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

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Introduction: the reason for this article

In recent times the requests for a preliminary ruling referred to the Court of Justice of the European Union (hereinafter, CJEU) by national courts of justice concerning compulsory third-party automobile insurance have been many in number. This is a phenomenon which, in its day, was highlighted by the European Commission itself on justifying the need for revising the current Codified Directive 2009/103/EC, which had merged the five existing Directives relating to this matter.

In the request for a preliminary ruling C-80/17, known as the "Juliana case", two questions arise of key interest for the management of compensation payments to traffic accident victims by the compulsory third-party insurance scheme.

On the one hand, the question arises as to how far the obligation to insure a motor vehicle should extend.

Secondly, the question arises as to whether, in a case where there is an obligation to have a vehicle insured, the Fund, which has paid compensation to the victim of the accident, can extend its recovery action not only to include the driver of the uninsured vehicle responsible for the accident, but also the owner who was not driving and was not involved in the accident.

The rulings of the CJEU in the Vnuk (Slovenia), Núñez Torreiro (Spain) and Andrade (Portugal) cases, which the European Commission has sought to reflect in its recent proposal for amending a Directive, tabled in May 2018 and being processed at the present time, have been particularly relevant in this context.

A very recent and equally relevant fourth ruling has now been added to these three highly significant decisions, which affect the scope of application of the Directive and, consequently, of compulsory third-party automobile insurance, by focussing on what can be understood as a "traffic event" or "use of motor vehicles" in the context of the Directive: the ruling delivered on 4 September 2018 in the case C-80/17, known as the "Juliana case", concerned with a request for a preliminary ruling referred by the Supreme Court of Portugal in 2017.

There is a natural tendency to take time to read the Judgements of the CJEU and to discuss their content. However, in the case of preliminary rulings as relevant as those referred to above, it is extremely important to read and learn the positions and arguments set forth in the Advocate General's preliminary Opinion delivered to the Court and most especially in those cases, as occurs in the "Juliana case", where the conclusions of the Advocate General are then taken up by the Court in its ruling.

Moreover, in this case, experts have considered the Advocate General's Opinion as highly clarifying and an exponent of the protective focus on traffic accident victims adopted by the Directives and by the CJEU itself. This is why it is worthwhile for us to examine the content of this Opinion, delivered on 26 April 2018, and to do so separately from the content of the final ruling of the CJEU of 4 September 2018, which, as we have already foreshadowed, is unquestionably aligned with the Advocate General's conclusions.

For this purpose, I will first refer to the importance, in my opinion, of the two issues raised in the request for a preliminary ruling in the "Juliana case" which are dealt with in section 1.

Following this, in section 2, I will explain the content of the Advocate General's Opinion.

Finally, in section 3, I will conclude with two important consequences which, in my opinion, can be extracted from the arguments contained in that Opinion.

As a preliminary step, let us recall briefly the case referred to the CJEU, on which the Advocate General issued his Opinion:

- The owner of a vehicle registered in Portugal stopped driving it on account of health problems and permanently parked it in her yard.
- The owner's son took the vehicle without his mother's permission and without her knowledge. He ran off the road, and the driver and two passengers died in the accident.
- The Portuguese *Fundo de Garantia Automóvel* paid compensation to the successors of the passengers and then filed suit against the owner and the daughter of the driver, seeking reimbursement.
- The Court of First Instance ruled in favour of the Fund, however the *Tribunal de Relação* (Court of Appeal) concluded that there was no obligation to insure the vehicle and set aside the judgement at first instance.
- The Fund appealed to the Supreme Court, which finally decided to stay the proceedings and refer the following two questions to the CJEU for a preliminary ruling:

  - Should Article 3 of the First Directive be interpreted as meaning that the obligation to take out insurance against civil liability in respect of the use of motor vehicles includes even those situations in which, at the owner's decision, the vehicle is immobilised on private property, off the public roads? Or should it be interpreted to mean that, in such circumstances, the owner is not under the obligation of insuring the vehicle, without prejudice to the liability of the Fund with respect to the injured third parties, particularly in the case of the theft of the vehicle?

  - Should Article 1, paragraph 4, of the Second Directive be interpreted to mean that the Fund has the right of subrogation against the owner of the vehicle, regardless of whether the owner was responsible for the accident? Or should it be interpreted to mean that the subrogation of the Fund against the owner depends on whether the requirements of civil liability have been met, particularly the fact that, at the time when the accident occurred, the owner had effective control of the vehicle?

1. The particular interest of the two questions referred by the Court in Portugal to the Court of Justice of the European Union for a preliminary ruling.

In the request for a preliminary ruling C-80/17, known as the "Juliana case", two questions arise of key interest for the management of compensation payments to traffic accident victims by the compulsory third-party insurance scheme.

On the one hand, the question arises as to how far the obligation to insure a motor vehicle should extend. In the specific case concerning us here, the vehicle was parked permanently in the yard on private property at the choice of its owner who, for medical reasons, was unable to use it.

In the written observations and during the hearing held in the proceedings, opinions were expressed which considered that requiring the payment of compulsory third-party insurance was disproportionate in the case of a person who decided to immobilise their vehicle; and it is equally frequent to hear opinions voiced in informal conversations by drivers and owners of motor vehicles and by insurance professionals who consider that there is no point in insuring a vehicle that is immobilised in a garage in cases where, for example, the owner has gone on a long journey or does not drive their car in winter or during lengthy periods of time in the course of the year.

Secondly, the question arises as to whether, in a case where there is an obligation to have a vehicle insured, the Fund, which has paid compensation to the victim of the accident, can extend its recovery action not only to include the driver of the uninsured vehicle responsible for the accident, but also the owner who was not driving and was not involved in the accident (in our case, the owner was seriously ill and undergoing dialysis and, for this reason, had her vehicle immobilised on her property).

This is not an exceptional case: in the traffic accidents caused by uninsured vehicles processed by the Consorcio de Compensación de Seguros (CCS) in its capacity as the national compensation body, it is not infrequent to find that the driver of the uninsured vehicle liable for the accident is a person who is not the owner, and the owner, due to ignorance of the law, is surprised when the CCS includes them in the action brought for recovery of the compensation payments, despite not having had any responsibility in causing the accident which gave rise to the compensation payments leading to the subsequent recovery action. Opinions on this issue were also given in written observations and during the hearing held in the proceedings, considering it excessive to extend the Fund's recovery action to include a vehicle owner who was unable to drive her vehicle due to poor health and who kept the vehicle inside her property and, therefore, off the public roads.

There are several reasons which, in my opinion, evidence the particular interest awakened by the two questions raised in this request for a preliminary ruling for all of the parties involved in the proceedings.

In the first place, we have the controversies that arose during the proceedings, in which, in addition to the parties, Germany, Spain, Ireland, Italy, Estonia and the United Kingdom, as well as the European Commission, requested to appear. Spain joined in the proceedings precisely because it considered that both questions were key issues and it maintained, together with the European Commission and Latvia, a position which we could consider, along general lines, opposite to that taken by Germany and, above all, by Ireland and the United Kingdom. Finally, the importance of the two questions raised by the court in Portugal was heightened in combination with the interest awakened by the debate and the discrepancies between the positions.

The Kingdom of Spain not only submitted written observations, but also asked to take part in the hearing. In both phases it maintained a clear position aligned with our current legislation on compulsory third-party automobile insurance. Spain took a stance on the obligation to insure the vehicle in question as the only way to guarantee an adequate "safety net" to protect possible traffic accident victims. Consequently, Spain also came out in support of the

appropriateness of domestic laws which –like Portuguese or Spanish legislation- have made provision for the insurance guarantee body to take recovery action against the owner of the vehicle who, although not involved in the accident, had failed to meet the legal obligation of insuring the vehicle.

Secondly, the fact that the CJEU was convened as the Grand Chamber with fifteen members, instead of the usual five-members sitting, can be considered additional proof of the significance and complexity of the questions referred.

In third place, we need to highlight the very important intervention in the proceedings by the Advocate General, who was requested by the CJEU to issue an Opinion prior to the deliberation and delivery of the verdict by the court. The case was assigned to Advocate General Michal Bobek, who delivered a very measured Opinion, with extensive reasoning and very expressive of the way in which the focus and the content of the five Directives on compulsory third-party automobile insurance –today merged into the codified 2009 Directive– were evaluated and interpreted by the CJEU.

2. The particular interest of the Opinion of the Advocate General delivered in the proceedings.

The quality of the Advocate General's Opinion and the fact of its subsequent alignment with the Judgement of the CJEU, with his conclusions delivered in a public hearing on 26 April 2018, warrant that we should pause here to comment on that Opinion, separately from the content of the later Judgement of 4 September 2018.

The Opinion is centred essentially on the first of the two questions referred to the CJEU for a preliminary ruling by Portugal's Supreme Court, that is, whether Article 3 of the First Directive should be interpreted to mean that the obligation to take out civil liability insurance for motor vehicles includes those situations in which, at the owner's choice, the vehicle is immobilised on private property, off the public thoroughfare, or if, on the contrary, it should be interpreted to mean that, in such circumstances, the owner of the vehicle does not have an obligation to insure it.

We will dispense with the second question with respect to whether Article 1.4 of the Second Directive should be interpreted to mean that the insurance guarantee body has the right of subrogation against the owner of the vehicle, independently of the owner's liability for the accident, or, whether it should be interpreted to mean that such subrogation by the insurance guarantee body depends on the circumstance that, at the time of the accident, the owner had effective control of the vehicle. And we are dispensing with this second question because it did not generate the same level of controversy as the first. The issue, in general, was considered to be a right to be regulated under national law and occupies only a small portion of the Opinion, in which it is concluded that the Directive neither creates an obligation nor does it preclude the Member States from providing for subrogation, including against a person who has failed to fulfil the obligation to insure required in domestic legislation. To sum up, the majority of the parties in the proceedings, the Advocate General and the Court –which aligns itself with the Advocate General's conclusions– consider that the subrogation of the insurance guarantee body against the owner non-driver of the uninsured vehicle does not contradict the Directives and is a matter to be decided under national law.

Focussing, therefore, on the first question, we find that the Advocate General points to how recent CJEU judgements highlight the fact that, although the Directives have had a dual purpose –that of facilitating the free movement of persons and goods and the protection of traffic accident victims–, the objective of providing protection has been gradually reinforced and has gained prominence with the successive Directives approved over time.

Thus, in the request for a preliminary ruling, C-162/13, known as the "Vnuk case", the CJEU established that the victim (in this case a farmer worker on a ladder) of an accident –caused on a farm in Slovenia by a tractor that struck the ladder– should be protected since the use being made of the vehicle at the time of the accident was consistent with its normal function, considering that, as occurred in this accident, the manoeuvring of a tractor in the courtyard of a farm to hook up a trailer represents a use of the vehicle which should be understood as within the protective scope of the Directive

and, therefore, within the scope of compulsory automobile insurance. That is, the CJEU removes the accident from the framework of civil liability in farming activities, in order to place it within the protective sphere of the compulsory third-party automobile insurance Directive.

In the same way, in a later request for a preliminary ruling, C-334/16, known as the "Núñez-Torreiro case", the CJEU considered that the accident caused when an all-terrain "Aníbal" military vehicle fitted with wheels overturned in a field owned by the Spanish Army in Chinchilla (Albacete) during night-time manoeuvres, while travelling with combat lights and on terrain suitable for tracked vehicles, also entered within the protective scope of the Directive and of the insurance: the use of the vehicle was consistent with its normal use, and this is so regardless of whether the travel was on public or private roads for generalised or restricted use. The type of terrain –in this case clearly delimited as a restricted area, inaccessible to the general public and not suitable for wheeled vehicles– falls, therefore, outside of the concept of a traffic event.

In a third ruling, delivered in what is known as the "Andrade case", C-514/16, the CJEU also examined the function being performed by the vehicle –a farm tractor– at the time when it overturned in a vineyard in Portugal causing the death of a worker. The vehicle, like many others, had a dual function and if, at the time of the accident, it was being used mainly as a means of transport, the accident would have fallen within the scope of the Directive and of compulsory third-party automobile insurance. However, as occurred in this specific case, the tractor was being used in its function as a machine (parked on a terraced slope with the engine running in order to drive a pump for spraying herbicide; a hose was connected to the tractor and was handled by the worker for spraying vines in the vineyard), then the damages would have been excluded from the aforementioned protection and dealt with through other mechanisms.

On the basis of the preceding rulings, it appears obvious that the obligation to insure the vehicle in the "Juliana case" existed **when the accident occurred,** since it was being driven on a public thoroughfare and performing its function as a means of transport.

However, as the Advocate General notes in his Conclusions to the CJEU, that affirmation does not provide a response to the question of whether the obligation of insuring the vehicle while it was parked on a permanent basis by its owner in her yard on private property existed or not.

In the Advocate General's opinion, the notion of "use of vehicles" and the scope of the obligation to insure can be defined a priori, and this is so for reasons of legal certainty: vehicles cannot be subject to the obligation of being covered by insurance, or not, depending on the activity in which they are involved from one moment to another. The existence of the obligation to insure cannot be evaluated exclusively when an accident occurs and the activity for which the vehicle was being used at that precise moment is being examined. In the Vnuk, Núñez-Torreiro and Andrade cases commented upon above, the vehicles were insured and what had to be determined was a very specific aspect –whether the accidents that occurred were or were not within the scope of the compulsory third-party insurance taken out for those vehicles–, while in the "Juliana case" the vehicle was not insured and the issue raised involved a much more significant level of abstraction: it concerned whether it was appropriate to require an obligation to insure in general.

The Advocate General's answer is unequivocal: **the activity for which a vehicle is used or the mode in which it is found varies from one moment to another, however, this cannot occur with the obligation to insure, which requires a clear beginning and a clear end in time, and a certain logical degree of continuity and foreseeability.** Thus, in the "Andrade case", even though the vehicle at the specific moment of the accident was being used as a machine and not as a motor vehicle generating a traffic event, this does not lead to the conclusion that its obligation to be insured was suspended during the minutes or the hours in which it was being used as a machine. From this it can be concluded that the concepts of "use of vehicles" and "obligation to insure" are not identical.

Driving a vehicle to and from work daily is clearly included within the concept of "use of vehicles", whereby the obligation to insure against liability exists. However, the Advocate General asks himself whether such obligation technically disappears when the vehicle is parked in a private garage during the night and its engine is turned off, in order to

resume the next morning when the ignition key is activated and the vehicle is driven again on the public thoroughfare. The Advocate General considers that this is clearly not the case.

The Advocate General points out that, when a vehicle remains parked overnight, after having been used as a means of transport for travelling to and from work, the status of the vehicle is fully consistent with its normal function. And he goes on to ask what happens if its owner, unexpectedly, takes a taxi to the airport on the next day instead of using her car and goes skiing for a week; and if she breaks a leg while skiing and is in a cast for a month; and if during that month of inactivity she finally decides to sell her car?

The Advocate General asks himself whether the obligation to insure the vehicle ceases at any time and when: when the driver parked and turned off the engine after returning from work?, when she decided to go on a holiday instead of taking her car?, when she broke her leg?, when she decided to sell the car? or at some other point in time?

The answer is that if a vehicle is designed for travelling, for transporting or for moving from place to place, **and is capable of doing so,** a general obligation to insure it derived from the Directive arises. There will be points in time when the vehicle does not generate traffic events and does not generate risks. There will be other times when the risk, although it does exist, is very slight or almost non-existent.

The Advocate General concludes that the fact that a vehicle is normally parked during lengthy periods of time and, consequently, the risk is minimal, **is a good reason for applying a different insurance premium in line with such circumstances, but not for excluding the obligation to insure.** Insurance undertakings can collect different premiums on the basis of mileage or can differentiate the premiums in other ways which will enable them to adjust the scope and degree of use to the type of risk.

All of this does not prevent it from being necessary to establish reasonable limits to the obligation to insure a vehicle. The Advocate General offers a number of guidelines for establishing a beginning and an end to this obligation. He notes expressly that this is not the issue being raised in this case, but, nevertheless, makes a few reflections:

- A vehicle registered and administratively authorised must be insured. The registration of the vehicle is a key and objective point in time for requiring insurance to be taken out.

- The suspension of registration means that a vehicle is not enabled for being used for travel, not even for short distances; the temporary or final suspension would therefore put an end to the obligation to insure the vehicle.

- The incapacitation of the vehicle (removal of its battery and its wheels, for example) could also give rise to the end of the obligation, since the vehicle would in fact no longer be a “motor” vehicle, and it could be considered that the vehicle has ceased to exist in its status as “motorised”.

3. Conclusions reached from a reading of the Advocate General's Opinion delivered in the "Juliana case"

The judgement by the CJEU takes in the sound arguments of the Advocate General, and both the former as well as the latter make it possible to extract, in my opinion, at least two lessons of interest, which I will discuss below. One, with respect to the penalty system applicable to noncompliance with the obligation to insure; the other, with respect to what we could call “occasional” or “intermittent” use policies, which are making a significant effort to gain a foothold in the insurance market.

3.a) Penalty system applicable to failure to insure

The ruling of the CJEU[1] and the Advocate General's Opinion signify, on the one hand, clear support for the disciplinary actions which can be expected to be taken by the traffic and road safety authorities with respect to the obligation to insure. It appears obvious that such authorities can act by identifying the vehicles being used de facto on a more or less routine basis on public or private roads in order to initiate penalty proceedings against persons who not only fail to meet their legal obligation to insure their vehicles but also drive uninsured. However, the facts and the outcome of the "Juliana case" highlight the fact that vehicles left stationery by their owners do not cease to come under the obligation of being insured by the mere circumstance of the subjective choice of their owner to have them "set aside" or "immobilised", removed from road traffic. The traffic authorities are clearly enabled to penalise noncompliance with this obligation separately from the fact of travelling on the roads. In the case of Spain, domestic law provides for the transfer by the CCS to the Directorate General for Traffic (hereinafter, DGT) of the information kept in the Insured Vehicle Database (FIVA), which makes it possible, technically, to control the insuring of all vehicles, regardless of whether or not they are in use at certain times. The Advocate General's Opinion and the Judgement of the CJEU subsequent to it constitute an unquestionable stimulus for addressing such supervision conducive to eradicating or, at least, significantly reducing the level of failure to insure vehicles. It is true and well known that there are considerably older vehicles which have not been deregistered by their owners to remove them from the DGT Register, despite the fact that they no longer exist or are abandoned and not capable of use. However, exercising the necessary caution derived from this fact, there would be scope to centre the data "matching" between the two registers –the Vehicle Register of the DGT and the FIVA of the CCS–, and take the ensuing disciplinary action, with respect to vehicles whose registration numbers will enable us to assume that these are vehicles in active use, independently of whether they are being used daily, are used occasionally or are driven very exceptionally. The obligation of keeping insurance up to date does not depend on the mere choice of the owner to use the vehicle or not. The tragic accident that gave rise to these proceedings referred to the CJEU is sad evidence of all of the foregoing.

3.b) The coverage of the insurance: stable, not intermittent

The Opinion of the Advocate General set forth in the "Juliana case" –and I insist, taken up and in no way rejected or qualified by the CJEU in its final decision–, also sheds light, in our opinion, on the phenomenon of the automobile civil liability policies in which delimitations are established in terms of hours, territories or use in the coverage. The policies, in accordance with these delimitations, are activated and deactivated intermittently, when one of the delimiting parameters established by the insurance undertaking begins to operate or ceases to do so. The activation and deactivation can be supported on a computer application, in such a way that the action is reflected in the application. In one instance, a driver will activate the mechanism on starting the engine for travelling, in general, or for performing the activity stipulated in the policy, in particular, thereby activating the coverage of the insurance; and this same driver, on parking the vehicle, deactivates the coverage of the insurance through the application. The system is based on the principle known as "pay as you drive" and can admit multiple versions depending on whether a broad concept of driving

(1) The Grand Chamber of the CJEU declared the following in its Judgement of 4 September 2018:

1) Article, 3 paragraph 1, of Council Directive 72/166/EEC, of 24 April 1972, First 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, and to the enforcement of the obligation to insure against this liability, as amended by Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005, must be interpreted as meaning that the conclusion of a contract of insurance against civil liability is obligatory when the vehicle concerned is still registered in a Member State and is capable of being driven but is parked on private land, solely by the choice of its owner, who no longer intends to drive it.

2) Article 1, paragraph 4, of Council Directive 84/5/EEC, of 30 December 1983, Second 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, as amended by Directive 2005/14, must be interpreted as not precluding national legislation which provides that the body referred to in that provision has the right to bring an action, in addition to an action against the person or persons responsible for the accident, against the person who was subject to the obligation to take out insurance against civil liability in respect of the use of the vehicle which caused the damages or injuries for which compensation was paid by that body, but who had not concluded a contract for that purpose, even if that person has no civil liability for the accident in which the damage or injuries occurred.

is established for the purpose of the insurance, or a restricted concept in which different kinds of requirements are established (hours, days of the week, geographical proximity, type of use of the vehicle, and the like) for the notion of driving to the said effects and purposes of the insurance.

Those who take part in these insurance transactions allege reasons of cost reduction and rationality in insurance premiums, of the use of technology to the benefit of the policyholder and of the adaptation of insurance to the new collaborative ways to use vehicles.

However, this means overlooking the fact that automobile liability insurance is a type of insurance which has deserved the enactment of no less than five European Union Directives, which have given rise to a codified Directive (Directive 2009/103, of 16 September 2009), as a text merging all five to facilitate the reading and understanding of their contents taken together. Neither should we forget that such intense and continuous regulatory activity –not found in other types of insurance, by the way– is due to the determination of the European supranational institutions to prioritise the protection of the third parties injured in traffic accidents caused by motor vehicles. Each of the five Directives adds a substantial dose of protection in favour of the victims of accidents. And we must add that, subsequent to the five Directives, the European Commission submitted a proposal in May 2018 for amending the codified 2009 Directive which would contribute, if approved, an additional dose of certainty and protection for the third parties injured in traffic accidents.

It is in that context of concern for the protective effectiveness of this body of Community regulations into which we must place the rulings of the CJEU in the "Vnuk" and the "Núñez Torreiro" cases already discussed, and where the arguments of the Advocate General in his opinion on the "Juliana" case must be understood.

It is true, as the Advocate General states, that ex post facto there are ways of using a vehicle at specific points in time that can be considered as outside the concept of a "traffic event", in such a way that they do not give rise to the civil liability coverage addressed in the Directive. This is confirmed in the judgement delivered in the "Andrade case", to which I have also referred. However, the existence of specific situations outside of the scope of compulsory insurance coverage does not preclude the existence of a broad and generic obligation to keep vehicles insured (ex ante). The Advocate General clearly considers that the key to requiring vehicles to be insured is that a vehicle is **intended to move and to travel on the surface of the land and that in fact it is capable of doing so.**

To counter their allegations, the Advocate General recalled the positions defended by the Republic of Ireland and the United Kingdom in their written observations and during the hearing in the proceedings and expressed his absolute disagreement with them: in the cases of owners or drivers who do not use their vehicles on public roads, of vehicles kept in garages located on private property or vehicles on display for their sale, it is true that such vehicles generate much lower risks than those of a vehicle travelling habitually on public roads. However, this difference in levels of risk should be addressed by the insurance market by establishing equally different premiums.

If the idea prevails that the obligation to insure a vehicle is activated and deactivated in line with the activation and deactivation of the parameters stated in the policy delimiting coverage, accident victims will be deprived of the "safety net" intended by the Directives. In effect, the consideration by the Advocate General, which is reflected explicitly in the CJEU ruling, is very important in the sense that, if it is accepted that a vehicle does not have to be insured in view of a circumstance such as those described, it cannot be argued that, in the exceptional case of an accident, the victim will have the protection of the insurance compensation body (the CCS in the case of Spain)[2]. As reasoned by the Advocate General, the compensation body provided for in the Directive is not conceived as a "Guarantee Scheme" for all

(2) Aside from the considerations made in this article centred on compulsory third-party automobile insurance, it appears clear that an intermittent civil liability coverage, delimited by time slots, traffic zones, actual use of the vehicle, etc., would bring with it negative consequences for the coverage by the CCS of the extraordinary risks which could affect a vehicle insured in that way, at a time when such coverage has been extended to all insured vehicles regardless of whether they have some kind of coverage of their own damage. However, this unquestionably adverse impact on the coverage of extraordinary risks is not the subject of this article.

situations, but rather is a mechanism from among those conceived as a "last resort" for the clear and specific situations foreseen in the Directives. The compensation body cannot be expected to pay compensation in those cases in which a vehicle is considered as not subject to the obligation to be insured. The Member States can transpose the Directives by assigning functions to the compensation body in cases where there is no obligation to insure a vehicle, however, this would be on a voluntary basis and not because provision is made or a requirement exists in the Directives.

To sum up, the obligation to insure is stable and lasting to the benefit of the injured third parties, and the coverage offered or requested cannot be intermittent or subject to the activation and deactivation of certain requirements. Spanish legislation is inspired by this idea, clearly set out and reasoned, first, in the Opinion delivered by the Advocate General in the "Juliana case" and later taken up and backed in the CJEU decision issued in the aforementioned request for a preliminary ruling. Any insurance policy whatsoever must provide a vehicle with a level of coverage on a permanent basis, in exchange for a particular level of premium which could be called "basic"; and the more or less intensive use of the vehicle in accordance with the "supervening" circumstances provided for in the contract will be reflected by the higher or lower amount of the insurance premium, but not by the activation or deactivation of the coverage of third parties.

The Directives, the Conclusions of Advocate General Bobek delivered on 26 April 2018, the CJEU Judgement of 4 September 2018 and current Spanish legislation are all radically opposed to a situation where the coverage of compulsory automobile insurance against civil liability can, like that old saying we have, "appear or disappear like the Guadiana River".