

## **The Motor Vehicles Insurance Directive and the Nullifying of an Insurance Policy? Case C 236/23 introduces an Abuse of Rights Defence**

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## **Op-Ed: “The Motor Vehicles Insurance Directive and the Nullifying of an Insurance Policy? *Case C-236/23* introduces an Abuse of Rights Defence”**

### **Introduction**

The Court of Justice, on 19 September 2024, delivered its ruling on [Case C-236/23](#), *Mutuelle assurance des travailleurs mutualistes (Matmut) v TN and others*, a decision based on the correct interpretation of Articles 3 and 13 of the Motor Vehicles Insurance [Directive 2009/103/EC](#) (MVID). The MVID has proven significant for its expanding protection of third-party victims of motor vehicle accidents and the establishing across the Member States of a framework for the insurance of civil liability in respect of motor vehicles, aimed at ensuring that victims of road traffic accidents are adequately compensated, regardless of the responsible party's insurance status. The request for a preliminary ruling arose in proceedings involving Matmut (the insurer of the policyholder and passenger victim in the case, PQ), TN (the driver of the vehicle at fault for the accident), MAAF assurances SA (the insurer of the other vehicle in the accident), the Fonds de garantie des assurances obligatoires de dommages (FGAO) (the national guarantee fund body in France), and PQ. The case centred on the enforceability of the nullity of a motor vehicle liability insurance contract between PQ and Matmut, in light of a misrepresentation made by PQ regarding the usual driver of the vehicle at the time of the application and the granting of the policy.

### **The Background and Issues face by the Referring Court**

The factual background is straightforward. On 5 October 2012, PQ entered into an insurance contract with Matmut, explicitly declaring himself as the sole driver of the insured vehicle. However, on 28 September 2013, the vehicle, driven by TN under the influence of alcohol, was involved in a traffic accident with another vehicle insured by MAAF assurances. PQ, who was a passenger at the time of the accident, sustained injuries. TN faced criminal charges and during these proceedings before the *tribunal correctionnel* (criminal court), Matmut raised the defence that the insurance contract should be declared null and void as in accordance with statute in France ([Article L. 113-8 of the Insurance Code](#)), where an applicant (here PQ) makes an intentionally false or misleading representation, the insurer may obtain a declaration that the contract is null and void. It is essentially that the contract of insurance is considered as never having existed. Matmut argued that this nullity absolved it of liability, thereby shifting the responsibility for compensating PQ to the national guarantee fund body – the FGAO – being the body responsible for compensating victims of uninsured vehicles.

The *tribunal correctionnel* accepted Matmut's argument, declaring the contract null and void. However, FGAO, MAAF assurances, and TN appealed to the *Cour d'appel de Lyon* (Court of Appeal of Lyon). The appellate court upheld the annulment of the insurance contract but rejected Matmut's claim to be absolved of liability. Consequently, Matmut sought further recourse by appealing to the *Cour de cassation* (French Court of Cassation), which, recognising the need for clarity on the interpretation of relevant Articles of the MVID, referred two questions to the Court of Justice. Whether Article 3 and Article 13(1) preclude national legislation that (i) allows the nullity of an insurance contract to be invoked against a passenger, who is a victim of the accident and also the policyholder, due to a misrepresentation regarding the usual driver, and (ii) permits the insurer, in cases where nullity cannot be invoked, to recover from the policyholder all sums paid in compensation under the insurance contract.

### **How to Answer the Questions: Not as Straightforward as Might Otherwise be Thought**

This was, one may have thought, a relatively simple exercise. It is true, as the referring court provides in their request to the Court, that the issue of the policyholder being a passenger victim and the person who made the misrepresentation in obtaining the policy of insurance had not been ruled on before in the Court's jurisprudence. Article 3 of the MVID is the instruction to Member States 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. Article 13(1) requires 'each Member State to take all appropriate measures to ensure that *any statutory provision or any contractual clause contained in an insurance policy* issued in accordance with Article 3 shall be deemed to be void in respect of claims by third parties who have been victims of an accident where that statutory provision or contractual clause excludes from insurance the use or driving of vehicles by (a) persons who do not have express or implied authorisation to do so...' (authors' emphasis).

The MVID is thus clear, Member States must ensure vehicles are subject to compulsory cover and they are prevented from permitting through statutory or contractual means provisions which would undermine this aim. Further, the jurisprudence on the MVID have established the EU's ongoing goal of enhancing protections for accident victims (*Liberty Seguros* ([C-375/20](#), para. 56), and citing *Delgado Mendes* ([C-503/16](#), para. 42), the Court highlighted the importance of limiting national regulations that might unduly restrict the definition of 'passenger' under compulsory civil liability insurance. The concept of 'passenger' and associated protections apply equally, regardless of whether the individual is the policyholder or the vehicle's owner. The use of declarations to make void or to nullify policy's of insurance have been used in the UK as well as in France. In the UK, whilst the UK national courts allowed the insurer to benefit from this process by recanting a contract of insurance –available at s. 152 Road Traffic Act 1988 (*Colley v Shuker* [2019] EWHC 781), it had been earlier accepted in *R (Roadpeace) v Secretary of State for Transport & MIB* [2017] EWHC 2725 (Admin) (7/11/17) that this legislative instrument was in breach of the MVID. Indeed, in 2019 the UK (through the [Motor Vehicles \(Compulsory Insurance\) \(Miscellaneous Amendments\) Regulations 2019](#)) and in France (through [Article L. 211-7-1](#)) both effectively discontinued the recanting/nullifying of such contracts.

The Court of Justice thereby ruled that the MVID precludes national legislation that permits the nullity of an insurance contract to be invoked against a passenger who is also the policyholder, where that person is a victim of the accident. The Court emphasised that the policyholder's status as the victim of a road traffic accident does not remove them from the scope of 'third parties who have been victims' under Article 13(1). The Court stressed that the objective of the MVID is to protect all victims of road traffic accidents, regardless of their relationship to the insured vehicle. Consequently, a passenger's role as the policyholder, or their misrepresentation regarding the usual driver, cannot justify depriving them of the protection afforded to third-party victims.

Furthermore, the Court elaborated on the insurer's obligations under Article 3. It reaffirmed that an insurance company cannot invoke the nullity of an insurance contract to avoid its duty to compensate a third-party victim, even if the contract was concluded on the basis of false statements or omissions by the policyholder. The Court's reasoning stems from the broader objective of ensuring that all victims of road traffic accidents receive compensation, an objective which cannot be undermined by the insurer's reliance on national statutory provisions or contractual clauses allowing for the nullity of the insurance contract. Therefore, the insurer

remains liable to compensate the victim, notwithstanding the policyholder's intentional misrepresentation when concluding the contract.

### **Abuse of Rights? Why Now and Why in these Circumstances?**

All would seem in order then. Yet the Court continued, and in so doing has created possibly a fracture in the bedrock of the MVID. It will be remembered that the second question posed by the referring court was to the effect that if the contract of insurance cannot be nullified, yet established on a misrepresentation by the policyholder, can any payment made by the insurer be recovered from the policyholder? The Court held that to allow such a situation would be to defeat the very essence of the MVID – which is correct. However, it allowed the referring Member State a get-out. In both questions sent in the reference request, the Court of Justice precludes the application of the statutory and/or contractual terms, along with the possibility of the insurer recovering payments made as against the policyholder ‘... unless the referring court finds that there is an abuse of rights.’ This may seem a minor point, but it is of possible crucial significance to the application of the MVID. Whilst in the case, the Court attempts to assist the French court by asserting that in its opinion there is no abuse of rights by the policyholder in these circumstances (which of itself is unnecessary and venturing again into its tactic with the MVID of factual jurisprudence), it provides Member States who so wish, an avenue to allow those same insurers to escape responsibility to satisfy claims of third-party victims of vehicles they had insured as was made possible through legislation which was clearly in breach of the MVID. This is an aspect of the ruling which needs much more investigation, but initial thoughts are that it may not be beyond the scope of an insurer’s legal team to establish that an intentional misrepresentation of a policy holder could in effect work to ensure the advantage gained was to contravene the purpose of legislation (the MVID).

Hence, while Directive 2009/103/EC does not allow the insurer to avoid its liability to the victim, the Court acknowledged that the insurer may pursue recovery of the sums paid from the policyholder, provided that the latter's intentional wrongdoing in concluding the contract is established. This right of recovery ensures that the insurer is not left without remedy for the policyholder’s fraudulent conduct, while maintaining the essential protection afforded to accident victims under the directive.

### **Concluding Thoughts, and a Way Forward for Uncompensated Victims**

If the circumstances as noted above do prevail however, the victim should not go uncompensated or be forced into a claim to the national guarantee fund body. This body is a requirement as established at Art. 10 MVID but is an insurer of last resort, only to be employed in the event of uninsured vehicles (which, whether the Member State or the Court of Justice try to argue otherwise, is not the case for policies which are allowed to be recanted or held as null and void). It also operates on terms which are less advantageous for victims than claims directly against an insurer. It should be remembered that in a similar case in the UK (*Delaney v Secretary of State for Transport* [2015] EWCA Civ 172), where the UK allowed the insurer to avoid liability which was imposed on it through EU law, the unsuccessful claimant simply changed their legal plea and sought recovery of compensation through a *Francovich* State liability claim. This avenue of redress was successful and paved the way for similar claims due to the sufficiently serious and clear breach of the MVID. Similarly here, if France chooses to ignore the direction of the court and find PQ has been guilty of an abuse of rights, it may find itself the party responsible for compensating PQ rather than Matmut.

The judgment in *Matmut v TN and others* in part reinforces the protective framework established by the MVID, ensuring that victims of road traffic accidents, including those who are also policyholders, are treated as third-party victims entitled to compensation. The decision underscores that the insurer's duty to compensate victims cannot be circumvented by invoking the nullity of the insurance contract, even where that contract was obtained through misrepresentation. In this regard, the Court's ruling strikes a balance between the rights of accident victims and the insurer's ability to seek redress for fraudulent conduct by the policyholder. If only it didn't introduce an abuse of rights defence. Perhaps insurance lawyers now have a new line of jurisprudence to investigate.

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