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Behind the wheel: private power and cross-border motor third-party liability claims in Europe

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Abstract

The legal framework governing cross-border motor third-party liability (MTPL) claims in Europe is shaped by a combination of (EU) public regulation and private regulation in the form of private law agreements, resulting in a hybrid legal system. Within this system, private actors play a pivotal role in both the operation and the enforcement of the legal framework governing cross-border MTPL claims. However, uncertainty persists regarding the relationship between private regulation and EU law, the jurisdiction of the Court of Justice, and the role of private actors in interpreting, operationalising, and enforcing the legal framework. This uncertainty gives rise to accountability concerns, particularly as it becomes unclear which actor is responsible for which aspects of the functioning and enforcement of the legal framework governing cross-border MTPL claims.

To address these concerns, a clearer understanding is needed of how the framework functions and why it poses accountability issues. This paper therefore proceeds in two steps. First, it examines the functioning of the framework and the pivotal role of private actors in its operation and enforcement. Second, it analyses the 2017 *Dockevičius* case before the Court of Justice, which illustrates how the hybrid nature of the legal framework generates accountability issues. Based on this analysis, the paper offers preliminary reflections on the broader implications of private enforcement for accountability within the legal framework governing cross-border MTPL claims.

Keywords:

Cross-border MTPL claims, Green Card system, Protection of Visitors system, Motor Insurance Directives, Council of Bureaux, Private enforcement

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I. Introduction

Cross-border MTPL claims in Europe

Addressing cross-border motor third-party liability (hereafter: MTPL) claims in Europe requires navigating a complex and multi-layered legal framework shaped by both (EU) public legislation and private regulation in the form of private law agreements. Private actors play a pivotal role within this legal framework, not only in the daily functioning, but also in its enforcement. Two principal systems govern such claims: the Green Card system and the Protection of Visitors system, the latter being based on the EU Motor Insurance Directives.

The Green Card system, established in 1949 under the auspices of the United Nations, is grounded in a network of private law model agreements (the most recent instrument: the *Internal Regulations)*.[1] From its inception, the system was shaped by close involvement of the insurance industry and was designed as an international framework,[2] allowing not only European but also non-European countries to participate. It laid the foundation for the legal framework governing cross-border MTPL claims but also left several legal and practical challenges unresolved.[3] Within the European Union, these challenges were gradually addressed through six Motor Insurance Directives. These directives did not replace the Green Card system, but rather built upon it: first by introducing an additional private law agreement between national insurance bodies (referred to as *national bureaux)* for the simplification of the Green Card procedures within the European Community,[4] and later, in 2000, creating an additional EU-based regime: the Protection of Visitors system.[5]

Today, both systems continue to govern cross-border MTPL claims in Europe. The Green Card system remains broader in scope, encompassing 47 participating states across Europe, North Africa, and the Middle East, including all EU member states.[6] The Protection of Visitors system, by contrast, applies exclusively within the European Union. In practice, these two systems operate as complementary regimes. Where the Green Card is mainly designed as the protection mechanism of a victim suffering damage in their own country caused by a foreign vehicle,[7] the Protection of Visitors system aims to protect the victim of a road traffic accident in a member state other than their member

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[1] United Nations Economic Commission for Europe, *Recommendation No 5* (adopted January 1949; superseded by Appendix 2 of the *Consolidated Resolution on the Facilitation of International Road Transport,* adopted by the Working Party on Road Transport of the Inland Transport Committee).

[2] See Wolfgang Schmitt, *System der Grünen Karte. Die Grundlagen des Garantiesystems der Grünen Internationalen Versicherungskarte für Kraftverkehr* (Feuermann 1968) 23.

[3] See for example Council of Europe, *Consultative Assembly Recommendation on the international green automobile insurance card* 606 (1970).

[4] Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of obligation to insure against such liability [1972] OJ L103.

[5] Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (Fourth Motor Insurance Directive) [2000] OJ L181/65.

[6] Ibid.

[7] It should be noted that, in case an accident occurs in a country other than the victim's country of residence, and the liable vehicle is registered in yet another country, the victim may also bring a claim before the Green Card Bureau of the country where the accident took place. In this sense, the Green Card system is not limited to the protection of a victim suffering damage in their own country of residence. However, it remains questionable to what extent a victim in such a cross-border situation truly benefits from the possibility to approach the Green Card Bureau of the accident country. In cases occurring within the EEC, and the victim is a European resident, the Protection of Visitors system may in fact provide more effective protection. This consideration, however, is distinct from private international law: from that perspective, a victim might nonetheless have an incentive to bring a claim via the Green Card national bureau of the accident country if the applicable liability law there provides for broader compensation.

state of residence.[8]

A hybrid legal framework

Despite their different origins, the two systems have become increasingly intertwined in several ways over the last couple of decades. For example, the Council of Bureaux was originally established by the insurance industry to manage the Green Card system.[9] However, it was later also entrusted by the European Union with coordinating the Protection of Visitors system.[10] On a more technical level, the European Union has progressively integrated the Green Card instruments into its own regulatory framework. For instance, by publishing the *Internal Regulations* as annexes to European Commission Decisions in the *L Series* of the *Official Journal* of the European Union.[11]

This hybridity of the legal framework governing cross-border MTPL claims came sharply into focus in the 2017 *Dockevičius* case before the Court of Justice.[12] Advocate General Bobek argued that the *Internal Regulations* (the private law instrument currently forming the basis of the Green Card system) had, through both formal incorporation and substantive reliance, effectively become part of EU law as an 'external act', and therefore fell within the Court's jurisdiction.[13] He contended that once an EU institution incorporates an originally external instrument into EU law and relies on it for the achievement of EU objectives,[14] it cannot subsequently deny responsibility for its legal effects by invoking the instrument's private origins. Allowing "for such 'black holes' of judicial review would be incompatible with the vision of a Union based on the rule of law", according to Bobek. [15] The Court of Justice, however, did not follow Bobek's reasoning. It adhered to its earlier case law and held that, because the *Internal Regulations* had not been adopted by an EU institution, they could not be regarded as acts of the Union and therefore lay outside its jurisdiction.[16]

Accountability concerns

Advocate General Bobek's Opinion in the *Dockevičius* case, and the Court's refusal to follow it, expose the very tension that lies at the heart of this paper. The hybrid nature of the legal framework governing cross-border MTPL claims has produced a fragmented system in which private actors play a central role in its operation and enforcement, while the relationship between on the one hand private regulation and private actors and on the other hand EU public regulation and EU institutions remains unclear. This

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[8] In certain cases, both the Green Card system and the Protection of Visitors system may apply to a single cross-border traffic accident. For this paper, it is assumed that an accident falls under one system or the other. For situations in which both systems may apply concurrently, see: Luk de Baere and Frits Blees, *Insurance Aspects of Cross-Border Road Traffic Accidents* (Eleven International Publishing 2012) 208-210.

[9] Schmitt (n 2) 31.

[10] Schmitt (n 2) 3. See the articles of association of the Council of Bureaux. The CoB now coordinates the activities of 1) the Green Card System, comprising 43 Green Card Bureaux representing approximately 1500 motor insurers across 47 countries in Europe, North Africa and the Middle East, and 2) the Protection of Visitors system, involving Compensation Bodies, Guarantee Funds, and Information Centers that apply the European Motor Insurance Directives in the 30 member states of the European Economic Area.

[11] Internal Regulations of the Council of Bureaux adopted by the Agreement of 30 May 2002 as appended to Commission Decision 2003/564 of 28 July 2003 on the application of Council Directive 72/166 relating to checks on insurance against civil liability in respect of the use of motor vehicles (OJ 2003 L 192, p. 23).

[12] Case C-587/15 *Dockevičius* ECLI:EU:C:2017:463.

[13] Case C-587/15 *Dockevičius* ECLI:EU:C:2017:234, Opinion of AG Bobek, see for the formal approach paragraph 58-61, and for the substantive approach, paragraph 62-95.

[14] When adopting the 1st Motor Insurance Directive, the European Community expressly built upon the Green Card system. It recognised that the system facilitated the free movement of goods and persons and contributed to the functioning of the internal market. At the same time, however, the continued practice of internal Green Card checks at the borders created obstacles for free movement. The community therefore urged the national bureaux to conclude an additional private law agreement aimed at abolishing these checks. For further discussion, see Section II.I of this paper ('Simplification within the European Community').

[15] Case C-587/15 *Dockevičius* ECLI:EU:C:2017:234, Opinion of AG Bobek, para 88.

[16] Case C-587/15 *Dockevičius* ECLI:EU:C:2017:463, more specifically para 39-40.

hybridity gives rise to concerns relating to accountability, particularly as it becomes unclear which actor is responsible for which aspects of the functioning and enforcement of the legal framework governing cross-border MTPL claims.[17]

Tension with principle of accountability arises because it is uncertain to what extent EU institutions can be held accountable for the functioning of the Green Card system, an instrument formally treated as external to EU law, based on the *Dockevičius* judgment, but on which the EU relies to achieve EU objectives such as enhancing the internal market.[18] At the same time, the accountability of private actors operating within the legal framework governing cross-border MTPL claims is equally unclear. Private bodies such as the Council of Bureaux exercise managing and coordinating functions under the Protection of Visitors system and issue guidelines on how this EU-based regime should be applied and interpreted.[19] Yet, because the Protection of Visitors system is a creature of EU public regulation, this raises the question whether issuing such guidelines should fall under the responsibility of the European Commission or the European Insurance and Occupational Authority (EIOPA) rather than a private body, such as the Council of Bureaux.

Aim and outline

This paper does not attempt to resolve all questions arising from this hybrid legal framework. Instead, it takes a first step by clarifying the role of private actors in the functioning and enforcement of the cross-border MTPL framework, and by analysing the *Dockevičius* case as an illustration of the interconnectedness of the two systems and the questions this raises. These analyses form the basis for possible further research on accountability in the context of private enforcement of the legal framework governing cross-border MTPL claims.

The structure of this paper is as follows. Section 2 sets out the origins and functioning of both the Green Card system and the Protection of Visitors system, with particular attention to the involvement of private actors in their creation, operation, and enforcement. Section 3 examines the interplay between the two systems and the hybridity of the legal framework that results, highlighting the extent to which the legal framework relies on private law agreements. Section 4 then turns to the *Dockevičius* case, focusing on Advocate General Bobek's Opinion and the CJEU's ruling. Finally, section 5 ends with some reflections on accountability and private enforcement when it comes to the legal framework governing cross-border MTPL claims. Methodologically, this paper adopts a doctrinal approach, drawing on EU legislation, the documents underpinning the Green Card system, CJEU case law and relevant literature.

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[17] This paper builds on Bovens' distinction between accountability as a virtue and accountability as a mechanism. Given the topic of this paper, it adopts the latter understanding. Accountability as a mechanism refers to 'a relationship between an actor and a forum (i), in which the actor has an obligation (ii), to explain and to justify (iii) his or her conduct (iv), the forum can pose questions (v) and pass judgments (vi), and the actor may face consequences (vii). See Mark Bovens, 'Two Concepts of Accountability: Accountability as a Virtue and as a Mechanism (2010) 33 *West European Politics* 946, 951; see also Deirdre Curtin and Linda Senden, 'Public Accountability of Transnational Private Regulation: Chimera or Reality' (2011) 38 *Journal of Law and Society*, 75.

[18] See Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of obligation to insure against such liability [1972] OJ L103 preamble 1. See also *Ufficio van Ameyde v UCI* (Case 90/76) EU:C:1977:101, paras 13 and 18.

[19] See, for example, the *Guidelines on Outsourcing by EU Claims Representatives* issued by the Council of Bureaux. The Council of Bureaux has also played a key role in the creation of the Agreement between the Protection of Visitors Insolvency Bodies, which entered into force retroactively on 23 December 2023 pursuant to the Sixth Motor Insurance Directive. For the text of the guideline and the agreement, see the website of the Council of Bureaux, https://www.cobx.org/sites/default/files, accessed 27 November 2025.

II. The legal framework governing cross-border MTPL claims[20]

As already shortly addressed in the Introduction of this paper, the Green Card system and the Protection of Visitors system can be seen as two sides of the same coin. On the one side, the Green Card system is a protection mechanism for victims of cross-border road traffic accident caused by foreign vehicles.[21] On the other side, the Protection of Visitors system is a protection mechanism for victims of cross-border traffic accidents that occurred abroad (outside the victim's country of residence, but only in the territory of the European Economic Area). Together these two systems form the foundation for the legal framework for handling cross-border MTPL claims in Europe.[22] However, they differ significantly in both their historical origins, legal foundation, and the role of private actors. In this section, these differences will be shown by first explaining the development and functioning of the Green Card system (2.1), and second the development and functioning of the Protection of Visitors system (2.2). Third, some comparative observations on both systems are offered (2.3).

II.I The Green Card system

The development and functioning of the Green Card system

In the aftermath of the Second World War, the volume of (international) traffic in Europe increased significantly.[23] This surge was accompanied by a rise in road traffic accidents, prompting a growing number of European states to adopt legislation governing liability for such accidents as well as laws mandating compulsory motor third-party liability (MTPL) insurance. However, considerable disparities existed between national legal systems. In some states, compulsory MTPL insurance applied only to domestic vehicles, whereas others extended the requirement to foreign-registered vehicles.[24] As a result, foreign drivers were often required to purchase additional insurance at border crossings, even when already insured in their home county.[25] Since host states frequently did not recognize foreign insurance policies as sufficient, this practice led to long queues at border crossings and considerable inconveniences for travellers.[26] These inconveniences, combined with the rapid growth in international road traffic, created substantial legal and practical barriers to cross-border mobility.

To address these challenges, the United Nations Economic Commission for Europe (hereafter: UNECE) took the initiative to develop a coordinated solution.[27] It's Working Party on Legal Questions was tasked with designing a framework that would streamline international road traffic and eliminate the need for drivers to purchase separate insurance policies at every border crossing.[28] The Working Group convened for the first time in May 1948, with representatives from many countries, as well as insurance experts and interest groups.[29]

A proposed solution involved the introduction of a general insurance certificate to protect victims of accidents caused by foreign motorists, based on a Scandinavian model that was already in

[20] This section draws on earlier work, see: Claire Stalenhoef and Michael Faure, 'Soft Law in Insurance Regulation: a Law & Economics Perspective on Cross-Border Motor Third-Party Liability Claims' (manuscript on file with author), 2025.
[21] See footnote 7 for an explanation of the precise scope of the Green Card system.
[22] National liability laws and private international law also play a significant role in this context.
[23] See for example: Frank Schipper, *Driving Europe: Building Europe on Roads in the Twentieth Century,* vol 3 (Amsterdam University Press 2008) 59.
[24] In the 1930s, UNIDROIT conducted comparative studies on motor third-party liability insurance across Europe, revealing significant divergences in national liability regimes and insurance requirements, also regarding the treatment of foreign vehicles. See: UNIDROIT, *Responsabilité civile des automobilistes: étude préliminaire* (1935); and also UNIDROIT, *Assurance obligatoire des automobilistes* (1936).
[25] Schmitt (n 2) 8-21.
[26] Schmitt (n 2) 8-21.
[27] Schipper (n 23) 161.
[28] United Nations Economic Commission for Europe, *Resolution concerning the programme of work* (1948). See also: Schmitt (n 2) 23.
[29] Schmitt (n 2) 23

place.[30] This envisioned system included the creation of a 'national motor insurance bureau' in each participating country. These national bureaux would operate in two manners. Depending on the circumstances of an accident they would either function as a *handling* bureau, or as a *guaranteeing* bureau. A *handling* bureau is the national bureau in the country where the accident occurred, and the *guaranteeing* bureau would be the national bureau in the state where the liable vehicle was registered. The *handling* bureau would be responsible for managing and settling claims locally, in accordance with the national law of the country of the accident. The *guaranteeing* bureau would ensure reimbursement of any compensation paid by the *handling* bureau. This structure would enable victims to be compensated according to the laws of the country where the accident occurred, while interacting with a local entity in the language of that country.[31]

The proposal was broadly supported and the Working Group for Legal Questions embraced it and drafted a concept Recommendation, which was circulated among member governments and interested parties (among which the insurance industry) for feedback.[32] After incorporating the input received, the Recommendation was finalized and adopted as Recommendation No. 5 by the Working Party on Road Transport of the Inland Transport Committee (part of the Working Group for Legal Questions of the UNECE) in 1949.[33]

Under Recommendation No. 5, each participating country was to establish a central organization, its national motor insurance bureau (hereafter: national bureau), recognized by national authorities and composed of all domestic insurers providing MTPL policies.[34] These national bureaux were authorised to issue the insurance certificate (the Green Card) to their member insurers, who would in turn provide them to policyholders. The Green Card served as proof that the motorists held valid liability coverage in compliance with the laws of the destination country, offering protection for injury or damage to third parties.[35] Importantly, this insurance certificate allowed the issuing national bureau to accept legal responsibility for claims and to authorise another national bureau to receive service of legal documents on its behalf.[36] If a claim arose, the *handling* national bureau in the country where the accident occurred would process the claim as if the liable motorist was locally insured, acting under the authority of the issuing national bureau.[37] For the system to function effectively, it was essential that insurers in each participating country offer policies with cross-border coverage that complied with the legal requirements of other participating states.[38] At the same time, border control and legal authorities in the destination country were required to recognize this foreign coverage as sufficient.[39] This mutual recognition mechanism eliminated the need to buy a new insurance policy at each border crossing. Finally, to operationalise the guarantees and reimbursement procedures between national bureaux, the Recommendation envisioned the conclusion of (model) agreements under private law between the national bureaux of all participating states. These agreements laid the foundation for inter-bureau cooperation and financial settlement.[40]

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[30] See for more information about this Scandinavian Model: Schmitt (n 2) 15; Francis Deák, 'Automobiles accidents: a comparative study of the law of liability in Europe' (1931) 79 *University of Pennsylvania Law Review* 271.
[31] Schmitt (n 2) 23-24.
[32] Council of Bureaux, *Explanatory Memorandum to the Internal Regulations of the Council of Bureaux* (2003) preamble 1 < https://www.cobx.org/recherche-indexee?f%5B0%5D=media_type%3Afile&f%5B1%5D=view_compendia_only%3A0 accessed 26 Aug 2025.
[33] United Nations Economic Commission for Europe, *Recommendation No 5* (adopted January 1949; superseded by Appendix 2 of the *Consolidated Resolution on the Facilitation of International Road Transport,* adopted by the Working Party on Road Transport of the Inland Transport Committee).
[34] Ibid para 1(a).
[35] Ibid para 1(b).
[36] Ibid para 1(d).
[37] Ibid para 1(e).
[38] Ibid para 1 (c).
[39] Ibid para 2.
[40] Ibid para 1(g).

After several meetings of the Working Group for Legal Questions, it was decided in 1952 to implement this system (hereafter: the Green Card system) as soon as possible in those countries that had established a national bureau.[41] Consequently, a resolution was adopted to formally introduce the Green Card system, with its implementation scheduled for January 1953.[42] In this Resolution it was also stated that the national bureaux of all participating states shall join and support an international overarching body, known as the 'Council of Bureaux'.[43] Up until today, the Council of Bureaux is the managing organization of the Green Card system,[44] under the aegis of the Working Party on Road Transport of the Economic Commission for Europe.[45] It provides facilities for the administration of the agreements between national bureaux and for the consideration of matters of mutual interest for participating bureaux. By mid-1953, the Green Card system was operational in Denmark, Norway, Finland, Austria, Belgium, France, the Netherlands, Great Britain, Ireland, Sweden, Switzerland, and West-Germany.[46] Although the system was founded on the aforementioned UN Resolution, it functioned in practice on the basis of bilaterally concluded private law agreements between the national bureaux, known at the time as the *Uniform Agreement.* This *Uniform Agreement* functioned as the model agreement which needed to be concluded bilaterally under private law.[47]

The introduction of the Green Card system marked a significant step towards establishing a legal framework for the settlement of cross-border MTPL claims, one that remains largely intact to this day. While the system has evolved over decades, its core principles have endured, and the Green Card system now encompasses 47 countries across Europe, North Africa, and the Middle East.[48]

Simplification within the European Community

After the introduction of the Green Card system in 1953, the system continued to evolve in the following years. One of the most significant developments was its geographical expansion to additional countries.[49]

In addition to geographical expansion, the Green Card system underwent further development. Although the introduction of the system significantly eased border crossings, not all issues were resolved. While it was no longer necessary to inspect and review insurance policies, verifying the presence of the Green Card at the border was still required, which meant that border queues were not entirely eliminated. This inconvenience threatened the effective functioning of the Green Card system and impeded further European integration, for example of the internal market. To address this, the European Economic Community (EEC) sought further simplification of the Green Card system. In 1972, the EEC adopted the first Motor Insurance Directive (hereafter: 1st MID), in response to concerns that the Green Card checks were hindering the development of the internal market and obstructing the

[41] Schmitt (n 2) 28.

[42] See Inland Transport Committee of the Economic Commission for Europe, *The revised consolidated resolution on the Facilitation of Road Transport* (2004) https://www.cobx.org/recherche-indexee?f%5B0%5D=media_type%3Afile&f%5B1%5D=view_compendia_only%3A0 accessed 26 Aug 2025.

[43] Ibid point 2.

[44] And also for the Protection of Visitors system, which will be explained later in this paper.

[45] Ibid point 2.

[46] Schmitt (n 2) 28.

[47] Council of Bureaux, *Uniform Agreement* (1953) https://www.cobx.org/recherche-indexee?f%5B0%5D=media_type%3Afile&f%5B1%5D=view_compendia_only%3A0 accessed 26 Aug 2025.

[48] In 1996, the Council of Bureaux passed a recommendation limiting the geographical scope of the system to the countries lying to the West of the Ural Mountains and the Caspian Sea and to countries bordering the Mediterranean Sea. See UNECE Working Party on Road Transport of the Inland Transport Committee, *Minutes of the General Assembly* (2012) https://unece.org/DAM/trans/doc/2012/sc1/ECE-TRANS-SC1-2012-1e.pdf accessed 26 Aug 2025; see also Council of Bureaux, *Articles of Association,* art 5.1.1(a) https://www.cobx.org/sites/default/files/2023-12/Articles%20of%20Association.pdf accessed 26 Aug 2025.

[49] In the early 1970s, 27 states were already part of the system, and today that number has grown to 47 (European and non-European) countries. See Council of Bureaux, 'About COB' https://www.cobx.org/article/4132/about-cob accessed 26 Aug 2025.

free movement of goods and people.[50] The 1st MID pursued two primarily goals: (1) to facilitate the free movement of vehicles and individuals within the EEC and (2) to ensure that victims of accidents received equivalent treatment regardless of where in the EEC the accident occurred. To this end, the 1st MID made MTPL insurance mandatory for all member states and aimed to eliminate insurance checks at internal borders.

At the time of the 1st MID, the EEC consisted of six member states: France, western Germany, Italy, Belgium, the Netherlands and Luxembourg. Once all six member states had implemented compulsory MTPL insurance, as the 1st MID prescribed,[51] it stipulated that the national Green Card bureaux of all member states of the EEC would enter into an additional private law agreement.[52] This agreement would mandate that, if an accident occurred in an EEC member state involving a vehicle normally based in another EEC member state,[53] the national Green Card bureau of the country where the accident occurred would ensure settlement and compensation of the damages according to the national legislation of where the accident happened, *regardless* of whether the liable vehicle was insured.[54]

Once this agreement was in place and extended to cover *uninsured* vehicles,[55] insurance checks on Green Cards at the internal borders between EEC member states could be abolished for vehicles originating within the EEC, which was the ultimate aim of the 1st MID.[56] The fact that a member state guaranteed to process a claim regardless of whether the vehicle was insured or not, enables the abolishment of checks on the Green Card of EEC vehicles when entering other EEC member states and is referred to as the 'deemed insurance principle'. The 1st MID further stipulated that EEC member states should not conduct insurance checks on vehicles from third countries entering their territory from another EEC member state either. In practice, this meant that insurance checks were only carried out at the EEC's external borders for vehicles from third countries, but not at the internal borders between EEC members.[57] The *Uniform Agreement*, which governed the relationship between the national bureaux at the time, did not, logically, meet the requirements set by the 1st MID, that applied exclusively to the six EEC member states. Hence, the six EEC member states entered into an additional agreement known as the *Supplementary Agreement(s)* to arrange the practicalities of the deemed insurance principle. The *Supplementary Agreement(s)* existed alongside the *Uniform Agreement* for many years.[58]

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[50] Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of obligation to insure against such liability [1972] OJ L103 preamble 6.
[51] Ibid article 3(1).
[52] Ibid article 2.
[53] Based on the 1st MID, article 1.4 the territory in which the vehicle is normally based means (i) the territory of the state in which the vehicle is registered, or (ii) in cases where no registration is required for a type of vehicle but the vehicle bears an insurance plate, or a distinguishing sign analogous to the registration plate, the territory of the state in which the insurance plate or the sign is issued, or (iii) in cases where neither registration plate nor insurance plate nor distinguishing sign is required for certain types of vehicles, the territory of the state in which the person who has custody of the vehicle is permanently resident. Currently, the definition for 'territory in which the vehicle is normally based' is given in article 1.4 of the Codified Directive, see: 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 (Codified Motor Insurance Directive) [2009] OJ L 263/12.
[54] Ibid article 5.
[55] The Supplementary Agreement(s) was/were introduced to operate alongside the Uniform Agreement. See for more information De Baere and Blees (n 8) 41-43.
[56] Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of obligation to insure against such liability [1972] OJ L103 article 2.
[57] Ibid.
[58] De Baere and Blees (n 8) 33.

The Green Card system today

To this day, two different approaches exist in the application of the Green Card system. One group of countries continues to apply the system in its 'original' form, whereby physical Green Cards may be inspected at border crossings. Another group of countries – comprising at least all EU member states – applies the Green Card system based on the 'deemed insurance principle', which assumes that a vehicle is insured without requiring physical proof of the Green Card at the border.[59] These different approaches in the application of the Green Card system are also reflected in the *Internal Regulations,* the successor of the *Uniform Agreement*.[60]

The *Internal Regulations* not only distinguish between the two approaches to applying the Green Card system, but more importantly serve as a framework that standardizes procedures for claim handling, reimbursement between national bureaux, and other inter-bureaux obligations. Substantively, the *Internal Regulations* remain like their predecessors such as the *Uniform Agreement.* However, they differ in form. Whereas the *Uniform Agreement* functioned as a bilateral model contract to be concluded under private law, the *Internal Regulations* establish an overarching legal and operational structure designed to promote consistency and uniformity across the system. Article 16 of the *Internal Regulations* provides that national bureaux must still conclude bilateral agreements under private law for the Green Card system to operate between their countries. In this sense, the *Internal Regulations* can best be understood – following De Baere and Blees – as set of a general terms and conditions supplementing those bilateral agreements.[61] In addition, Article 17 stipulates that states applying the Green Card system on the basis of the 'deemed insurance principle' must accede to the *Multilateral Guarantee Agreement* (the successor to the *Supplementary Agreement).*

In summary, the Green Card system draws its legal foundation from Recommendation No. 5 (1949) of the UNECE's Working Group on Legal Questions and the subsequent UN Resolution adopted by the participating states. However, its operation has always relied on private law agreements between national bureaux, which remain the backbone of the system today. Two instruments are particularly central at present:

1. The *Internal Regulations,* providing the overarching framework for the relationships, obligations, and procedures of the national bureaux. They require bureaux to conclude bilateral agreements to make the system operational and reference the *Multilateral Guarantee Agreement.*
2. The *Multilateral Guarantee Agreement,* a private law instrument that underpins the abolition of Green Card checks at internal borders through the 'deemed insurance principle'. For all EU member states, participation in this agreement is mandatory under the 1st MID.

II.II The Protection of Visitors system

The development and functioning of the Protection of Visitors system

As noted in the previous section, the 1st MID was adopted in 1972.[62] In the years that followed, the European Union adopted five additional Motor Insurance Directives (1982, 1990, 2000, 2005, 2021)

[59] The only criterion triggering this guarantee was whether the vehicle was considered to be 'normally based' in one of the EEC member states. In most cases, the country where a vehicle is normally based corresponds to the vehicle's registration plate, although exceptions to this rule are set out in the *Internal Regulations.* See for the exceptions: Council of Bureaux, *Internal Regulations* (2003) https://www.cobx.org/sites/default/files/2023-12/Articles%20of%20Association.pdf. accessed 26 Aug 2025.

[60] Section 2 of the Internal Regulations governs the traditional approach based on the physical Green Card checks, while section 3 of the *Internal Regulations* outlines the procedure for countries applying the deemed insurance principle.

[61] De Baere and Blees (n 8) 42.

[62] Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of obligation to insure against such liability [1972] OJ L103.

and a Codified Directive (2009) in which the first five Motor Insurance Directive were codified.[63] In the Fourth Motor Insurance Directive (hereafter 4th MID), the EU introduced another key mechanism relevant to cross-border MTPL claims: the Protection of Visitors (hereafter PoV) system. The PoV system serves as a safeguard for victims of cross-border road traffic accidents that occurred outside their country of residence, but within the territory of the European Economic Area (hereafter EEA) and functions as a kind of mirror image of the Green Card system.[64] While the Green Card system facilitates the processing of claims in the country where the accident occurred, the PoV system enables victims to pursue claims from within their own country.

The 4th MID stipulated that an injured party could file a claim for compensation in their own member state through a claims representative appointed by the insurer of the liable party.[65] This provision significantly enhanced access to justice by allowing claims to be processed within a familiar linguistic environment. However, importantly, this system does not affect the applicable substantive law.[66] Accordingly, private international law remains decisive in determining which law applies to the claim and which courts are competent to hear the case if an amicable settlement is not reached.[67]

Several specific conditions must be met for the PoV system to apply. First of all, the injured party must be a resident of an EU member state. Second of all, the liable motor vehicle must be normally based and insured in a different member state than the member state of residence of the injured party.[68] Unlike the Green Card system, also applicable to non-EU countries, the 4th MID applies exclusively to

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[63] Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles [1984] OJ L 8/17 (Second Motor Insurance Directive); Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles [1990] OJ L 129/33 (Third Motor Insurance Directive); Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles [2000] OJ L181/65 (Fourth Motor Insurance Directive); Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles [2005] OJ L 149/14 (Fifth Motor Insurance Directive); 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 (Codified Motor Insurance Directive) [2009] OJ L 263/11; Directive (EU) 2021/2118 of the European Parliament and of the Council of 24 November 2021, amending Directive 2009/103/EC relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability [2021] OJ L 430/1 (Sixth Motor Insurance Directive); See for an overview also Caroline van Schoubroeck, 'European harmonised rules on motor vehicles liability insurance reviewed' (2022) *Insurance and Legal-Economic Environment* 133.

[64] De Baere and Blees observe that, initially, the protection of visiting victims was not a primary concern for the United Nations Economic Commission for Europe or the European Union. The main objective was to facilitate cross-border road traffic without diminishing the level of protection for road traffic accident victims. Victims residing in their home country had to be assured of proper compensation, which was the focus of the Green Card system and later the first MID. In contrast, visitors travelling abroad voluntarily were expected to take precautions, such as purchasing travel or other insurance products, and to navigate the compensation process, even if it meant dealing with a foreign insurer in a different language. See: De Baere and Blees (n 8) 167-168.

[65] Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (Fourth Motor Insurance Directive) [2000] OJ L181/65 article 4.

[66] Ibid article 4(8).

[67] Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) [2007] OJ L 199/40; Convention on the law applicable to traffic accidents (The Hague, 4 May 1971), See also: Klea Vyshka, 'Direct actions against insurers in cross-border traffic accidents in an Europeanised Private International Law – What protection for the injured parties? (2020) 36 (3-4) Pravni vjesnik 137; Jenny Papettas, 'Direct actions against insurers of intra-community cross-border traffic accidents: Rome II and the Motor Insurance Directives' (2012) 8(2) Journal of Private International Law 297.

[68] Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (Fourth Motor Insurance Directive) [2000] OJ L181/65 article 1.

member states of the European Economic Area.[69]

To ensure the proper functioning of the Protection of Visitors system, the 4th MID required all insurers offering MTPL insurance in the EU to appoint a claims representative in every other Member State.[70] These representatives are responsible for handling claims in the official language of the injured party's country of residence.[71] Furthermore, the 4th MID mandated the creation of information centres to assist injured parties in indemnifying the relevant insurer and in pursuing compensation when necessary.[72] If, within three months, the insurance company or its representative, failed to provide a reasonable response, or if no claims representative had been appointed, the injured party was entitled to submit the claim to the compensation body in their own member state.[73] An injured party may also file a claim with the compensation body in case the vehicle involved cannot be identified, or in case the insurer of the vehicle involved cannot be identified.[74] Finally, the 4th MID also introduced an explicit direct right of action for the injured party against the liable insurer, strengthening the legal position of cross-border accident victims within the EU.[75]

The Protection of Visitors system today

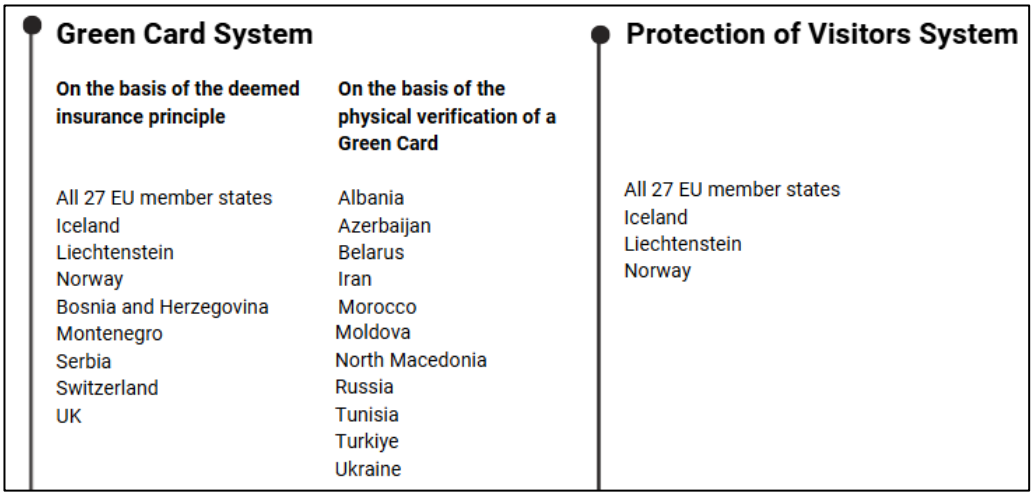
The Protection of Visitors system, introduced by the 4th MID in 2000, functions up until today. Within the framework, private international law plays an important complementary role, particularly when determining the applicable law and the competent court in cases involving cross-border MTPL claims.[76] In this regard, the Rome II Regulation, and where applicable, the Hague Convention on the Law Applicable to Traffic Accidents (1971) are especially relevant.[77] Yet, the legal structure of the PoV system is not shaped solely by hard law. Like the Green Card system, private law agreements also play a role. In the context of the PoV system, these agreements are concluded between insurers and their appointed claims representatives. This is not surprising, as claims representatives are typically commercial entities (often also insurance companies) that generate revenue by acting on behalf of insurers in handling claims across borders. While the PoV system may rely on these private law agreements to some extent for its practical functioning, its existence and legal foundation do not depend on them. Unlike the Green Card system, which structurally depends on the network of private law agreements between the national bureaux, the PoV system is primarily driven by the EU Motor Insurance Directives. The role of private law agreements is therefore facilitative rather than foundational: they support the system's implementation, but they are not a legal precondition for its operation.

[69] Ibid article 1(2) and 1(3). Under certain conditions, injured parties could still steek compensation from a claims representative or compensation body if the accident occurred in a third country that was part of the Green Card system, provided that the liable vehicle is insured in a member state.
[70] Ibid article 4.
[71] Ibid article 4(5).
[72] Ibid article 5 and 6.
[73] Ibid article 6(1).
[74] Ibid article 7.
[75] Ibid article 3.
[76] See for example Csongor István Nagy, 'The Rome II Regulation and Traffic Accidents: Uniform Conflict Rules with some Room for Forum Shopping – How so?' (2010) 6(1) *Journal of Private International Law* 93; Jenny Papettas, 'Choice of Law in Cross-Border Road Traffic Accidents: Rome II, Hague Convention and Motor Insurance Directive' (Policy Commons, 2012) < https://policycommons.net/artifacts/1333671/choice-of-law-for-cross-border-road-traffic-accidents/1938352/ > accessed September 2025.
[77] For the relationship between Rome II and the Hague Convention, see: Antoinette Collignon-Smit Sibinga, 'Crossing Borders: What Happens When Rome Meets the Hague' (2014) 1 *Journal of Personal Injury Law* 13.

III. Interplay between the Green Card system and the Protection of Visitors system

From the description of the origins and functioning of both the Green Card system and the Protection of Visitors system in the preceding section,[78] several points of interaction have already become apparent. This section explores that interplay in greater depth, focusing on the ways in which the two systems interact. A closer examination reveals that the two systems differ in important respects, while at the same time becoming increasingly interdependent.

A first distinction concerns their geographical scope. Whereas the Green Card system extends well beyond the EEA, the Protection of Visitors system applies exclusively within the EEA. An overview of the participating countries is provided in the figure below.



A second, more fundamental difference lies in their legal foundations. The PoV system rests on the 4th MID and is therefore embedded in EU law. The Green Card system, by contrast, is rooted in Recommendation No. 5 (1949) of the UNECE's Working Group on Legal Questions and the subsequent UN Resolution adopted by participating states. While these instruments provided the political and institutional basis for the Green Card system, its operation has always depended on private law agreements between national bureaux. Since its inception, such agreements have formed the backbone of the system. The result is that the legal framework governing cross-border MTPL claims is a hybrid legal framework: EU law and private law agreements co-exist and are intertwined.

This hybridity becomes especially visible in the interaction between the two systems. A striking example can be found in the 1960s, when the Green Card system encountered practical difficulties, such as delays at border crossings. [79] The introduction of the 1st MID and the creation of 'deemed insurance principle' addressed these shortcomings. At the same time, the 1st MID relied on, and in some respects, expanded the Green Card system by requiring an additional private law agreement between the national bureaux of the EEC's member states to be able to abolish border checks. Building on this, the European Commission Recommendation No. 73/185 emphasized that the adopted private law agreement, the Supplementary Agreement, meets the requirements of the 1st MID, highlighting the hybrid nature and interconnectedness of the systems.[80] This Recommendation also fixed the date from which the Member

[78] The key aspects of each framework have been highlighted. Yet, certain aspects of both systems have not been addressed in this paper. For instance, under the Green Card System, insurers may appoint correspondents to handle claims on their behalf, and national bureaux may delegate claims handling to agents. Furthermore, in practice, the distinction between the Green Card System and the PoV system is not always clear-cut, as both frameworks can apply to the same cross-border accident. In addition, the role of Guarantee Funds, relevant not only for domestic but also for cross-border claims, has not been examined here. For more information on the practical operation of both systems, see: De Baere and Blees (n 8).

[79] Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of obligation to insure against such liability [1972] OJ L103 preamble 6.

[80] Commission Recommendation of 15 May 1973 [1973] OJ L 194/13.

States were to refrain from border checks on insurance.[81] As far as the mutual links between the Green Card and the Motor Insurance Directives, the legislative history of the 5th MID (2005) shows that some modifications were suggested by the Council of Bureaux.[82]

The interconnection is also visible at a technical level. The *Internal Regulations* were published as an annex to a Commission Decision in the *L Series* of the *Official Journal of the European Union*.[83] Those same *Internal Regulations* themselves annex the 1st MID, thereby creating the paradoxical situation in which a Commission Decision indirectly annexed its own directive.

Finally, institutional practice illustrates the entanglement of the two systems as well. The Council of Bureaux, originally created by the insurance industry to manage the Green Card system, was later entrusted by the European Union with the coordination of the PoV system as well.[84] In addition, in practice, in some member states, a single entity deals with claims arising under both the Green Card system and the PoV system.[85] Thus, for all practical purposes, a claimant may hardly tell the difference as to when one and the same authority is acting under the PoV system, and when it is acting under the Green Card system, as often the national procedure is also the same.[86]

Taken together, these observations confirm that the legal framework governing cross-border MTPL claims is a hybrid one, combining (EU) public law and private law agreements. The PoV and Green Card systems are closely connected, not only institutionally, but also technically and practically. For victims and alleged tortfeasors alike, the enforcement of rights and obligations depends primarily on private actors: national bureaux, claims representatives, and the Council of Bureaux. These bodies carry out the practical tasks of claim assessment, settlement and reimbursement. The resulting framework is therefore characterised as a legal grey zone, in which EU law relies on instruments and enforcement structures that formally lie outside its reach. The *Dockevičius* case, to be discussed in the following section, illustrates the practical consequences of this grey zone.

IV. *Dockevičius*

The hybrid nature of the legal framework outlined in the previous section raises questions about the relationship between EU law and the private law agreements underpinning the Green Card system. These questions came sharply into focus in the *Dockevičius* case, in which the Lithuanian Supreme Court asked the Court of Justice of the European Union (CJEU) to interpret provisions of the *Internal Regulations*. The CJEU, however, held that it lacked jurisdiction to interpret the *Internal Regulations*, thereby leaving the substantive questions unaddressed.

The *Dockevičius* case was not the first time that the Court's jurisdiction over instruments associated with the Green Card system had been contested.[87] Earlier, in 1987, the issue arose in

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[81] Ibid.

[82] Case C-587/15 *Dockevičius* ECLI:EU:C:2017:234, Opinion of AG Bobek, para 48; Proposal for a Fifth MID, COM(2002) 244 final [2002] OJ C 227/387, Impact Assessment Form, under 'Consultation', point 6(3), noting that the Council of Bureaux 'has expressed its support for the core provisions contained in the proposal and has given its cooperation to the Commission in order to resolve properly some difficult problems such as those relating to vehicles without a registration plate or bearing a non-corresponding plate or to insurance cover for imported vehicles'.

[83] Commission Decision 2003/564 of 28 July 2003 on the application of Council Directive 72/166/EEC relating to checks on insurance against civil liability in respect of the use of motor vehicles [2003] OJ L 192/23, annex ('Internal Regulations of the Council of Bureaux adopted by the Agreement of 30 May 2002').

[84] See the articles of association of the Council of Bureaux.

[85] National bureaux under the Green Card system and compensation bodies under the PoV system can function under a single entity. See: Case C-587/15 *Dockevičius* ECLI:EU:C:2017:234, Opinion of AG Bobek, para 78.

[86] Ibid para 78-79.

[87] See most prominently the Demouche case (Case C-152/83, EU:C:1987:421), where the Court held that it lacked jurisdiction to interpret the Uniform Agreement underlying the Green Card system. Related questions also arose, albeit more indirectly, in the *Fournier* case (Case C-73/89, EU:C:1992:431), and the *Van Ameyde* case (Case 90/76, EU:C:1977:101). In those cases, the Court likewise denied jurisdiction over het private agreements forming the basis of the Green Card system, yet still provided guidance on the interpretation of the Motor Insurance

Demouche.[88] In that case, the Court held that it lacked jurisdiction to interpret the *Uniform Agreement* (the predecessor of the *Internal Regulations)* because the instrument had been drafted and concluded by bodies governed by private law, without the participation of any EU institution or body. On that basis, the Court concluded that the *Uniform Agreement* could not be regarded as an act of the Union and therefore fell outside the scope of its jurisdiction.[89]

In *Dockevičius,* Advocate General Bobek took a different view. He argued that the *Internal Regulations* had, both formally and substantively, become part of EU law as an 'external act', and therefore fell within the jurisdiction of the Court. By advancing this argument, he explicitly departed from the Court's earlier approach and explained why a different line of reasoning was warranted considering the evolution of EU motor insurance law and the increasing interdependence between the Green Card system and the Motor Insurance Directives. Nevertheless, the Court did not adopt Bobek's analysis and instead reaffirmed its earlier case law, again holding that it lacked jurisdiction. The divergence between Advocate General Bobek's reasoning and the Court's position highlights both the complexity of the hybrid legal framework governing cross-border MTPL claims, and the accountability tensions inherent in its design.

The next section examines these issues in greater detail by first outlining the factual background and domestic proceedings in *Dockevičius,* before turning to the Opinion of Advocate General Bobek and the ruling of the CJEU.

The facts of the case

The dispute originated in a road traffic accident that took place in Germany in July 2006. Two cars collided: a car registered in Lithuania (driven by Mr. Dockevičius and owned by Ms. Dockevičienė) and a German registered taxi (driven by Mr. Floros). Both drivers were fined for the accident by the local police. The Lithuanian vehicle was not covered by compulsory motor third-party liability (MTPL) insurance. The police report of the accident left unclear which party was responsible for the accident. Both drivers were, simultaneously, considered victims of the accident and accused of having been in breach of the Highway Code. According to the police report, it was determined that Mr. Floros was driving without maintaining a safe distance when he hit another vehicle which was in the process of braking and that Mr. Dockevičius had been reversing without due care and attention. Both Mr. Floros and Mr. Dockevičius were fined by the German authorities, in the amounts of € 35,00 and € 60,00, respectively. Following the accident, the Mr. Floros sought compensation for his damages following the accident.[90]

Intermezzo

Before turning to the subsequent litigation, two points should be underlined: first, under which system the cross-border traffic accident falls, and second, how that system operates in this case. In this case, a German citizen had an accident in its own country of residence, involving a foreign vehicle. The Green Card system applies in such situations. It governs cases where a person suffers damage in their own country caused by a vehicle registered abroad, provided that both countries are members of the Green Card system and that their national bureaux are linked by agreement. In the present case, both Germany and Lithuania are members of the Green Card system and are bound by the *Multilateral Agreement* between their bureaux.[91] Turning to the second point, it is useful to recall briefly how the Green Card mechanism functions in practice. The *handling* bureau – in this case the German national bureau – is

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Directives, thereby indirectly offering orientation for the interpretation and functioning of the legal framework as a whole. See also the Opinion of AG Bobek in Case C-587/15 *Dockevičius* ECLI:EU:C:2017:234, paras 64 – 70.

[88] Case C-152/83 *Demouche and Others* EU:C:1987:421.

[89] Ibid specifically paras 18 – 21.

[90] See for the facts of the case Case C-587/15 *Dockevičius* ECLI:EU:C:2017:234, Opinion of AG Bobek, paras 15-30.

[91] There is no doubt that the case falls under the scope of the Green Card system. See: Case C-587/15 *Dockevičius* ECLI:EU:C:2017:234, Opinion of AG Bobek, para 31.

responsible for assessing the claim under German law and paying compensation to the injured party. The *guaranteeing* bureau – here the Lithuanian bureau – must guarantee reimbursement for the *handling* bureau for any sums paid to the injured party. Since both Germany and Lithuania are parties to the *Multilateral Agreement*, this guarantee applies even in situations where the vehicle is uninsured. Generally, when the liable vehicle is insured, the *guaranteeing* bureau can recover the damages paid from the insurance company. In case the vehicle is uninsured, which was the situation here, the *guaranteeing bureau* will probably try to recover the damages paid from the tortfeasor.

National proceedings in Germany and Lithuania

In October 2010, Mr. Floros sought compensation for the damage to his vehicle and lodged a claim with the German national bureau (i.e. the *handling* bureau in this case). The claim was rejected by the German national bureau on the ground that liability could not be established.[92] Mr. Floros then initiated proceedings before the Landgericht Frankfurt am Main, claiming € 10.831,77 in damages. The court dismissed the action, first on procedural grounds and subsequently due to shortcomings in the factual description of the accident.[93] Mr. Floros appealed. The Higher Regional Court found that the first-instance judgment contained errors arising from insufficient evidence and held that, absent an amicable settlement, the case would need to be remanded for a new examination.[94] The Higher Regional Court suggested that the parties settle, proposing that the German national bureau would pay € 4.095,00 to Mr. Floros. Failing such a settlement, a hearing with witnesses would be required.

Following this suggestion, and for procedural considerations without acknowledging liability, the German national bureau agreed to an amicable settlement. Mr. Floros received € 8.352,96, covering both the recommended amount and his legal costs. The German national bureau was reimbursed for this amount by the Lithuanian national bureau (i.e. the *guaranteeing* bureau in this case).[95]

The Lithuanian national bureau, in turn, initiated proceedings before the Lithuanian courts to recover the reimbursed sum from Mr. Dockevičius and Ms. Dockevičienė. The legal basis invoked was the Lithuanian law on compulsory insurance, which transposes the Codified Motor Insurance Directive (2009).[96] In a first-instance judgment, the claim of the Lithuanian national bureau was upheld. However, Mr. Dockevičius and Ms. Dockevičienė appealed to that judgment and in October 2014 the first-instance judgment was set aside by the Regional Court. The appeal court reasoned that Mr. Dockevičius and Ms. Dockevičienė had not accepted the settlement amount and had not been parties to the legal relationship between the German and Lithuanian national bureaux. The fact that the German national bureau had compensated Mr. Floros could not, in itself, establish the existence or quantum of damages.[97] The burden of proof, the court held, remained with the Lithuanian national bureau. Furthermore, the court emphasized that the *Internal Regulations* of the Council of Bureaux governs relations between national bureaux and do not directly regulate relations between bureaux and third parties. Neither Lithuanian law on compulsory insurance nor the Motor Insurance Directives provided that the Lithuanian national bureau could recover amounts reimbursed to another bureau directly from the person allegedly responsible for the damage without an independent assessment of liability.[98]

This second instance judgment was challenged before the Supreme Court of Lithuania. The Supreme Court noted that Mr. Dockevičius and Ms. Dockevičienė had not been parties to the German proceedings nor to the settlement negotiations that led to the payment to Mr. Floros. It further observed that the German national bureau had consistently maintained that Mr. Floros's claim was unfounded, and that Mr. Dockevičius had consistently denied liability for the accident. Against this background, the Supreme Court expressed doubts as to the scope of the procedural obligations incumbent upon the

[92] Case C-587/15 *Dockevičius* ECLI:EU:C:2017:234, Opinion of AG Bobek, para 16.
[93] Ibid para 18.
[94] Ibid para 19.
[95] Ibid para 21.
[96] Ibid para 22.
[97] Ibid para 25.
[98] Ibid para 25.

national bureaux and the corresponding rights of individuals under the Motor Insurance Directives, the *Internal Regulations* and the European Charter of Fundamental Rights.[99] Consequently, the Supreme Court referred a preliminary question to the Court of Justice of the European Union, essentially concerning the legal effects of the settlement agreement and the procedural safeguards available to third parties when such a settlement is enforced against them before national courts.[100]

Opinion Advocate General Bobek

Against the background of the Court's earlier refusals to assume jurisdiction in cases related to the Green Card system, Advocate General Bobek first addresses whether the Court of Justice has jurisdiction in the present case. He argues that the *Internal Regulations* have entered the EU legal order in two ways, namely formally and substantively, and that under both approaches the Court of Justice has jurisdiction to interpret the *Internal Regulations.*

Formal approach

Bobek argues that, generally, annexes to EU legal acts are deemed to have the same legal force as the acts to which they are attached.[101] He notes that the *Internal Regulations* were published as an annex to Decision 2003/564, which was printed in the *L Series* of the *Official Journal,* reserved for binding legislation.[102] That decision itself imposes clear obligations on member states, such as refraining from insurance checks at borders for vehicles from other member states or third countries covered by the *Internal Regulations*. Moreover, article 6 of the Codified MID (2009) requires member states to ensure that national bureaux exchange certain information, a duty that presupposes acceptance of the *Internal Regulations*.[103] According to Advocate General Bobek, the combined effect of these elements is the formal incorporation of the *Internal Regulations* into EU law.[104]

Substantive approach

Also, when assessed more substantively, Advocate General Bobek reaches the same conclusion. First, he places the *Demouche* judgment, in which the Court held that it lacked jurisdiction over the Green Card system, in its jurisprudential context and analyses its scope. Without revisiting the facts of *Demouche* in detail,[105] it suffices to note that the case concerned an arbitration clause in the *Uniform Agreement*, the predecessor to the *Internal Regulations*, governing dispute settlement between national bureaux. Advocate General Bobek notes that in this case it solely concerned the *internal* functioning of the Green Card system. Hence, the refusal of jurisdiction in *Demouche* should be seen in that context. By contrast, in the present case, the Lithuanian Supreme Court asked the CJEU to clarify the procedural safeguards owed to individuals who are deemed liable for an accident and face recourse proceedings in another member state. These proceedings are the direct consequence of the operation of the Green Card system, which has since been expressly incorporated into EU law. For Advocate General Bobek, the present case thus raises issues that go well beyond the internal functioning of the Green Card system; it concerns the external legal consequences of the *Internal Regulations* for third parties' rights and obligations.[106]

Second, Advocate General Bobek points out that the motor insurance law has developed significantly since the *Demouche* judgment of 1987. Over time, the Green Card system and the MIDs have become increasingly intertwined; substantively, institutionally, and procedurally. Substantively, the MIDs build directly on the Green Card system. An example is the introduction of the deemed

[99] Ibid para 28.
[100] Ibid para 29.
[101] Case C-587/15 *Dockevičius* ECLI:EU:C:2017:234, Opinion of AG Bobek, para 58.
[102] Ibid para 59.
[103] Ibid para 60.
[104] Ibid para 61.
[105] Case C-152/83 *Demouche and Others* EU:C:1987:421, paras 12-19 for the facts of the case.
[106] Case C-587/15 *Dockevičius* ECLI:EU:C:2017:234, Opinion of AG Bobek, paras 71-74.

insurance principle by the 1st MID, altering the Green Card system for the member states of the European member states.[107] Institutionally, national bureaux under the Green Card system often coincide with compensation bodies under the MIDs. In practice, claimants can rarely distinguish whether a given body is acting under one regime or the other.[108] Procedurally, article 6 of the Codified MID (2009) requires member states to ensure information exchange between national bureaux regulated by the Green Card system.[109] For Advocate General Bobek, these examples illustrate that although formally autonomous, the Green Card system has become so closely connected with the EU framework that it now effectively constitutes a single whole.[110]

Third, Advocate General Bobek turns to the case law of the Court concerning the jurisdiction of the Court to interpret external acts. Advocate General Bobek recalls that since *Sevince*[111] the Court has consistently held that its interpretative jurisdiction under article 267 TFEU is not limited to acts formally adopted by EU institutions.[112] Jurisdiction also extends to acts adopted outside the institutional framework which nevertheless form part of the EU legal order. This is justified by the very purpose of Article 267: ensuring the uniform interpretation of all provisions forming part of the EU legal order.[113] Advocate General Bobek draws particular attention to the *Elliott* case, in which the Court confirmed its jurisdiction to interpret harmonised standards adopted by CEN, a private-law organisation, which had been published in the *C Series* of the *Official Journal.*[114] The Court held that such standards formed part of EU law, especially when their application was enforced by the Commission.[115] Advocate General Bobek argues that if this conclusion applies to technical standards published as a mere communication in the *C series* of the *Official Journal,* it must apply *a fortiori* to a Commission Decision in the *L Series* of the *Official Journal,* which carries binding force.[116] He also invokes *Ledra Advertising,* where the Court emphasised that once again an EU institution incorporates an external act into EU law and enforces it internally, it cannot subsequently disclaim responsibility for that act's legal consequences.[117] To permit such a 'black hole' of judicial review would be inconsistent with the rule of law.[118]

Fourth, Advocate General Bobek situates the jurisdictional question within the broader context and purpose of the *Internal Regulations* and the MIDs. In his view, article 267(a) TFEU (concerning the interpretation of the treaties) provides an additional or complementary basis for jurisdiction.[119] The subject matter of the present case clearly falls within the scope of the free movement provisions of the Treaty. Both the MIDs and the Council of Bureaux agreements were adopted to facilitate the free movement of persons within the Union.[120] This, Advocate General Bobek argues, has two consequences. First, given the intertwined nature of the systems, it is essential to ensure consistency in their application. Second, it is equally important that their operation does not undermine the free movement of persons, particularly those held liable in cross-border accidents, in a manner contrary to

[107] Ibid para 77.
[108] Ibid para 78-79.
[109] Ibid para 80-81.
[110] Ibid para 83.
[111] Ibid para 84; see Case C-192/89 *Sevince* EU:C:1990:322, paras 8-12. In this case the Court decided that it had jurisdiction to interpret decisions adopted by an authority, where that authority had been established by an international agreement concluded by the Union, and for which the authority had the responsibility of implementation.
[112] Case C-587/15 *Dockevičius* ECLI:EU:C:2017:234, Opinion of AG Bobek, para 84.
[113] Ibid para 84.
[114] Ibid paras 85-86.
[115] Ibid para 86.
[116] Ibid.
[117] Case C-8/15 P to C-10/15 P *Ledra Advertising* EU:C:2016:701.
[118] Case C-587/15 *Dockevičius* ECLI:EU:C:2017:234, Opinion of AG Bobek, paras 87-88.
[119] Ibid paras 89-95.
[120] Ibid para 92.

primary law.[121] This, in turn, has implications for the applicability of procedural rights, especially article 47 of the Charter, as highlighted by the Supreme Court of Lithuania.[122]

Consideration of the questions referred

On the basis of both the formal and substantive arguments outline above, Advocate General Bobek concluded that the Court of Justice had jurisdiction to interpret the *Internal Regulations* and therefore proceeded to examine the substantive issues raised by the Lithuanian Supreme Court.[123]

He first observed that the *Internal Regulations* are silent on the procedural conditions under which a national bureau, subrogated into the rights of another national bureau, may bring an action such as the one at issue in this case.[124] The *Internal Regulations* govern only the mutual relations between national bureaux,[125] accordingly, both the procedural rules and the substantive conditions governing a recourse action fall to be determined entirely by the national law of the member state in which that action is brought.[126] Building upon his conclusion that the *Internal Regulations* have become part of the EU legal order, and noting that they function as a mechanism facilitating the free movement of persons, Advocate General Bobek argued that the minimum standards laid down in the Charter of Fundamental Rights are applicable to situations arising under the *Internal Regulations.*[127] In this respect, Article 47 of the Charter (the right to an effective remedy and a fair trial) is of particular relevance. It follows, in his view, that the judicial enforcement of claims arising under the *Internal Regulations* must comply with the minimum procedural safeguards guaranteed by the Charter.[128] These safeguards apply not only to victims of road traffic accidents, but also to persons allegedly responsible for those accidents who may be confronted with related compensation or recourse claims.[129] In developing this argument, Advocate General Bobek drew an analogy with the procedural safeguards available under the Protection of Visitors system, arguing that it would be difficult to justify applying minimum procedural standards to claims handled under the Protection of Visitors system while denying similar guarantees in recourse actions arising under the Green Card system.[130] Given the increasingly intertwined nature of the Motor Insurance Directives and the Green Card system within the European Union, Advocate General Bobek argued that Article 47 of the Charter therefore requires a common minimum standard of procedural protection for persons held responsible for accidents.[131]

Applied to this case, this would mean that Mr. Dockevičius and Ms. Dockevičienė have the opportunity to contest both the allegation of liability and the amount of damages claimed. That opportunity must be available either in proceedings before the courts of the member state where the accident occurred (if such proceedings were initiated) or before the courts of the member state in which the recourse action was brought.[132] It would be incompatible with Article 47 of the Charter for a person considered responsible for an accident to face the automatic enforcement of a settlement agreement concluded in the member state of the accident when they had not taken part in those proceedings.[133] In short, while the manner in which a potential recourse action is pursued is a matter of national law, Article 47 Charter requires that an individual alleged to be responsible for a traffic accident must be

[121] Ibid para 93.
[122] Ibid paras 94-95.
[123] Ibid para 96.
[124] Ibid para103.
[125] Ibid para103.
[126] Ibid para104.
[127] Ibid para105.
[128] Ibid para106.
[129] Ibid para106.
[130] Ibid paras107-108.
[131] Ibid para 109.
[132] Ibid para 111.
[133] Ibid para 112.

given its 'day in court' if he or she disputes liability. Advocate General Bobek states that such an individual 'cannot fall into the cracks between legal systems'.[134]

Reasoning of the Court of Justice

In its ruling, the Court of Justice began by recalling that, under Article 267 TFEU, its jurisdiction is limited to giving preliminary rulings on the interpretation of the Treaties and on the validity and interpretation of acts adopted by the institutions, bodies, offices or agencies of the European Union. [135] It noted that it had already held, in relation to instruments preceding the *Internal Regulations,* that such instruments could not be regarded as acts of the Union.[136] In those earlier cases, the Court emphasized that the instruments in question had been drafted and adopted by bodies governed by private law, without the participation of any EU institution, office, agency or body.[137] The Court further considered irrelevant a number of circumstances that had been raised in support of jurisdiction: first, that the conclusion of those instruments had been a condition for the entry into force of the 1st MID, second, that the period of application of that directive was conditional on the continued application of the instruments, third, that the European Commission had repeatedly acknowledged, through recommendations and decisions that the instruments were consistent with the directive, and fourth, that they had been annexed to a Commission decision and published in the *Official Journal*.[138]

In *Dockevičius* the Court held that the same considerations applied to the *Internal Regulations*, which likewise had been drawn up and concluded by private-law bodies without the involvement of any EU institution.[139] It therefore found that it lacked jurisdiction to give a preliminary ruling on the questions referred concerning the interpretation of the *Internal Regulations*.[140] As a result, the substantive questions regarding the procedural safeguards available to Mr. Dockevičius and Ms. Dockevičienė remained unanswered.

Interim conclusion

The Opinion of Advocate General Bobek, as well as the Court's refusal to follow his reasoning, bring into sharp relief the structural tensions inherent in the hybrid legal framework governing cross-border MTPL claims. Advocate General Bobek's analysis demonstrates how closely intertwined the Green Card system and the EU Motor Insurance Directives have become, to the point where the *Internal Regulations* arguable operate, in practice if not in form, as part of the EU legal order. The Court's ruling, by contrast, reinforces the formal separation between the two systems by holding that the *Internal Regulations* remain purely private instruments lying outside the scope of EU judicial review.

Taken together, these positions illustrate a fundamental tension: although the Motor Insurance Directives rely on the effective functioning of the Green Card system to achieve EU-level objectives, the instruments on which this functioning depends fall outside the EU's own mechanisms of judicial scrutiny and political accountability. Bobek's Opinion exposes how deeply embedded the *Internal Regulations* have become in the functioning of the EU Motor Insurance Directives. He refers to the fact that the *Internal Regulations* have been annexed to Decisions, and the reliance on the Green Card system in the 1st MID to further the internal market. From this perspective, denying the Court jurisdiction risks creating precisely the type of accountability gap Bobek calls a 'black hole' of review: EU institutions rely on private instruments to achieve EU objectives, yet no EU body accepts responsibility for their interpretation or effects.

The Court's contrasting position demonstrates the opposite side of the tension. By adhering to the formal boundary between EU acts and privately drafted instruments, the Court reinforces the legal

[134] Ibid para 114.
[135] Case C-587/15 *Dockevičius* ECLI:EU:C:2017:463, para 35.
[136] Ibid para 36-37.
[137] Ibid para 37.
[138] Ibid para 38.
[139] Ibid para 39.
[140] Ibid para 40.

autonomy of the Green Card system and the private actors operating within it. After all, the Green Card system remains, in formal terms, a privately created regime in which the Council of Bureaux is the only competent actor to interpret the *Internal Regulations.* Yet, the Council of Bureaux is not only the competent actor to interpret the *Internal Regulations,* but also the actor that drafted them and the one enforcing them. Moreover, its membership consists of national bureaux, which themselves are composed of all MTPL insurers operating in a member state.[141] This results in a framework in which, practically, the insurance industry designs the rules, interprets them, and oversees their enforcement. This is not necessarily problematic, as there are several advantages of private regulation. Private actors are closely embedded in the insurance sector, possess detailed expertise, and can often act more flexibly and efficiently than public institutions. [142] The Green Card system itself, functioning for more than seventy-five years, demonstrates the resilience of such a model. At the same time, reliance on private enforcement, particularly in the absence of EU-level judicial review, creates vulnerabilities, as illustrated by *Dockevičius.* Uncertainty persists regarding the minimum procedural safeguards available to individuals, and the case shows how persons may be affected by decisions taken within a framework that is functionally intertwined with EU law, but formally treated as external to it, with implications for their ability to secure judicial protection on the EU level.

These divergent approaches highlight the broader accountability concerns that accompany the hybrid legal framework governing cross-border MTPL claims. Uncertainty persists as to which actor – EU institutions, national authorities, private bodies, or bodies such as the European Insurance and Occupational Pensions Authority – is responsible for specific aspects of the framework's functioning, interpretation and enforcement. Such diffusion of responsibility generates accountability gaps, particularly when private regulatory instruments on which EU law relies, shape outcomes for individuals without clear mechanisms for public oversight or EU-level judicial review. Although individuals may seek judicial protection before national courts, significant variation across member states in the availability and scope of such protection threatens to undermine the uniformity of EU motor insurance law and may ultimately jeopardise the consistent application of the EU Motor Insurance Directives.

V. Conclusion

This paper has shown that cross-border MTPL claims in Europe are governed by a hybrid legal framework in which (EU) public regulation and private law agreements co-exist and rely on one another. Functionally, EU objectives, such as free movement and comparable treatment for victims of traffic accidents, presuppose the effective operation of Green Card arrangements. On many levels, the Protection of Visitors system and the Green Card system are closely intertwined, with private actors executing the key operational tasks.

The *Dockevičius* judgment clarifies the limits of enforcement by the CJEU in this hybrid setting: by declining jurisdiction over the *Internal Regulations,* the Court of Justice leaves questions of interpretation and enforcement with private actors, above all the Council of Bureaux. This allocation has recognised strengths (sectoral expertise and speed), but it also raises persistent concerns about accountability and legal certainty for individuals whose disputes sit at the intersection of EU legislation and privately drafted instruments. How these risks can be mitigated, and which procedural and

[141] Notably, there are also other members to the Council of Bureaux in relation to the Protection of Visitors pillar. The organisational structure of the Council of Bureaux and its membership is based on two main pillars: the Green Card pillar (represented by members acting in the capacity of national bureaux) and the Protection of Visitors pillar (represented by members acting as Guarantee Funds, Compensation Bodies and Information centres). Only members acting in the capacity of national bureaux have voting rights on Green Card matters. See Articles of Association of the Council of Bureaux, for example article 4.1.2 on the pillars, and article 10.5.1 on the voting rights.

[142] See for more information on the benefits and challenges of this legal framework from a law & economics perspective, Stalenhoef and Faure (n 20).

institutional safeguards are most effective, warrants further research.

In short, private actors are, in many respects, *behind the wheel* of cross-border MTPL enforcement. The central challenge is to ensure that the route they chart remains compatible with the core commitments of the EU legal framework, while preserving the efficiencies that have sustained the system for decades.

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