Reports of Cases

OPINION OF ADVOCATE GENERAL
BIONDI
delivered on 25 September 2025 [1]

Case C-490/24

Stichting Koskea, as administrator of ED,

v

Nationale Nederlanden Schadeverzekering Maatschappij NV, trading under the name of Reaal Schadeverzekering NV

(Request for a preliminary ruling from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands))

(Reference for a preliminary ruling – Compulsory insurance against civil liability in respect of the use of motor vehicles – Directive 2009/103/EC – Article 12(1) – Damage caused by a vehicle – Cover by insurance – Exclusion of the damage suffered by the driver as provided for in Directive 2009/103 – Passenger's involvement in the occurrence of the damage caused by the vehicle – Impact on status as 'driver' – Definition – Autonomous concept of EU law – Objective of protection of third-party victims – Legal certainty – Distinction between civil liability on the one hand and insurance against civil liability on the other hand)

1. Ongoing technological development seeks to relieve individuals of the most arduous or dangerous tasks. Driverless cars, once science fiction, are becoming a reality. They are already circulating in San Francisco and Beijing, and soon they will be in London. [2] A substantial reduction in the number of road traffic accidents is expected as a result of reduced risk linked to human error.

[1] Original language: French.

[2] See 'Self-driving vehicles set to be on roads by 2026 as Automated Vehicles Act becomes law', available at the following address: https://www.gov.uk/government/news/self-driving-vehicles-set-to-be-on-roads-by-2026-as-automated-vehicles-act-becomes-law (last accessed on 18 June 2025).

2. While we wait to find out if that reduction comes to pass, EU law continues to provide significant protection to victims of road traffic accidents by way of the directives on compulsory insurance against civil liability in respect of the use of motor vehicles [3] (together, 'the "Civil Liability Insurance Directives"'). While the Court of Justice has already, on several occasions, ruled on the interpretation of those directives, in order to define, inter alia, the concepts of 'passenger' [4] and 'use of vehicles', [5] the present reference for a preliminary ruling asks it to clarify for the first time the scope of the concept of 'driver'; a question already raised before numerous national courts.

I. The dispute in the main proceedings, the questions referred and the procedure before the Court

3. In 2016, ED, the applicant in the main proceedings, drove a van belonging to a football club carrying a former coach of that club and some members of the team as passengers. The van left the premises of another football club and was heading to a party taking place at a third club. While ED was driving at a speed of approximately 70 km/h, the coach, who was sitting behind and to the right of the driver, suddenly pulled the handbrake. The van skidded and hit several pillars. The driver and the teammate sitting in the passenger seat were ejected from the vehicle. The teammate died as a result of his injuries. ED was seriously injured and still suffers serious lasting effects from the accident.

4. The football club that owned the van had taken out civil liability insurance with Reaal Schadeverzekering NV. The club had also taken out passenger and driver accident insurance with the company Nationale Nederlanden. [6]

5. In respect of the damage he suffered as a result of that accident, ED, through the foundation Stichting Koskea, which now administers his assets and defends his interests, sought compensation from Nationale Nederlanden. In January 2020, that company's lawyer informed ED that the driver's insurance would not be applicable since the police report on the circumstances of the accident showed that ED had consumed alcohol before getting behind the wheel and that he was not wearing his seatbelt. The lawyer also stated that he was not covered

[3] Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ 1972 L 103, p. 1; 'the First Directive'); Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1984 L 8, p. 17; 'the Second Directive'); Third Council Directive 90/232/EEC 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; 'the Third Directive'); 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 (OJ 2000 L 181, p. 65; 'the Fourth Directive'); Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles (OJ 2005 L 149, p. 14) and, lastly, 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), which codified the earlier directives (see recital 1 of Directive 2009/103), as amended by Directive (EU) 2021/2118 of the European Parliament and of the Council of 24 November 2021 (OJ 2021 L 430, p. 1). Since the facts of the present case date back to 2016, I shall refer primarily, in the remainder of my analysis, to Directive 2009/103 in its original version. Since the latter codified the earlier directives, I note that the case-law relating to those earlier directives can be applied to the interpretation of the equivalent provisions of Directive 2009/103 (see judgment of 10 June 2021, *Van Ameyde España*, C-923/19, EU:C:2021:475, paragraph 23).

[4] See, for example, judgment of 1 December 2011, *Churchill Insurance Company and Evans* (C-442/10, EU:C:2011:799, paragraph 30).

[5] See, for example, judgments of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146); of 20 December 2017, *Núñez Torreiro* (C-334/16, EU:C:2017:1007); and of 20 June 2019, *Línea Directa Aseguradora* (C-100/18, EU:C:2019:517).

[6] It is apparent from the request for a preliminary ruling that Reaal Schadeverzekering N.V. has since merged with the Nationale Nederlanden.

under the compulsory civil liability insurance since, under Article 4(1) of the Wet aansprakelijkheidsverzekering motorrijtuigen (Netherlands Law on insurance against civil liability in respect of motor vehicles; 'the WAM'), 'the insurance need not necessarily cover compensation for damage suffered by the driver of the motor vehicle that caused the accident'.

6. That national law transposes Article 12(1) of Directive 2009/103, which provides that 'the insurance referred to in Article 3 shall cover liability for personal injuries to all passengers, other than the driver, arising out of the use of a vehicle', into Netherlands law. [7]

7. Stichting Koskea, acting on behalf of ED, brought an action against Nationale Nederlanden seeking compensation for the damage he suffered on the basis of the civil liability insurance contract, claiming, in essence, that ED could no longer be regarded as a driver following the coach's intervention, which caused the damage.

8. The rechtbank Noord-Nederland (District Court, North Netherlands, Netherlands) upheld that action, holding, in essence, that, from the moment the former coach pulled the handbrake, the applicant in the main proceedings was no longer capable of actually driving that vehicle and, consequently, could no longer be regarded as the 'driver' within the meaning of Article 4(1) of the WAM.

9. Nationale Nederlanden brought an appeal against that judgment before the Gerechtshof Arnhem-Leeuwarden (Regional Court of Appeal, Arnhem-Leeuwarden, Netherlands), which set it aside, holding that ED had not lost his status as the driver as a result of the coach's intervention and that ED was the person who had initially taken the wheel of that vehicle, had started its engine, determined its speed and had chosen the direction of travel. He was operating the controls of the vehicle, and this fact was not altered by the coach suddenly pulling the handbrake and performing a driving act.

10. The foundation Stichting Koskea brought an appeal on a point of law before the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), the referring court. The latter is uncertain whether ED was still the driver when the accident occurred or whether he should be treated as a passenger victim and, as such, covered by the civil liability insurance. The referring court therefore asks whether Article 12(1) of Directive 2009/103 must be interpreted as requiring compulsory insurance to cover liability for the damage suffered by the initial driver of the vehicle where a passenger intervened in the driving of that vehicle and an accident occurred as a result of that intervention.

11. Although Article 4(1) of the WAM seeks to make use of the exception provided for in Article 1 of the Third Directive, now Article 12(1) of Directive 2009/103, none of those provisions provides a definition of 'driver'. Since Article 12(1) of Directive 2009/103 draws a distinction between the driver and other passengers, it is necessary to define the 'driver', to whom the general principle of protection by compulsory civil liability insurance does not apply.

[7] The first and second paragraphs of Article 3 of Directive 2009/103 are worded as follows:
'Each Member State shall, subject to Article 5, 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 the measures referred to in the first paragraph.'

12. In those circumstances, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) decided to stay the proceedings and, by decision received at the Court Registry on 12 July 2024, to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 12(1) of [Directive 2009/103] to be interpreted as requiring compulsory insurance to cover liability for the (initial) driver's damage in a case where a passenger interferes with the [driving] of the motor vehicle and an accident occurs as a result of that intervention?

(2) If the first question is answered in the affirmative, do certain requirements arise from EU law that the national court must take into account when determining whether a driver, within the meaning of Article 12(1) of Directive 2009/103, has lost the [status] of driver in the circumstances of the case and [is] entitled to claim passenger protection under the general rule?'

13. Written observations were submitted to the Court by Nationale Nederlanden, the Netherlands Government and the European Commission, who also all presented oral argument at the hearing which was held before the Court on 12 June 2025.

II. Analysis

14. As a preliminary point, it should be borne in mind that the Court has repeatedly held that 'the obligation to provide insurance cover against civil liability for damage caused to third parties by motor vehicles is … distinct from the extent of the compensation to be afforded to them on the basis of the civil liability of the insured person. Whereas the former is defined and guaranteed by EU legislation, the latter is, essentially, governed by national law'. [8] It follows that the First, Second and Third Directives do not seek to harmonise the rules of the Member States governing civil liability and that, as EU law currently stands, the Member States are free to determine the rules of civil liability applicable to road traffic accidents. [9]

15. Furthermore, the Court has previously held that the EU legislature did not, for example, wish to specify the type of civil liability, whether liability for fault or liability for risk, in respect of the use of vehicles, which must be covered by compulsory insurance. [10] It is therefore the type of civil liability applicable under national law as defined by each Member State that must be covered by insurance under EU law, with the limitation that national law must not undermine the effectiveness of the directives governing that field. [11] It is in the name of that effectiveness that the Court has thus held that those directives preclude a national provision which automatically excludes or disproportionately limits the victim's right to compensation on account of his or her contribution to the occurrence of the damage. [12]

16. In so doing, the Court's case-law has further blurred the line between harmonisation of civil liability rules and harmonisation of civil liability insurance. This fine line must be borne in mind before analysing the questions referred to the Court.

[8] Judgment of 10 June 2021, *Van Ameyde España* (C-923/19, EU:C:2021:475, paragraph 36 and the case-law cited).

[9] See, inter alia, judgments of 17 March 2011, *Carvalho Ferreira Santos* (C-484/09, 'the judgment in *Carvalho Ferreira Santos*', EU:C:2011:158, paragraph 32 and the case-law cited), and of 23 January 2014, *Petillo* (C-371/12, EU:C:2014:26, paragraph 29).

[10] The judgment in *Carvalho Ferreira Santos* (paragraph 33).

[11] See the judgment in *Carvalho Ferreira Santos* (paragraph 36 and the case-law cited).

[12] See the judgment in *Carvalho Ferreira Santos* (paragraphs 36 to 38).

A. Definition of the concept of 'driver'

17. For once, I shall begin my analysis with the second question referred for a preliminary ruling. However, in view of the answer which I propose to give to the first question, it will not, in my view, be necessary for the Court to answer this second question, which asks it to define the concept of 'driver' within the meaning of the 'Civil Liability Insurance Directives'. I therefore raise the following points only in the alternative.

18. Article 12(1) of Directive 2009/103 does not define the term 'driver'. Article 1 of that directive, which deals with definitions, is no more enlightening. None of the other 'Civil Liability Insurance Directives' provides any clarification in that regard. [13]

19. However, since it is a concept which appears in a provision of a directive which makes no reference to national law, the term 'driver' requires, in principle, having regard to the requirements of both the uniform application of EU law and the principle of equality, an autonomous and uniform interpretation which takes into account the context of that provision and the objective pursued by the legislation of which it is a part. [14]

20. As regards the context, it is apparent from an examination of Directive 2009/103 that the driver is defined only in negative terms: he or she is not a passenger, [15] not a pedestrian or a non-motorised road user, [16] nor, a fortiori, a cyclist. [17]

21. The driver must, however, necessarily be in the vehicle, which is defined in Article 1(1) of Directive 2009/103 as being 'propelled by mechanical power'. It can therefore be inferred that the driver is, in principle, the person who, within the vehicle, activates the mechanical power of the vehicle.

22. As regards the objective pursued, the Court has recently noted that the directives codified by Directive 2009/103 have 'progressively defined the obligations of Member States with respect to compulsory insurance. They are intended, first, to ensure the free movement of vehicles normally based in the territory of the European Union and of persons travelling in those vehicles and, second to guarantee that the victims of accidents caused by those vehicles receive comparable treatment irrespective of where in the European Union the accident occurred … It is apparent from recitals 2 and 20 of Directive 2009/103 that that directive pursues, in essence, the same objectives as those of those directives … The development of the EU legislation concerning compulsory insurance shows that the objective of protecting the victims of accidents caused by vehicles has continuously been pursued and reinforced by the EU legislature'. [18]

[13] There is no mention of the 'driver' in the First Directive. This concept appears for the first time in the Second Directive (see the ninth recital and Article 3 of the Second Directive). In the Third Directive, only Article 1 refers to the 'driver'. The Fourth Directive refers to the driver in recitals 23 and 24 and Article 5(4) thereof. Lastly, reference is made to the driver in recital 15 and Article 4(1) of Directive 2005/14.

[14] See, to that effect, judgment of 3 September 2014, *Deckmyn and Vrijheidsfonds* (C-201/13, EU:C:2014:2132, paragraphs 14 and 15). On the requirement for a uniform interpretation of the concept of 'use of vehicles', see, inter alia, judgments of 28 November 2017, *Rodrigues de Andrade* (C-514/16, EU:C:2017:908, paragraph 31), and of 20 June 2019, *Línea Directa Aseguradora* (C-100/18, EU:C:2019:517, paragraph 32 and the case-law cited).

[15] See Article 12(1) of Directive 2009/103.

[16] See Article 12(3) of Directive 2009/103.

[17] See Article 12(3) of Directive 2009/103. See also, in so far as it excludes electric bicycles from the concept of 'vehicle' within the meaning of that directive, judgment of 12 October 2023, *KBC Verzekeringen* (C-286/22, EU:C:2023:767).

[18] Judgment of 30 April 2025, *Nastolo* (C-370/24, EU:C:2025:300, paragraphs 37 to 39 and the case-law cited). The objective of protecting victims, pursued by Directive 2009/103, has been confirmed by Directive 2021/2118 (see recital 39 of that directive).

23. While this objective requires a broad definition of 'victims',[19] it cannot, in my view, justify a definition of 'driver' encompassing the driver as a potential victim, because of the explicit exclusion contained in Article 12(1) of Directive 2009/103.

24. The definition of 'driver', within the meaning of that provision, must therefore lie somewhere between the observance of the freedom of the Member States to define the rules on civil liability[20] and the preservation of the effectiveness of the directive.

25. To achieve a higher degree of precision in this definition, interpretative assistance can be found in international law.

26. The Vienna Convention on Road Traffic of 8 November 1968,[21] to which all the Member States are parties, defines a driver in Article 1(v) as 'any person who drives a motor vehicle or other vehicle (including a cycle)'. Article 8 of that convention is a specific provision on drivers, from which it follows that 'every moving vehicle or combination of vehicles shall have a driver', that 'every driver shall possess the necessary physical and mental ability and be in a fit physical and mental condition to drive', that 'every driver of a power-driven vehicle shall possess the knowledge and skill necessary for driving the vehicle' and that 'every driver shall at all times be able to control his vehicle'.[22] It is interesting to note that, under Article 8, it is the sole responsibility of the driver to be, at all times, capable of controlling the vehicle.

27. It can be inferred from all of those factors that the driver is the person who sits in the driver's seat of the vehicle and who therefore has access to the essential controls of that vehicle, enabling him or her to determine its movement, direction and speed.

28. Lastly, I would add that, for the reasons which I shall set out below, it is only in very exceptional circumstances that the status of driver could be taken away from the person sitting in the driver's seat.[23] In any event, the burden of assessing, on a case-by-case basis, who the driver was at the time of the accident, according to the specific factual circumstances of each situation, must be left to the national courts. In making that assessment, I would remind them that they must ensure that the effectiveness of Directive 2009/103 is preserved.[24]

[19] Directive 2021/2118 prefers the concept of 'injured parties' (see recital 2 of that directive). See also the heading of Article 12 of the amended version of Directive 2009/103.

[20] This is reflected in the first subparagraph of Article 12(3) of Directive 2009/103. I am sympathetic to the argument, put forward by the Commission at the hearing before the Court, that excessively narrow definition criteria could undermine the competence of the Member States to define the rules governing civil liability.

[21] *United Nations Treaty Series*, vol. 1042, p. 17.

[22] See Article 8(1), (3), (4) and (5), respectively, of the Vienna Convention on Road Traffic of 8 November 1968.

[23] For example, the mere interference in the driving by a person other than the driver should not be sufficient to cause the driver to lose that status within the meaning of Directive 2009/103. As the Netherlands Government has pointed out, care must be taken to preserve legal certainty for victims. If the status of driver can easily be lost, that means, looking the other way, that a passenger loses the status of victim. We could therefore find ourselves in a system in which insurance companies would have an interest in systematically questioning the behaviour of the passengers in the vehicle, which would undermine the effectiveness of their compensation and therefore, ultimately, their protection.

[24] See point 15 of this Opinion.

B. Compensation for the damage suffered by the driver

29. By its first question, the referring court asks the Court whether it follows from Article 12(1) of Directive 2009/103 that the compulsory insurance provided for in Article 3 of that directive must cover liability for damage suffered by the driver in a case where a passenger intervenes in the driving of the motor vehicle and that intervention causes an accident.

30. In my view, the answer to that question should be in the negative.

31. It should be recalled that the first paragraph of Article 3 of Directive 2009/103 requires each Member State to take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance.

32. While the damage covered and the terms and conditions of this insurance are determined in the context of these 'appropriate measures', [25] Directive 2009/103 specifies that the insurance must cover damage to property and personal injury. [26] That directive goes on to state that the insurance referred to in Article 3 'shall cover liability for personal injuries to all passengers, *other than the driver*, arising out of the use of a vehicle'. [27] By contrast, the injuries suffered by the family of the driver must, in principle, be covered. [28] Lastly, according to the second subparagraph of Article 12(3) of Directive 2009/103, that article 'shall be without prejudice either to civil liability or to the quantum of damages'.

33. It therefore follows from a literal interpretation of Article 12(1) of Directive 2009/103 that the EU legislature clearly and explicitly intended *not to provide* cover, by means of compulsory civil liability insurance, for damage suffered by the driver, regardless of its origin. The exclusion of the driver concerns all damage, without distinction, and is not limited to damage caused by the driver.

34. It also follows from the wording of that article that a vehicle may be driven by one driver only. [29]

35. The proceedings before the Court have not succeeded in establishing the exact reason for the exclusion of cover for the damage suffered by the driver, which originates in the Third Directive. [30] It may reasonably be thought that the civil liability insurance rules in respect of the use of vehicles, as implemented at EU level, is based on a fundamental dichotomy – a *summa divisio*. On the one hand, there is the driver, deemed to have decided that the vehicle would participate in road traffic, [31] and thus to be the source of the risk taken, and to have control over that risk. On the other hand, there are the victims, who are the 'weakest party in an accident', [32] whether they are pedestrians or passengers and, at the same time, policyholders, owners of the vehicle or members of the family of the driver, of the policyholder or of the owner of the vehicle, whether they entered

[25] See the second paragraph of Article 3 of Directive 2009/103.

[26] See the fourth paragraph of Article 3 of Directive 2009/103.

[27] See Article 12(1) of Directive 2009/103. Emphasis added.

[28] See, for personal injuries, Article 12(2) of Directive 2009/103.

[29] This contrasts with the plural used when referring to passengers.

[30] See Article 1 of the Third Directive. See also judgment of 14 September 2000, *Mendes Ferreira and Delgado Correia Ferreira* (C-348/98, EU:C:2000:442, paragraph 26).

[31] Here I am using the words used by Nationale Nederlanden at the hearing.

[32] See recital 22 of Directive 2009/103. According to the Court, 'by providing that insurance for civil liability in respect of the use of motor vehicles covers liability for personal injuries to all passengers other than the driver, Article 1 of the Third Directive lays down only one distinction between the driver and the other passengers' (judgment of 30 June 2005, *Candolin and Others*, C-537/03, EU:C:2005:417, paragraph 32).

the vehicle in full knowledge of the facts or may have contributed to the occurrence of the damage.[33] The weakness of third-party victims who are passengers stems, *ex hypothesi*, from their inability to influence emergency situations.[34] The persons protected under the various directives are therefore the victims of the accident, understood in a broad sense, who are defined as distinct from and as excluding the driver.

36. Whether from a literal or systemic perspective, there is reason to believe that Article 12(1) of Directive 2009/103 must be interpreted as meaning that the intervention of a passenger which causes an accident cannot have the effect of depriving the driver of the status of driver.

37. From a teleological point of view, an interpretation of Article 12(1) of Directive 2009/103 which excludes compensation for damage suffered by the driver, including in the case of intervention by a passenger, seems to me to be consistent with the objective pursued by that directive for two main reasons.

38. First, while legislative developments have undeniably moved towards greater protection for victims,[35] this development has, at the same time, been clearly marked by the consistent exclusion, since the adoption of the Third Directive, of damage suffered by the driver from the scope of compulsory insurance. The 'Civil Liability Insurance Directives' are thus based on the principle that only the damage caused to third-party victims must be covered by compulsory insurance.[36] The harmonisation brought about by these directives does not concern the driver, whose fate continues to be governed by national law.

39. In the second place, it is precisely in order to guarantee the objective consistently pursued by the legislature in the course of its interventions in this field that the exclusion provided for in Article 12(1) of Directive 2009/103 must be rigorously observed.

40. It seems to me that, since the Court has repeatedly held that the objective of protecting victims precludes national legislation from unduly restricting the concept of passenger,[37] it should not now take the risk of adopting a concept of 'driver', within the meaning of EU law, which is fluid, subjective and, above all, liable, in turn, to put the victims themselves at risk of being deprived of the status of passenger. The objective of protecting victims will only be ensured if the predictability of the rules is preserved, and predictability can only be guaranteed if the

[33] With regard to cover for personal injuries suffered by members of the family of the policyholder, driver or any other person who is liable under civil law, see Article 12(2) of Directive 2009/103; with regard to cover for personal injuries and damage to property suffered by pedestrians, cyclists and other non-motorised users, see the first subparagraph of Article 12(3) of that directive.

[34] On the status of passengers as third-party victims, see judgment of 19 September 2024, *Matmut* (C-236/23, EU:C:2024:761, paragraph 34). It follows that a person who is insured to drive the vehicle but who is a passenger at the time of the accident is to be regarded as a passenger victim for the purposes of Directive 2009/103 (see judgment of 19 September 2024, *Matmut*, C-236/23, EU:C:2024:761, paragraph 38 and the case-law cited).

[35] See point 22 of this Opinion.

[36] That finding is not altered by a reading of the judgment in *Carvalho Ferreira Santos*. In that case, the Court was asked whether national legislation which provided, in the event of a collision between two vehicles where neither driver was at fault, for a reduction in the civil liability of the insured person (the driver) under the *applicable national civil liability rules* was compatible with the 'Civil Liability Insurance Directives'. The Portuguese legislation thus sought to 'apportion the civil liability for damage caused by a collision between two motor vehicles, where neither driver is at fault' (see paragraph 41 of the judgment in *Carvalho Ferreira Santos*), and that apportionment necessarily affected the compensation received. In the situation considered in the judgment in *Carvalho Ferreira Santos*, each of the drivers was therefore both liable for the damage caused to the other (who therefore became a third-party victim) and a third-party victim himself. It is in that sense that the expression 'the right of the victim, in the present case that of the driver' in paragraph 43 of that judgment must be understood, and that dual status is expressly emphasised by the Court in paragraph 45 of that judgment. The Portuguese legal system had chosen to resolve that apparent incongruity by providing for a division of civil liability in proportion to the contribution of each vehicle (see paragraph 43 of the judgment) – that is not to say driver – to the occurrence of the damage. The judgment in *Carvalho Ferreira Santos* must therefore be read in the light of the facts and the national legal framework which characterised the situation in the main proceedings.

[37] See judgment of 19 September 2024, *Matmut* (C-236/23, EU:C:2024:761, paragraph 36 and the case-law cited).

relevant concepts are clear and stable. I also note that, in relation to passengers, cover under Directive 2009/103 of the damage they suffer is not conditional on an absence of participation in causing that damage. [38]

41. The issue of compulsory insurance cover must therefore be disconnected from that of liability for damage, since EU law has not succeeded in harmonising the latter. [39] In order to preserve legal certainty and a correct division of competences, it must therefore simply be stated, in a somewhat Manichean way, that Directive 2009/103, on the one hand, requires the Member States to ensure that compulsory insurance covers damage suffered by passenger victims and, on the other hand, does not require that insurance to cover damage suffered by the driver.

42. The circumstances of the accident which gave rise to the dispute in the main proceedings are quite tragic and concern must be shown for all the victims. Nevertheless, the desire to restore some sense of justice in misfortune cannot justify twisting legal rules and concepts to the point that they lose their common meaning.

43. For the purposes of Directive 2009/103, ED cannot be both the driver and the passenger of the vehicle which caused the damage. The coach who pulled the handbrake cannot be considered to be the driver. The mere fact that a passenger interferes with the driving does not have the effect of depriving that passenger of his or her status as a victim just as that interference is not sufficient to deprive the driver of his or her status as the driver.

44. The degree of the passenger's involvement – of his or her liability – in causing the damage is a matter which does not concern civil liability insurance as organised by Directive 2009/103, but rather civil liability itself, [40] which is governed by national law. [41] For the reasons set out above, I propose that Article 12(1) of Directive 2009/103 be interpreted as not providing that compulsory insurance must cover damage caused by the vehicle to its driver, even where a passenger intervened in the driving of the vehicle.

45. To rule in that way would not leave drivers without recourse but would reiterate to the Member States that they are responsible for putting in place an insurance scheme covering damage suffered by drivers. [42]

[38] Except in the specific cases referred to in the second subparagraph of Article 13(1) of Directive 2009/103.

[39] The diversity of models adopted by the Member States must be preserved, and it is because the Member States have not agreed on the definition of a single system that Directive 2009/103 remains the balancing act that it is. For example, some Member States have chosen a model in which the damage caused by the vehicle is insured through its driver, who is the policyholder. It is then the driver him- or herself who is insured for damage caused to third parties by the vehicle he or she is driving. In such systems, it is clear how difficult it would be to accept that the status of driver could be transferred to a passenger in the vehicle at the slightest intervention by that passenger. The driver's insurance cannot be expected to cover damage caused to the latter by the passenger, who intervened in the driving, and that passenger, for his or her part, would in all likelihood not be insured as a driver.

[40] As already follows, in my view, from a reading of paragraph 24 of the judgment of 30 June 2005, *Candolin and Others* (C-537/03, EU:C:2005:417).

[41] See judgment of 10 June 2021, *Van Ameyde España* (C-923/19, EU:C:2021:475, paragraph 36 and the case-law cited).

[42] Such a scheme is likely to include exclusion clauses, as is the case with the driver's insurance taken out to cover the damage suffered by ED. It would therefore appear that ED's only recourse is to seek to hold the coach civilly liable, where appropriate (see paragraph 11 of the Netherlands Government's written observations).

III. Conclusion

46. In the light of all the foregoing considerations, I propose that the Court answer the questions referred for a preliminary ruling by the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) as follows:

Article 12(1) of 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,

must be interpreted as meaning that damage suffered by the driver of a vehicle during a road traffic accident is not covered by the compulsory insurance provided for by that directive, even where a passenger's intervention in the driving of the vehicle caused the accident.