

LIABILITY FOR USE OF MOTOR VEHICLES: SPANISH REGULATION IN THE LIGHT OF EU LAW

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Abstract

Many of the deaths and physical and psychological injuries in children and adults that happen today in Europe are due to traffic accidents. These facts and the increasingly growing use of automobiles, due in part to globalization and technological development, highlight the need to establish legislation that regulates protection against traffic accidents.

This paper will analyse the Spanish legislation on liability for use of motor vehicles within the European Common Frame of Reference, as well as describe the proposal developed by the European Parliament for the reform of the current European legislation.

Key words: liability, motor vehicle, accident, injury, compensation, Motor Vehicle Traffic Act of Spain, Reglamento on Road Traffic Liability, Draft of Common Frame of Reference.

Introduction

First of all, it is important to say that, regarding non-contractual liability of Spain, the *Spanish general clause* for civil liability establishes that a person who by an act or omission causes damage to another, concurring fault or negligence, is obliged to repair the damage caused.¹

The requirements for non-contractual liability under Spanish Law are the following:

- “unlawful” act or omission
- intention, fault or negligence (i.e. strict liability)²
- damage
- causal link

On the other hand, the Spanish doctrine establishes the obligation to *compensate the injury* caused when the negligent conduct of the agent results in damage (considering “*damage*” all that harm to a person or loss or diminution of what a person owns caused by the fault of another person). The purpose of the compensation would be the complete reparation, thus there is not punitive damages. The most common remedy is the monetary compensation.³

Regarding the use and circulation of motor vehicles, there are several laws, but

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¹ art. 1.902 Spanish Civil Code (hereinafter CC)

² We also need to mention the subject of capacity, which is treated in the art. 1903 of CC

³ Yolanda BERGEL SAINZ DE BARANDA, *Non-contractual liability under Spanish law (a comparative perspective with French and German Law)*, Universidad Carlos III de Madrid, 2013

regarding the subject matter of analysis, the relevant law is the *Spanish Liability and Insurance for Motor Vehicle Traffic Act*.⁴

1. On Motor Vehicle Traffic Act of Spain

1.1. Scope of application

The scope of application of the Liability and Insurance for Motor Vehicle Traffic Act is governed by the concepts ‘fact of traffic’ (*hecho de la circulación*) and ‘motor vehicle’ (*vehículo a motor*). *Reglamento* on Road Traffic Liability (Royal Decree n° 1507 of 12 September 2008; hereinafter: *Reglamento*) Art. 2 provides that a *hecho de la circulación* is every fact occurring as a consequence of the risk created by the driving of motor vehicles, including those occurring in garages and car parks, and no matter whether they happen on a public or private road. It should be mentioned here that the concept if ‘vehicle’ and ‘fact of the traffic’ have been interpreted by courts to distinguish a) which accidents are covered by compulsory traffic liability insurance and b) which case have to be dealt with according to the special (oral) proceeding.⁵ It is also important to note that the court swing between an extensive and a narrow interpretation of these concepts, depending on whether a compulsory liability insurance is attached to the liability or not.⁶

For example, the traffic refers to moving vehicles, but also includes these vehicles when they are stationary, when they are parked, when the operation related to their use, such as opening or closing doors, or loading or unloading luggage, etc. are done.⁷

The provision excludes special cases, that is no such *hechos* are the following:

- Accidents occurring in sport competitions and on circuits specially designed or adapted for such use.
- Accidents occurring in the course of industrial or agricultural activities, unless they happen on a road.
- The use of a motor vehicle as an instrument to commit an intentional crime.

The definition of a “*motor vehicle*” in *Reglamento* Art. 1 is based on Directive 72/166/EEC.⁸ Damage which ensues from exposure to farm machinery does not connote a traffic accident⁹, nor does carbon monoxide poisoning of children in a garage.¹⁰

1.2. Liability rules relating to damage caused by motor vehicles

The Art. 1.1 of the Spanish Liability and Insurance for Motor Vehicle Traffic Act provides that “*the driver of motor vehicles is liable, by virtue of the risk created by their*

⁴ Royal Legislative Decree 8/2004, of 29 October (<https://www.boe.es/buscar/act.php?id=BOE-A-2004-18911>)

⁵ MARTIN-CASALS, M. – RIBOT, J – SOLÉ, J: Spain. In KOCH, B. A. – KOZIOL, H. (Eds.): *Unification of Tort Law: Strict Liability. Principles of European Tort Law Vol. 6.* Kluwer Law International. 2002. p 281–321.

⁶ *Ibid.* The courts often make a quite broad interpretation of the concept ‘fact of traffic’ to hold the insurance company liable.

⁷ *Ibid.*

⁸ Council Directive of 24 April 1972 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 such liability

⁹ TS 10 February 1998, RAJ 1998 (1) n° 752, p. 1178; TS 7 May 1998, RAJ 1998 (2) n° 3238, p. 4723

¹⁰ TS 4 July 2002, RAJ 2002 (4) n° 5900, p. 10483

driving, for the damage caused to persons or to property in the course of traffic". In the case of damages to persons, liability is strict for the realization of the risk that is linked with the use of a motor vehicle¹¹; this responsibility shall only be exonerated when it proves that the damage was due solely to the conduct or negligence of the injured party due to *force majeure* extraneous to the driving or operation of the vehicle. The defects of the vehicle or the breakage or failure of any of its parts or mechanism will not be considered *force majeure*.

In European context the specialty of this Act that the risk-based liability is limited to personal injuries.¹² In contrast, in the case of damage to property, the driver will respond to third parties when it is liable according to the provisions of Art. 1902 (general liability rule for damage) and following rules of the Civil Code of Spain (hereinafter: CC), or, according to the Art. 19 of the CP (*Código Penal*; Criminal Code) and the provisions of this Law.

Thus, responsibility for risk is sanctioned and then a different liability system is imposed, according to whether it is corporal or material damage:

With regard to *personal injury or damage to persons*, a strict liability is imposed, since *the driver will only be exonerated when he proves that the damage was due solely to the conduct or negligence of the injured party or to a force beyond the control or operation of the vehicle*. Based on this objective liability, the obligation to subscribe the compulsory insurance is imposed. Royal Legislative Decree 8/2004, of October 29, establishes a scale that quantifies compensable damages, updated annually by the corresponding resolutions of the Directorate General of Insurance.

In relation to the *material damages*, Art. 1902 of CC establishes that "*the one that by action or omission causes damage to another, intervening fault or negligence, is obliged to repair the damage caused*" without being applicable in the case collision between two vehicles the reversing of the burden of proof.¹³ So, with regard to material damages, the liability system is that of Arts. 1902 and following ones of CC, or if it was derived from a criminal offense, the CP. Likewise, if the negligence of the driver and of the injured party concur, it shall proceed the fair moderation of the liability.

The Art. 1 of the Spanish Liability and Insurance for Motor Vehicle Traffic Act attributes the responsibility to the driver, regardless of the ownership of the vehicle; paragraph 3 stipulates that "*the non-driver owner shall be liable for damages to persons and property caused by the driver when he is related to him by some relationships that are regulated by arts. 1903 CC and 120.5 CP*", and that "*this responsibility will cease when the said owner proves that he used all the diligence of a good parent to prevent the damage*".

The Art. 2 imposes on every owner of a motor vehicle that has its habitual establishment in Spain the obligation to sign an insurance contract that covers the civil liability referred to in Art. 1.

The injured party or his heirs have direct action against the insurer to demand, with a charge to the compulsory insurance, the compensation for the corporal and material damages. This action is under one-year period of prescription.

So, according to the Art. 1.1 of Liability and Insurance for Motor Vehicle Traffic Act, liability is imposed on the driver; however, it provides that, along with the driver,

¹¹ DÍEZ-PICAZO – GULLÓN, *Sistema II*, 2018, p 574

¹² Ernst KARNER: A Comparative Analysis of Traffic Accident Systems, 53 WAKE FOREST L. REV. 2018. 365–382. p 371

¹³ Indemnización de los daños ocasionados a los vehículos <http://guiasjuridicas.wolterskluwer.es/>

the owner of the vehicle shall also be strictly liable, if the driver, in the sense of Art. 120.5 CP, is an employee of the owner and commits a criminal act. If the conduct of the employee which causes damage does not amount to a criminal act, the liability of the owner is based on Art. 1903 CC¹⁴.

On the other hand, Art. 5 of Liability and Insurance for Motor Vehicle Traffic Act provides that the liability of the owner shall cease if the owner proves that he or she acted as *buen padre de familia* (“good family father) to prevent the damage. This provision accords with CC art. 1903, not with, however, the CP, which provides for strict liability which is subsidiary. At this juncture it cannot be conclusively asserted, how this tension is to be resolved¹⁵. There are no statutory regulations pertaining to the liability of the custodian; this state of affairs has been frequently criticized (ex: Reglero Campos, *Responsabilidad civil*, p. 913).

It is important to mention that the TS 30 December 1992, RAJ 1992 (5) n° 10565, p. 13807 refused to find a company liable, where the company had placed a company car at the disposal of an employee. The employee, for his part, permitted his son to use the car (without the permission of the company), with the misfortune that the son caused a traffic accident; the company was not liable, owing to the fact that it did not have any control over the use of the car. Liability under the Liability and Insurance for Motor Vehicle Traffic Act is curtailed by *force majeure* and fault on the part of the victim (Art. 1.1.2); *caso fortuito* is not admitted as defense¹⁶.

Contributory negligence on the part of the victim leads to the exclusion of liability if it was sole cause of the accident; in other cases, it leads to an appropriate reduction in the award of damages (Art. 1.1.4).

1.3. Damage being to be compensated: scale system for assessment of damage

First of all, the Spanish definition of “*damage*”, which is the same as in the majority of the World, describes it as “*any harm to a person or loss or diminution of what a person owns caused by the fault of another person*”. That harm should meet the following requirements: it should exist, be certain, and be valuable.¹⁷

The Spanish doctrine establish the obligation of compensate when the negligent conduct of the agent produces a damage; that compensation should be a complete reparation of the harm produced.

After five years of preparation, on 1 January 2016, the new system for the assessment of damages for death and personal injury caused by traffic accidents in Spain came into force. The new system has been approved by Act 35/2015 which is an amendment of Act 8/2004 on Civil Liability and Insurance of Motor Vehicles, which remains in force.

The new scale system (“*Baremo*”) appears as a new section within Act 8/2004 and replaces the old scheme which relied on a number of tables included in the previous Annex 1 to Act 8/2004.

The main purpose of the amendments is to make the Spanish compensation system consistent with European Directives and to bring it in line with the requirements of the EU Commission, which considered that Spanish compensation payable to victims in

¹⁴ DÍEZ-PICAZO, *Derecho de daños*, 1999, p. 130; Roca i Trias, *Derecho de daños 3*, 2016 p. 247

¹⁵ Yzquierdo TOLSADA: *Sistema de responsabilidad civil*, 2001, p 294

¹⁶ TS 22 December 1992, RAJ 1992 (5) n° 10639, p. 13873; TS 17 November 1989, RAJ 1989 (6) n° 7889, p. 9187; TS 8 February 1992, RAJ 1992 (1) n° 1198, p. 1516

¹⁷ BERGEL SAINZ DE BARANDA loc. cit [footnote 3]

cases of road traffic accidents was unfair in comparison to similar awards in other EU countries.

Although, in theory, the Act only applies to the calculation of compensation resulting from road traffic accidents, as was the case previously, insurers, lawyers and claimants expect that it will be used by judges as a guideline for compensation in respect of all kinds of death and personal injury claims, regardless of how they occur.

Consequently, Spanish insurers and others involved in the Spanish insurance market are reassessing risks and calculating their potential liability in Spain under the new system. The Spanish Government has estimated a possible overall increase in compensation payments of around 50% in cases of death and 35% in cases of permanent injuries.¹⁸

The new system is based on the civil law principle of full reparation of the victim, structured compensation and objective damage and it sets out new rules under which compensation is to be assessed.

Broadly, it extends the scope of compensation both in the range of people who can bring a claim and the heads of damage which can be claimed. In addition, it provides for increased amounts to be awarded where compensation was already available.

1.4. Procedural features of the assessment

The Act establishes a new procedure to claim for damages for death and personal injury in case of a road traffic accident which is intended to favour out of court settlements and encourage parties to avoid litigation. Thus, some examples of this new framework are: i) the claimant's obligation to cooperate to allow access to medical experts appointed by the responsible party or their insurer prior to commencing proceedings; ii) the obligation on the responsible party/their insurer to submit any offer to the claimant based on medical criteria; and iii) the application of accrued interest to be imposed whenever there is unjustified delay in submitting an offer.

1.5. Classification of damage

Ultimately, the '*Baremo*' distinguishes between three types of claim: *death, permanent physical injury and temporary injury*. In each case, the claimant might recover three possible types of compensation: *basic personal injury compensation; individual personal compensation* (moral damages and loss of domestic autonomy and/or quality of life); and *compensation for financial loss* (expenses and loss of earnings).

- *Sequelae or ongoing symptoms*

Sequelae are defined as permanent injuries which remain after the conclusion of any medical treatment.

The basic damages for *sequelae* cover psychological and physical harm and also aesthetic consequences, which are calculated separately. The '*Baremo*' contains tables with numeric values assigned to a long list of bodily injuries. Once the particular injury is located within these tables, the figure for compensation in respect of each particular type of injury can then be calculated using an economic table.

¹⁸ <https://www.thomascooperlaw.com/damages-for-death-personal-injury-in-spain-the-new-act/>

The ‘*Baremo*’ also contemplates compensation for the loss of quality of life of a relative who undertakes the role of career.

- *Temporally injuries*

As under the previous system, basic damages will include a daily rate of compensation from the day of the accident until the date when the healing process is concluded.

- *Death*

Law 35/2015 approved on January 1, 2016, represented a significant increase in death compensation, which is good news for the affected families after the defence commissions of the victims achieved these objectives after years of claims.

The new scale for the calculation of compensation for death in traffic accidents is not easy to understand for most people, and even professionals, so it is vital to have a traffic accident lawyer who can correctly defend the right of those harmed by death in accident¹⁹.

The ones who are entitled to compensation for death are the following:

1. *The widowed spouse*: provided that it was not legally separated, nor had initiated the procedures for separation or divorce.

If you are a woman / husband of the deceased, you have the right to receive a fixed amount for a coexistence of up to 15 years and depending on the age of the deceased. The amount increases for each additional year of coexistence with the victim.

2. *Parents*: the parents are also compensated for the death of the child and the amount will be depending on whether he was more or less than 30 years old at the time of the accident.

3. *Brothers*: the brothers of the deceased in accident will also be entitled to compensation, depending on whether they are more or less than 30 years old.

4. *Children*: the compensation that corresponds to them will vary according to age, if they are under 14 years old, from 14 to 20 years, from 20 to 30 years and older than 30.

In addition, they will be entitled to claim compensation for the biological children of the deceased, as well as the adopted children, and those of their partner with whom they had lived together.

5. *The close ones*: those who, without having the status of aggrieved party, have lived with the victim for at least 5 years immediately prior to the death and were especially close to him/her in kinship or affectivity will also be entitled to compensation.

1.6. How is compensation for death in accident calculated?

Apart from the basic compensation, we have to take into account the so-called *particular personal damages*. This supposes a supplement of the basic compensation taking into account the situation of the relative. There are 9 categories:

1. The psychic or physical disability that the family member has (increasing the compensation between 25% and 75%).

¹⁹ Abelardo MORENO ABOGADO: Guía para calcular Indemnización por fallecimiento <https://centrodelaccidentado.com/indemnizacion-por-fallecimiento/>

2. The cohabitation of the injured relative with the victim (corresponds to the grandparents, children, parents, grandchildren and siblings).
3. The family injured party that is unique in its category (if only it has a son, or a brother, etc.).
4. Single family injured; that the relative be the sole parent (the children are compensated with amounts of up to 50%).
5. If both parents die in the accident (increasing the amount of compensation up to 70%).
6. Due to the death of the only child (increasing the compensation to their parents by 25%).
7. If the victim died in the accident was pregnant with loss of the fetus (up to 30,000 euros is increased).

The *emerging damage* means that each person injured by death is entitled to 400€ without the need for justification. Likewise, expenses of burial, funeral or repatriation of the corpse must also be taken into account and demanded.

Regarding *loss of profit due to death*, this is an additional compensation item that is intended to compensate relatives and relatives who depended financially on the victim at the time of the accident. The calculation is made according to the victim's income and the age of the victim according to his relationship with the deceased (spouse, brother, father, grandfather, etc.). (See Table 1: Chart of indemnifications for death in traffic accident)

INDEMNIZACIONES POR CAUSA DE MUERTE	
TABLA 1.A	
PERJUICIO PERSONAL BÁSICO	
Categoría 1. El Cónyuge viudo	
Hasta 15 años de convivencia, si la víctima tenía hasta 67 años	90.000 €
Hasta 15 años de convivencia, si la víctima tenía desde 67 hasta 80 años	70.000 €
Hasta 15 años de convivencia, si la víctima tenía más de 80 años	50.000 €
Por cada año adicional de convivencia o fracción con independencia de la edad de la víctima.	1.000 €
Categoría 2. Los Ascendientes	
A cada progenitor, si el hijo fallecido tenía hasta 30 años	70.000 €
A cada progenitor, si el hijo fallecido tenía más de 30 años	40.000 €
A cada abuelo, sólo en caso de premoriencia del progenitor de su rama familiar	20.000 €
Categoría 3. Los Descendientes	
A cada hijo que tenga hasta 14 años	90.000 €
A cada hijo que tenga desde 14 hasta 20 años	80.000 €
A cada hijo que tenga desde 20 hasta 30 años	50.000 €
A cada hijo que tenga más de 30 años	20.000 €
A cada nieto, sólo en caso de premoriencia del progenitor hijo del abuelo fallecido	15.000 €
Categoría 4. Los Hermanos	
A cada hermano que tenga hasta 30 años.	20.000 €
A cada hermano que tenga más de 30 años.	15.000 €
Categoría 5. Los Allegados	
A cada allegado	10.000 €

1.7. Example for calculating compensation for death in accident

Death of a 49-year-old man, married, with spouse of 47 years, and two children of 15 and 13 years, who works with annual net income of € 50,000. Marriage of 20 years of cohabitation.

To calculate the compensation for the death in the accident, we will go to the widowed spouse category, which corresponds to 90,000€ for 15 years of coexistence and to be the victim under 67 years of age. It adds 1,000€ more for each year of coexistence from the 15. So: Total compensation widower 90,000 + 5000 (for each year more than coexistence). = 95,000€. The 13-year-old son is 90,000€ and the 15-year-old is 80,000€. TOTAL basic personal injury = 265,000€

2. Regulation of liability and compulsory insurance on EU level

As it was mentioned above, the Spanish regulation of strict liability relating to road traffic corresponds with the EU Motor Insurance Directive (hereinafter: MID), and the Spanish judicial practice also follows the EU law within the interpretation of “acts of traffic”. On the following therefore, the recommended common liability rule for damage caused by motor vehicles and the last amendment of the Motor Insurance Directive will be touched upon. The latter also concerns with the concept of acts of traffic, since the tendency of CJEU interpretation have changed the legal text.

2.1. Accountability for damage caused by motor vehicles in Draft of Common Frame of Reference²⁰ (DCFR, 2009)

According to the Art. VI.–3:205 “A keeper of a motor vehicle is accountable for the causation of personal injury and consequential loss, loss within VI.–2:202 (Loss suffered by third persons as a result of another’s personal injury or death), and loss resulting from property damage (other than to the vehicle and its freight) in a traffic accident which results from the use of the vehicle.

“Motor vehicle” means any vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled.”

This Article formulates the two principles crucial to the law on liability:

- liability for personal injury and property damage caused by motor vehicles is strict, and
- such liability lies with the keeper of the vehicle.

The strict liability relates to motor-driven vehicles of all types, including slow-moving vehicles (e.g. tractors, bicycles with an auxiliary motor). Railway vehicles (including trams and underground railway), aeroplanes and ships are excluded, so they are consistently subject to special regimes of liability.

Liability for damage caused by motor vehicles is in many Member States the subject matter of an elaborate and detailed special regime of legislation, which for its part is flanked by a plethora of rules of the law on insurance, mainly indemnity insurance.²¹

On the other hand, because traffic is still generally one of the most important causes of damage, the law formulates two crucial principles for the issue of liability: liability for personal injury and property damage caused by motor vehicles. (i) is strict and (ii) falls to the owner of the vehicle.

²⁰ VON BAR, Christian (et al.) (2009): Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference (DCFR) Outline Edition. Sellier, Munich, 2009.

²¹VON BAR, Christian (ed.): Non-Contractual Liability Arising out of Damage Caused to Another (PEL Liab. Dam.) Sellier 2009, p 703

This strict responsibility for the owners of a motor vehicle is nowadays a characteristic extended by almost all Europe, and in the few countries where they do not foresee it, the solutions that are applied in practice produce more or less the same result.

2.1.1. The concept of keeper

Thieves and others who use the vehicle against the keeper's will are themselves made keepers. However, the "real" keeper's liability in negligence remains potentially applicable in such cases; it takes hold where the keeper in breach of duty omitted to reasonably secure the vehicle against unauthorized use.

The showed Article of DCFR channels the liability to the keeper (or the keeper's insurer). In contrast, the liability of a driver who is not at the same time the keeper is subject to the general rules. In the case of professional drivers there may even be specific relief from liability provided for in the national legal systems, see VI. –7:104 (Liability of employees, employers, trade unions and employers' associations) sub-paragraph (a). To subject private drivers to a particularly intensified liability (in the form of either strict liability or liability for presumed misconduct) seemed unreasonable against this background. The strict liability of the keeper, coupled with compulsory insurance and a direct claim against the insurer, suffices for the requirements of victim protection.

2.1.2. Traffic accident resulting from the use of the vehicle

Liability is confined to those cases where the damage has been caused "in a traffic accident which results from the use of the vehicle". Damage in connection with a parked car is therefore only within the scope of the Article if the vehicle has been parked on a road or area open to traffic or the public. In other words, the Article relates only to situations in which the vehicle is used on a public road or on a road accessible to the public, and in which an "accident" in the sense of a sudden occurrence, typically a collision, occurs.

In relation to causation, the general rules are to be applied. Thus, it must be possible to say of the relevant personal injury or property damage that it is to be regarded as a consequence of the use of the relevant vehicle. It means that it is not sufficient that the vehicle (the parked car or vehicle number one) was "involved" in the accident; in fact, it is decisive whether its use has caused the relevant accident.

2.2. The amendment of MID of 2018

Around 135,000 people were injured, whereas more than 25,000 were killed, an average of 2,085 per month, in European roads in 2017. The new rules to improve the current motor insurance directive (Directive 2009/103/CE), voted by the MEPs on the 13th February 2018, include obligatory minimum amounts of cover in EU member States insurance policies, an obligation on motor vehicles to have motor third party liability insurance policy on the basis of a single European premium and an obligation to create guarantee funds for compensation of victims of accidents caused by uninsured or unidentified vehicles.²²

²² COM(2018) 336 final; 2018/0168 (COD) Proposal for a Directive of The European Parliament and of the Council amending Directive 2009/103/EC of the European Parliament and the Council of 16 September

2.2.1. Higher level of protection of victims

In the case not only of accidents caused by uninsured or unidentified vehicles, but also of insolvent insurers, compensation bodies set up in each member state should meet the costs. This compensation should be granted by the member states in less than 6 months.

Although member states may set higher amounts, the minimum coverage for personal injuries will be €6,070,000 per accident, or €1,220,000 per victim; and €1,220,000 per claim, irrespective of the number of victims, in the case of damage to property.

2.2.2. More affordable insurance premiums

The new Directive allows policyholders request claim history statements to facilitate switching insurance providers. Content and format should be the same for authentication purposes and nationality or place of residence should not be considered to calculate premiums.

2.2.3. Clamping down on uninsured vehicles

Uninsured driving is an increasing problem within the EU that is negatively affecting a wide range of stakeholders, including victims of accidents, insurers and guarantee funds. It costs millions of euros and increases premiums for paying consumers. Parliament's proposal would allow EU countries to conduct systematic cross-border insurance checks through unobtrusive technologies: there are certain devices that, thanks to the technological development, are able to check if the vehicle is insured without obstruct it, so the new control system would not interfere with the free movement of persons and vehicles.

2.2.4. Which vehicles will be included in the new directive?

All vehicles except e-bikes, electric scooters and segways are included in the Directive. Motorsports are not included, either, because they are usually covered by other forms of liability. Personal injury and property damage lie within the liability of keepers of motor vehicles but whenever there is intention or negligence, responsibility corresponds to the person involved in the incident.

The liability of the keeper includes damage to passenger's property but does not include commercial freights or possible property interests on the vehicle of third persons.

Passengers and persons who are active in the operation of the vehicle are protected by this Directive and thus may claim reparation of personal injury.

2.2.5. The scope of the Directive: use of a vehicle

According to the recent judgements²³ of the Court of Justice of the European Union, the amendment clarifies the scope of the Directive. The motor vehicles are intended normally

2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability

²³ See especially the following cases: Vnuk judgement (C-162/13), Rodrigues de Andrade Judgement (C-514/16), Torreiro Judgement (C334/16).

to serve as means of transport, irrespective of such vehicles' characteristics. Therefore, the use of such vehicles covers *any use of a vehicle* consistent with its normal function as a means of transport, *irrespective of the terrain*²⁴ on which the motor vehicle is used *and of whether it is stationary or in motion*. As I mentioned before, this broad concept of use of vehicle prevails in the judicial practice in Spain, too.

2.3. New mandatory safety systems into vehicles: the reform of the General Safety Regulation

According to the data of the European Commission, 90% of traffic accidents are due to human errors. The European Union, which wants to reduce risks at the wheel to reach the year 2050 with zero deaths on the road, has reached an agreement by which it will be obliged to include new security systems in vehicles that are marketed after 2022.

With this measure, which will be included in the reform of the General Safety Regulation and which has the support of the European motor vehicle industry, the EU hopes to save the lives of 25,000 people on the road and prevent the occurrence of some 140,000 serious injuries.²⁵

The Commission Proposal is to amend the General Safety Regulation was published²⁶ and it laid down the following requirements:

- Passenger cars, vans, trucks and buses must include a warning device for drowsiness and distraction (a camera focused on the driver), intelligent speed assistants (a GPS and a front camera will force to respect the speed limit), a system of Safe reverse gear (with cameras and sensors) and a black box (all travel data will be recorded to be able to recover them in the event of an accident).
- For cars and vans, an assistance system will also be required in case of abandoning the lane, an advanced emergency braking device (a sensor and a camera will emit audible and visual alerts in case of detecting an obstacle in the vehicle's trajectory, as well pedestrians and cyclists, standing or moving, in case the driver does not react, the car itself will do so automatically) and improved safety belts thanks to collision tests.
- Trucks and buses must also carry specific devices to improve the direct vision of drivers and eliminate blind spots and systems in the front and side of the vehicle to detect and warn the presence of vulnerable road users, especially when turns are made.²⁷

²⁴ E.g. on private properties, too.

²⁵ Alicia DELGADO: Europa quiere más seguridad y menos accidentes. 29th Mars 2019 <http://revista.dgt.es/es/motor/noticias/2019/04ABRIL/0401Conduccion-segura.shtml#.XMqrqi8RF-U>

²⁶ COM/2018/286 final - 2018/0145 (COD). Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on type-approval requirements for motor vehicles and their trailers, and systems, components and separate technical units intended for such vehicles, as regards their general safety and the protection of vehicle occupants and vulnerable road users, amending Regulation (EU) 2018/... and repealing Regulations (EC) No 78/2009, (EC) No 79/2009 and (EC) No 661/2009

²⁷ https://europa.eu/rapid/press-release_IP-19-1793_en.htm