



# IETL

Institute for European Traffic Law



The 14th European Traffic Law Days took place in Mondorf-les-Bains (Luxembourg) on 9 and 10 October 2013. They were a great success, attracting 211 participants from 28 countries.

One of the remarkable features of the event was the organisation of three workshops between which the participants could choose. You will find a summary of their contents in this issue. Below is a list of their topics:

- UN charter on road users' rights and obligations: the group adopted a draft recommendation for such a charter that may serve as a guideline for national legislators.
- Reimbursement of legal expenses in international road accident claims: the IETL will examine the possibility of a uniform European regulation.
- Intelligent transport systems, legal aspects: particularly evident was a lack of harmonisation concerning the legislation for the protection of personally identifiable data at a European level and the resulting consequences.

I would like to take this opportunity to wish you a wonderful New Year.

The President



### Workshop No. 3 / Claudia May, Dr. Bernhard Gause

The third work group was dedicated to Intelligent Transport Systems: Legal Aspects. The legal terms of reference (Directive 2010/40/EU and the ITS Action Plan) as well as the ITS technologies currently available or under development were presented. Important legal issues arise in terms of liability and data security. Notably, advanced continuous automation systems will exceed the current legal framework when higher and higher degrees of automation will be involved. This will require adaptations in liability and regulatory law as they have already become necessary with a view to the Vienna Convention of 1968. Furthermore, EU data protection law is not sufficiently harmonised and there is a lack of clear guidelines for the manufacturers as to the data protection requirements for the development of ITS technologies and applications. One solution would be privacy-by-design, meaning that any possible data protection issues likely to arise will be investigated and taken into account during the development of new technologies.



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### Ruling of the European Court of Justice on Case no. C-306/12

On 10 October 2013, the Second Chamber of the European Court of Justice gave an important ruling regarding the preliminary ruling (Case no. C-306/12) requested by the Landgericht Saarbrücken (regional court).<sup>1</sup>

With its request, the Landgericht Saarbrücken wanted to clarify whether, in the case of an accident that occurred in another Member State, Art. 21 (5) of Directive 2009/103/EC constitutes an authority for the motor insurer's claims representative in the injured party's Member State of residence to accept service of court documents.

In his Conclusions of 30 May 2013, Advocate General Cruz Villalón<sup>2</sup> commented that Art. 21 (5) of Directive 2009/103/EC could be interpreted to the effect that it constituted an authority to accept service of court documents, such as the injured party's statement of claim in a civil action before the competent court.

According to the ruling of the European Court of Justice, Art. 21 (5) of Directive 2009/103/EC is to be interpreted to the effect that the sufficient powers of claims representatives shall include the authority to validly accept service of court documents required for proceedings for settlement of a claim to be brought before the court having jurisdiction. In circumstances such as those of the case in the main proceedings where national legislation has reproduced word for word the provisions of Article 21 (5) of Directive 2009/103/EC, the referring court is required, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, to interpret national law in a way that it is compatible with the European Court's interpretation of the Directive.

This ruling makes it easier to enforce the injured party's claims for damages in his/her country of residence since in these cases, the statement of claim can be served on the foreign insurer's claims representative. Plus, it helps to avoid the cost of translating the statement of claim and saves the time it takes to serve it abroad.

Dr Tibor Pataky, lawyer, Hungary

<sup>1</sup><http://curia.europa.eu/juris/liste.jsf?language=de&jur=C,T,F&num=C-306/12&td=ALL>

<sup>2</sup><http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62012CC0306:DE:HTML> (link available in French, but not in English)

### Extension Powers Claim Representatives in International Traffic Cases

In international traffic cases in Europe involving Dutch vehicles loss and damage may be claimed from the representative of the foreign liability insurer in the Netherlands (claims representative) under Directive 2009/103 (the fifth Motor Liability Insurance Directive<sup>1</sup>). The claims representative will settle the loss further to applicable law.

Although most cases are settled, some call for litigation. In that case there are several options. Under Brussels I (EC Regulation 44/2001)<sup>2</sup> a person sustaining damage can sue the insurer of the liability party in the country where the liable party resides, where the insurer has its registered office, in the country in which the accident happened or in the country where the victim resides.

So far the writ of summons was served through the competent authorities at the office of the insurer established abroad. Service abroad takes time and money. Service at the office of the claims representative is not possible as the adjuster is usually not authorized to take receipt of services and notifications. See, for instance, Court of Rotterdam, 23 September 2009, JA 2010, 12<sup>3</sup>.

A recent ruling of the European Court of Justice of 10 October 2013, C-306/12 (Spedition Welter/Avanssur)<sup>4</sup> changed this. The Court of Justice held that the writ of summons can also be served at the office of the insurer's representative.

The case concerned a traffic accident that occurred near Paris on 24 June 2011, in which a lorry was involved of Spedition Welter, established in Germany. The French vehicle causing the accident was insured with the motor insurance liability insurer Avanssur established in France. Spedition Welter went to court to claim compensation. The writ of summons, however, was not served on Avanssur in France but on the representative designated by Avanssur in Germany, AXA Versicherungs AG (hereinafter: 'AXA').

The court in first instance held that the claim was inadmissible as the writ of summons had not been lawfully served on AXA as the latter was not authorised to take receipt of services and notifications.

Spedition Welter filed appeal with the Landgericht Saarbrücken. According to the Landgericht admissibility was decided by the interpretation of Article 21.5 of the Motor Insurance Liability Directive. For that reason the Landgericht submitted the case to the European Court of Justice.

Article 21.5 of the Directive says, in summary, that claims representatives should possess sufficient powers to represent the foreign insurer and meet claims in full. The article does not define the extent of those powers.

The European Court of Justice puts first and foremost that in determining the scope of an article its wording, context and objectives should be considered. The objective of the Directive was to make it easier for victims of accidents to take action and to enable them to file claims in their own languages and countries. The preamble to the Directive (paragraph 37) shows that Member States should ensure that claims representatives have adequate powers to represent the insurance undertaking in relation to persons suffering damage, before national authorities including the courts, insofar as this is compatible with the rules of private international law on the conferral of jurisdiction.

The European Court of Justice therefore reached the conclusion that Article 21.5 of the Directive should be interpreted to mean that the powers of the claims representative include taking receipt of court documents required to file a claim with the competent court.

This implies that in international traffic accidents in which the fifth Directive applies Dutch victims deciding to litigate in the Netherlands can now simply serve the writ of summons against the foreign insurer at the office of the Dutch claims representative. For Dutch representatives this means an extension of their powers.

9 December 2013

Antoinette Collignon-Smit Sibinga

<sup>1</sup>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

<sup>2</sup><http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001R0044:nl:NOT>

<sup>3</sup><http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBROT:2009:BK4104&keyword=betekening+dagvaarding+WAM>

<sup>4</sup><http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62012CJ0306:EN:NOT>

The issue of “Reimbursement of legal expenses in cross-border claims” was the subject matter of a workshop moderated by **Michael Nissen**, ADAC Legal Services, Munich: For injured parties in road accidents, who have not taken out motoring legal expenses insurance, the risk of lawyers fees, for which there are no unified rules across the EU, is of particular interest because it may be the ultimate clincher in their decision whether to seek legal counsel in the first place.

The presentations and discussions in this workshop were based on the Resolution adopted at the 3rd European Traffic Law Days (Trier III) but not included at that time in the wording of the Motor Insurance Directive:

*Pursuant to Art. 4 d of the 3rd Motor Insurance Directive, as amended by the proposal for a 5th Motor Insurance Directive, the Member States shall ensure that injured parties to accidents caused by a vehicle covered by mandatory motor insurance (TPL) enjoy a direct right of action against the insurance undertaking covering the person responsible against civil liability. We propose to add the following paragraphs:*

1. *This direct right of action shall also extend to the compensation of legal and other costs incurred by the injured party. Such other costs shall include fixed general costs, medical and technical assessment costs, out-of-court and in-court lawyers' fees.*
2. *In every event, legal costs shall be reimbursed if and providing that the injured party wins. The other legal costs shall only be indemnified where they are appropriate. Such is the case if they do not exceed the usual quanta and also if they are not disproportionate to the amount of the actual loss/damage.*
3. *Should the injured party and the insurer be unable to agree on the appropriate nature of the legal costs incurred, the injured party may approach a court or other competent authority for settling claims which shall resolve the dispute in accordance with the law applicable, taking into account the letter and the spirit of this provision.*

*Article 4, (6) (a), of the 4th Motor Insurance Directive should be modified as follows:*

*After the words 'a reasoned offer of compensation', the following subordinate clause should be inserted:*

*'which also includes compensation of the injured party's relevant legal costs.'*

**Paul Kuhn**, President of PEOPIIL (the Pan-European Organisation of Personal Injury Lawyers) and specialist for insurance, loss and injury law at ADAC Legal Services, Munich, urgently pleaded for the EU-wide harmonisation of legal provisions in this matter. He presented PEOPIIL's recent proposal promoting the resolution of reimbursement on the basis of an EU Regulation or Directive.

Speaking for the Brussels-based International Association of Legal Protection Insurers (RIAD), **Paul Timmins**, Chief Operating Officer DAS UK Group, Bristol advocated a different position: He did not see any necessity for a new provision since the legal expenses insurance market had, he said, found very practicable solutions with a view to the reimbursement of legal expenses in claims related to motoring accidents.

The legal practice in France where out-of-court lawyers fees are not reimbursed was presented by Maître **Patrick Parnière** of Schreckenberg, Parnière & Associés, Strasbourg. In view of the absence of a unified schedule of lawyers' fees, M. Parnière was sceptical about the chances of achieving an EU-wide solution.

The ensuing discussion showed that while most of those present saw the need of EU-wide regulation on the issue of reimbursement of extra-judicial legal expenses – at least where cross-border claims were concerned, interference with national lawyers' fees schedules and the national loss and injury law was considered problematic. The IETL will look into drafting a Resolution on the basis of the 2002 Resolution.



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## **IETL Working on UN Road Traffic Charter**

During the 14th European Traffic Law Days held by IETL in Luxembourg on 9 and 10 October 2013, a work group was devoted to drafting a future UN Road User Charter. The participants adopted the project unanimously and without a single abstention. More room for debate was needed when it came to defining the topics for the first two sections of the Charter. The third section was adopted unanimously. It contains a proposal to the UN Economic Commission for Europe Transport Division (UNECE/TD) in Geneva to devote the first week of summer, i.e. the last week of June, each year to road traffic campaigns. It was envisioned that the media should cover the risks of road traffic and carry specific road traffic and travel information for road users annually at the outset of the summer travel season. As to the first two sections of the draft UN Charter, the first is a compilation of the essential provisions of the Vienna Convention on Road Traffic, i.e. the essential compendium of international road rules. The majority wished to include the 14 point summary, which is a practical overview of the 80-page Convention.

The draft's main centre of gravity is the 15-point catalogue of "Warranties for the victims of road accidents". It attempts to define the fundamentals of accident victim protection reflecting the pan-European status quo in terms of traffic law. The document specifically lists the EU acquis with a view to road accident victim protection. With this, the draft takes into account the key points of the codified EU motor vehicle insurance directive. In addition, it contains the principles of the Hague Convention on the Law Applicable to Traffic Accidents and the Rome II principles on jurisdiction. Furthermore it contains the jurisdiction principles of the Lugano Convention. Finally it is envisaged also to include a recommendation with a view to limitation periods. It must be said that the UN Charter will not have statutory status. Rather, the Charter is of an advisory nature meant to serve as a guideline for national legislation. Its final purpose will be to serve as an instrument in comparative law and EU harmonisation. The first draft of the UN Charter reflecting the above terms of reference was published on the IETL website.