article 2 (2) of the directive provides that:

"As regards vehicles normally based in the territory of a Member State, the provisions of this directive, with the exception of Articles 3 and 4, shall take effect:

After an agreement has been concluded between the six national insurers' bureaux under the terms of which each national bureau guarantees the settlement, in accordance with the provisions of its own national law on compulsory insurance, of claims in respect of accidents occurring in its territory caused by vehicles normally based in the territory of another Member State, whether or not such vehicles are insured."

11 Since the Court only has jurisdiction to interpret Article 2 (2) of Directive 72/166, and is precluded from interpreting any later contractual provision, the question raised seeks in effect to ascertain whether the guarantee which each national bureau must provide includes the obligation to settle claims in respect of accidents caused on its territory by vehicles normally based on the territory of another Member State, even though the driver of the vehicle in question acquired it by theft or duress, and notwithstanding any exclusions from insurance cover provided for in the legislation of the State in question.

12 The parties to the action maintained the positions that they had already defended in Case 64/83 (judgment of 9. 2. 1984, *Bureau Central Français* v *Fonds de Garantie Automobile*, [1984] ECR 689). For its part, the French Government contends that the provisions of Article 2 (2) of the directive at issue mean that, in the present case, Bureau Belge des Assureurs is obliged to cover even the consequences of accidents caused by a stolen vehicle, notwithstanding the contrary provisions of Belgian law. On the other hand, the Italian Government, the United Kingdom, the Commission and Bureau Belge des Assureurs Automobiles are of the opinion that the directive can only be interpreted as meaning that claims for compensation against vehicles from other Member States must be treated in the same way as claims made against vehicles covered by compulsory insurance in the State whose bureau is called upon to settle the claim.

13 As the Court held in the aforesaid judgment of 9 February 1984 in Case 64/83, it follows from a consideration of Directive 72/166 that "as regards vehicles to which the directive applies, the national bureau of the Member State in which the accident has occurred guarantees the settlement of claims in respect of accidents which are required to be covered under the compulsory insurance scheme of that country, within the limits and in

accordance with the provisions of its national law, whether or not the driver was actually insured".

14 Consequently, the reply to the question raised should be that Article 2 (2) of Directive 72/166 must be interpreted as meaning that, with reference to the payment of compensation for damage caused in the territory of one Member State of the EEC by a vehicle normally based in the territory of another Member State of the EEC, if the driver of the vehicle obtained it by theft or duress, the national insurers' bureaux are under an obligation to settle such claims upon the terms laid down by their own national legislation.

15 The judgment of the Court (First Chamber) of 9 February 1984 (Case 64/83 *Bureau Central Français* v *Fonds de Garantie Automobile),* will be annexed to the present judgment, to which it is complementary.

Costs

16 The costs incurred by the Government of the French Republic, the Government of the Italian Republic, the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the question referred to it by the Cour d'Appel, Mons, Belgium, by order of 7 June 1983, hereby rules:

Article 2 (2) of Council Directive 72/166/EEC must be interpreted as meaning that, with reference to the payment of compensation for damage caused in the territory of one Member State of the EEC by a vehicle normally based in the territory of another Member State of the

EEC, if the driver of the vehicle obtained it by theft or duress, the national insurers' bureaux are under an obligation to settle such claims upon the terms laid down by their own national legislation.

Bahlmann Pescatore Due

Delivered in open court in Luxembourg on 21 June 1984.

For the Registrar

H. A. Rühl

Principal Administrator

K. Bahlmann

President of the Second Chamber

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 12 APRIL 1984

My Lords,

On 21 August 1976 there was an accident between two motor cars, one of them owned by a Mr Fantozzi, a resident of the Kingdom of Belgium, the other registered in France but driven by a man who had stolen it.

The latter car was insured by its owner with a French insurance company. That company refused to accept liability for the damage to the car, relying on a clause in the insurance policy which excluded liability for an accident caused by a stolen car driven by the thief. The company also relied on the fact that, under French law, insurance cover is not required where losses are caused by a vehicle which has been stolen.

Mr Fantozzi brought proceedings against the Bureau Belge des Assureurs Automobiles, which is the national bureau representing insurance companies in Belgium. At first instance, the court held that the Bureau was liable to compensate Mr Fantozzi for the damage caused. The Bureau appealed to the Court of Appeal