

Electric cycles are not motor vehicles

Comment on the judgment by the Court of Justice of the European Union of 12 October 2023. Case C-286/22

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Introduction

There is no doubt that what are termed personal transporters or personal mobility vehicles (PMVs), Electronically Power Assisted Cycles (EPACs) and other similar rideables have burst onto the scene in our cities in recent years, which has brought about road safety problems as well as accidents involving riders of such vehicles themselves and other people. It has therefore become necessary for there to be a clear regulatory framework both to ensure the orderly use of such vehicles on public thoroughfares and avoid or reduce traffic accidents.

Thus far we have encountered a mixed bag of incomplete legislation with nationwide regulations thrown together with municipal by-laws, which, in our view have still not addressed the problems that arise, particularly as these concern road safety. In this regard we ought to clear up questions about classifying these sorts of vehicles, their characteristics, what riders need, identification and registration, the insurance that should apply to them, etc.

As things stand, since they are not held to be motor vehicles the legislation on civil liability insurance for road-going motor vehicles does not apply to them, and neither does the Criminal Code where this concerns road safety offences in articles 379 et seq. thereof. Thus, as regards the criterion of attributing civil liability, Article 1902 of the Civil Code is applied, which is the general rule observed in this area where no specific legislation exists. Hence, if, for example, a moped collides with a PMV or an EPAC, theoretically separate criteria for apportioning civil liability are applied, which appears striking to say the least.

This issue is producing truly contradictory case law in regard to the criterion for attributing liability on the part of riders, as well as the owners and lessors of this sort of vehicle.



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Directive (EU) 2021/2118 on motor vehicle insurance

Directive (EU) 2021/2118 of the European Parliament and of the Council of 24 November 2021 amending Directive 2009/103/EC relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, has defined what should be understood by a motor vehicle and a traffic event by taking into account the case law of the Court of Justice of the European Union (CJEU), which comprises, inter alia, its decisions in the cases concerning Vnuk (CJEU judgment of 4 September 2014, case C-162/13), Rodrigues de Andrade (CJEU judgment of 28 November 2017, case C-514/16) and Torreiro (CJEU judgment of 20 December 2017, case C-334/16)¹.

In regard to the concept of a 'vehicle', section 1 of Directive 2021/2118 amends Article 1 Directive 2009/103/EC and states that these are held to be "any motor vehicle propelled exclusively by mechanical power on land but not running on rails, with i) a maximum design speed of more than 25 km/h; or ii) a maximum net weight of more than 25 kg and a maximum design speed of more than 14 km/h."

As we can note, in defining what should be understood by 'vehicle' its scope fails to cover Electronically Power Assisted Cycles (EPACs), given that it requires that they be propelled 'exclusively' by mechanical power, which prerequisite the cycles referred to do not satisfy.

Moreover, in regard to electric vehicles, Recital 4 of Directive 2021/2118 stipulates that light electric vehicles that do not fall within the definition of 'vehicle' should be excluded from the scope of Directive 2009/103/EC. Notwithstanding this, it offers Member States the option of requiring, under their national law, motor insurance, subject to conditions to be set by them, in respect of any motor equipment used on land that does not fall within that Directive's definition of 'vehicle', and for which consequently that Directive does not require such insurance.

As a result, so-called PMVs which do not have a specific design power do not qualify as 'vehicles' for the purposes of the Motor Vehicle Directive. As for EPACs, under no circumstances will they be considered to be a 'vehicle' in that they are not propelled 'exclusively' by mechanical power. This does not however hinder Member States from considering them to be 'vehicles' and requiring compulsory insurance by dint of the stipulations in Recital 4 of Directive 2021/2118. In fact as part of the work on transposing the Directive that is being carried out in Spain the Assessment Supervisory Committee has been commissioned to produce a reasoned report on establishing compulsory civil liability insurance for personal mobility and other motor vehicles which do not fall within the legal conception of what constitutes a 'motor vehicle' pursuant to the Directive.

¹ We recommend reading these articles from issues 9 and 12 of our e-magazine in which we refer to the three cases cited (Vnuk, Andrade and Torreiro):

- [The obligation of the owner of a motor vehicle to take out insurance against civil liability: comments on the Opinion of the Advocate General of the Court of Justice of the European Union of 26 April 2018 in the question referred for a preliminary ruling C-80/2017](#) (A. Izuzquiza).
- [The obligation on vehicle owners to take out compulsory insurance. Comment on the Judgment by the Court of Justice of the European Union of 4 September 2018 \(Case C-80/17\)](#) (J. A. Badillo).
- [The concept of a "traffic event" in EU jurisprudence](#) (J. A. Badillo).

The judgment by the Court of Justice of the European Union of 12 October 2023

The CJEU judgment of 12 October 2023 (case C-286/22) examines whether Power Assisted Cycles according to what is laid down in Directive 2009/103/EC (in force at the time of events) qualifies as a vehicle for the purposes of the Directive referred to.

Even though the definition of a 'vehicle' in the Directive of 2009 is more concise than that of 2021, it says that a 'vehicle' should be understood to mean: *"any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled"*. Thus this Directive also alludes to those which are propelled by mechanical power.

The facts behind this ruling

The facts behind this ruling relate to a vehicle running over the rider of an Electronically Power Assisted Cycle in Belgium. The victim was seriously injured and died on 11 April 2018. Given that the incident constituted an accident to the victim *in itinere*, P&V, their employer's insurer for accidents in the workplace paid out indemnities and subrogated itself to their rights and those of their successors in interest. It subsequently filed a claim for the indemnities paid out to the insurer of the vehicle responsible for the accident.

Legal issue raised

The legal issue which is raised in this proceeding concerns whether an EPAC can be considered to be a vehicle on the terms articulated in the Directive of 2009, since, if this is the case, the victim to blame for the accident would not be entitled to any indemnity at all; whereas if it is held that the EPAC does not qualify as such, then the victim does in fact have the right to be indemnified.

This is because Article 29 of the (Belgian) Law of 21 November 1989 confers protection for all accident victims who are not drivers or riders of vehicles in those cases where they are to blame for the accident. In other words, they do not apply either involvement of blame or exclusive culpability on the part of the victim and so they have to be indemnified on account of the vehicles having a role in the accident. As can be noted, the 'vulnerable victim' concept in Belgian law is more protective than that laid down in Article 1 of our Law on civil liability and insurance in using motor vehicles.

Belgian lower court judgments

On account of this, P&V, which had paid out an indemnity to the victim, filed a lawsuit against KBC, the insurer of the vehicle which ran the victim over, with the Western Flanders Court for Minor Offences in an attempt to achieve reimbursement of its costs based on Article 1382 of the old Belgian Civil Code or Article 29 bis of the Law of 21 November 1989. KBC brought a counterclaim in which it sought a refund from P&V of a sum of money paid out inappropriately. In its answer to the claim, on the basis of Article 29 bis P&V alleged that it could not be maintained that the victim was the rider or driver of a motor vehicle.

Under a judgment of 24 October 2019, the above-mentioned court ruled that the driver of the vehicle in question was not accountable for the accident, but that, by dint of Article 29 bis as discussed, KBC was nevertheless obliged to indemnify the victim as well as P&V, which had subrogated itself to the rights and claims of said victim due to the fact that the victim was not driving or riding a motor vehicle and was therefore entitled to an indemnity in accordance with that same Article.

In response to an appeal filed by KBC, the insurer of the vehicle, the intermediate court of appeal handed down a judgment on 20 May 2020 in which it dismissed the appeal given that it was of the view that a cycle is not a motor vehicle in the sense outlined in the Law referred to if it uses an ancillary motor when mechanical propulsion alone cannot start the cycle moving or keep it going. Therefore, in light of the information furnished by the manufacturer of the EPAC, the court in question ruled that the cycle's motor only provided support for pedalling, including the motor's 'turbo' function, and that this function could only be activated having exerted muscle-power, whether by pedalling, walking with the cycle or pushing it. This inferred that the victim was not the rider of a motor vehicle in the sense conveyed in Article 1 of the Law of 21 November 1989, and that they could claim damages pursuant to Article 29 bis of said law as 'a vulnerable user of a public thoroughfare' as was the insurer of occupational accidents who was subrogated to the rights of the victim.

Its claims having been once more thrown out, KBC appealed to Belgium's Court of Cassation for a reversal of the afore-mentioned judgment, this being the court which raises the preliminary issue with the CJEU. The appellant maintained that, since Article 1 of the Law of 21 November 1989 makes no distinction between vehicles used for land travel that can exclusively be propelled using mechanical power and those which can additionally be propelled via mechanical power, only vehicles propelled exclusively through muscle-power lie outside the scope of application of that Law. Based on this it adduces that Belgium's court of first instance wrongly interpreted the concept of a 'motor vehicle' in contravention of Articles 1 and 29 bis of that Law, as well as particularly Article 1, point 1 of Directive 2009/103/EC.

In view of this appeal, Belgium's Court of Cassation opted to put the following preliminary issue before the CJEU: *Should Article 1, point 1 of the Directive [2009/103] be interpreted in the version thereof that applied prior to amendment thereof by Directive [2021/2118] where 'vehicle' is defined as "any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled" in the sense of a power assisted cycle (a 'speed pedelec'), the motor of which only operates in support of pedalling, meaning that the cycle is incapable of moving autonomously without the use of muscle-power but instead solely via driving force along with muscle-power, and where a cycle with power assisted pedalling equipped with a 'turbo' function whereby the cycle accelerates to a speed of 20 km/h without any pedalling when the 'turbo' button is pressed but where muscle-power is required to be able to use that function are not vehicles in the sense depicted in that Directive?*

As we have already pointed out, according to Belgian law deeming an EPAC to be a vehicle on the terms of Directive 2009/103/EC would produce the outcome that the victim would not be indemnified in this case through being culpable for the accident. That said, in the contrary case the victim would be entitled to the relevant indemnification, as would the insurer that had paid out damages for them and is subrogated to their claims and rights.

The decision by the Court of Justice of the European Union

The European Court once again reminds us that Directive 2009/103/EC is intended to guarantee the free movement of both vehicles normally parked in EU territory and the persons occupying them, and on the other hand, that the victims of accidents caused by such vehicles receive comparable treatment wherever the accident has taken place within the European Union, as well as to ensure the protection of victims of accidents which motor vehicles cause. This objective of victim protection has been one that has been constantly pursued and reinforced by the European Union's legislative authority.

Beyond this, as regards EPACs, which constitute the matter raised in the principal litigation, it states that machines that are not propelled exclusively by mechanical power and which therefore cannot travel overland without the use of muscle-power, such as cycles with power-assisted pedalling, yet which, on the other hand, can accelerate without pedalling up to a speed of 20 km/h, do not appear capable of causing bodily injury or property damage comparable in seriousness or amount to that which motorbikes, cars, lorries or other vehicles travelling on land and powered

exclusively by mechanical force can occasion. For the CJEU the latter can attain speeds that are notably greater than such machines can reach and nowadays they are used more frequently on the roads. Therefore, the goal of protecting victims of traffic accidents caused by motor vehicles which is pursued by Directive 2009/103 does not require machines of this kind to be included within the concept of 'vehicles' in the sense described in Article 1, point 1 of this Directive.

Based on all the above reasoning it concludes that it is in order to address the preliminary issue raised by asserting that Article 1, point 1 of Directive 2009/103 must be interpreted in the sense that a cycle does not fall within the category of a 'vehicle' for the purposes of this decision if its electric motor merely assists pedalling and it has a function which allows it to accelerate without pedalling up to a speed of 20 km/h; a function which, nonetheless can only come into operation having exerted muscle-power.

Conclusions:

In light of the points raised in the preceding paragraphs, we may conclude the following:

1. Belgian law considers those persons who do not have vehicle driver or rider status as defined in Directive 2009/103/EC as vulnerable. Thus it is that in the case of anyone not classed as such passing along the road and then suffering an accident, they shall have to be indemnified jointly and severally by the insurers of the vehicles concerned regardless of whether there may or may not be culpability or fault exclusively or on an attendant basis on the part of the victim.
2. What is alluded to in the previous paragraph being the point of controversy in the Belgian courts, Belgium's Court of Cassation submits the issue for a preliminary ruling to the CJEU to determine whether EPACs qualify as vehicles for the purposes of Directive 2009/103/EC, given that whether or not the victim in the original litigation is indemnified will hinge on this.
3. The CJEU concludes that for the purposes of Directive 2009/103/EC a cycle does not fall within the category of a 'vehicle' if its electric motor merely assists pedalling and it has a function which allows it to accelerate without pedalling up to a speed of 20 km/h; a function which, nonetheless can only come into operation having exerted muscle-power.
4. Although in the case which concerns us here Directive 2009/103/EC applied, we ought to point out that pursuant to Directive 2021/2118, which is currently being transposed into Spanish law, an EPAC is not classed as a motor vehicle either, irrespective of the power it may have, given that the definition of a 'vehicle' mentions that it must be "propelled exclusively using mechanical power", which is a requisite that no EPAC of any description satisfies.
5. In any event, the foregoing represents no hindrance to Member States being empowered (pursuant to Recital 4 of Directive 2021/2118) to require motor vehicle insurance under their national law, subject to conditions to be set by them, in respect of any motor equipment used on land that does not fall within that Directive's definition of 'vehicle', and for which the Directive consequently does not require such insurance (PMVs or EPACs for example).