

Spanish and EU Legislation on Carrier's Liability Insurance in Land Transport¹

1. Introduction

The provision of passenger land transport services, by rail or road, by bus or coach, or in passenger cars, under a taxi licence or one of car rental with driver, constitutes a dangerous activity in itself. Consequently, the individuals involved in its development are required to take out compulsory insurance, so that they can be held liable for the potential damages to passengers during transport. However, and contrary to land transport of goods where the carrier is required to take out 'land transport insurance' (Articles 54-62 of the Insurance Contract Act 50/1980 of 8 October (henceforth ICA)), technically speaking, there is no single passenger land transport insurance.² Conversely, depending on the means of transport used, the insurance that the carrier, and, when appropriate, the owner of the vehicle, must take out is different. In the transport carried out by taxi or rental car with driver, the only compulsory insurance is the civil liability insurance for the use and circulation of motor vehicles, usually known as 'compulsory automobile insurance', which is regulated by Royal Legislative Decree 8/2004 of 29 October, which approves the revised text of the Act on Civil Liability and Insurance in the Circulation of Motor Vehicles (henceforth CLICMVA), along with its development regulation, approved by Royal Decree 1057/2008 of 12 September.

Compulsory automobile insurance is also compulsory in transport by bus or coach, although not by rail (as per Article 1.2.a of Royal Decree 1507/2008 of 12 September). Moreover, bus or coach companies and railway undertakings must take out compulsory passenger insurance, as required by Act 16/1987 of 30 July on the Administrative Organisation of Land Transport (henceforth AOLTA), amended by Act 9/2013, of 4 July (Article 21(1) AOLTA), and whose regulation has been carried out by Royal Decree 1575/1989 of 22 December, which approves the Regulation on Compulsory Passenger Insurance (henceforth CPIR). Such bus or coach and rail companies must have the relevant civil liability insurance, to which the AOLTA also alludes by reference to the European regulations that impose its subscription, that is, Regulation (EU) 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights

of passengers in bus and coach transport and amending Regulation (EC) 2006/2004 [2011] OJ L 55/1 (henceforth Regulation (EU) 181/2011 of 16 February), on the one hand, and Regulation (EC) 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations [2007] OJ L 315/14 (henceforth Regulation (EC) 1371/2007 of 23 October), on the other hand (Articles 21(2) and 23 *in fine* AOLTA).³

2. Transport by rail

2.1. *The impact of Regulation (EC) 1371/2007 of 23 October on the carrier's liability regime*

Currently, passenger protection in rail transport is regulated in the EU by Regulation (EC) 1371/2007 of 23 October. This will be replaced by Regulation (EU) 2021/782 of the European Parliament and of the Council of 29 April 2021 on rail passengers' rights and obligations [2021] OJ L 172/1 (henceforth Regulation (EU) 2021/782 of 29 April), applicable as of 7 June 2023 (Article 40), except for its Article 6.4, which refers to the procedures for public procurement of new rolling stock and for the improvement of existing rolling stock that requires a new authorization for its placing on the vehicle market, applicable as of 7 June 2025 (Article 41).

Nevertheless, Regulation (EC) 1371/2007 of 23 October does not set the amounts of the rail carrier liability coverage for damages caused to passengers⁴ and their luggage, referring for that purpose to national laws. It is limited to providing that railway undertakings have to be 'adequately insured or to make equivalent arrangements for cover of its liabilities under this Regulation' towards passengers (Article 12.1), in accordance with the provisions of Article 9 of the Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings [1995] OJ L 143/70 —now Article 22 of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area [2012] OJ L 343/32 (henceforth

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2. With regard to the classification of transport insurance, see MJ Morillas Jarillo, 'Seguro de transporte' (1997) 9 Cuadernos de Derecho judicial 393, 401-404.
3. The amount of such insurance constitutes an operating expense, which can be passed on to the passenger in the corresponding transport charges (Article 21.3 AOLTA).
4. In this respect, see 'Interpretative Guidelines on Regulation (EC) No 1371/2007 of the European Parliament and of the Council on Rail Passengers' Rights and Obligations' (Communication from the Commission) 2015/C 220/01; *ibid*, 'Report on the Application of Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on Rail Passengers' Rights and Obligations' (Report from the Commission to the European Parliament and the Council), Brussels, 14 August 2013, COM(2013) 587 final.

Directive 2012/34/EU of 21 November)⁵ —, which neither sheds light on this matter, as it only requires them to be 'adequately insured' or to 'have adequate guarantees' for cover, 'in accordance with national and international law', of its civil liability in the event of an accident, in particular as regards passengers, luggage, freight, mail and third parties.

This situation is not remedied by Regulation (EU) 2021/782 of 29 April, not yet applicable, which maintains in its Article 14, in essence, the same wording of Article 12.1 of Regulation (EC) 1371/2007 of 23 October. It is regrettable that the approved text has departed from the intended version, which was to set a minimum insurance cover in the event of death or injury of 310,000 euros per passenger (Article 7.2 of the Proposal for a Regulation⁶), assimilating the railway sector to that of aviation, in which the minimum limit of coverage for death or injury of passengers is 250,000 SDRs (Article 6.1 Regulation (EC) 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators (2004) OJ L 138/1).

Nonetheless, Regulation (EC) 1371/2007 of 23 October does set maximum limits, as well as some minimum limits, to the compensation the carrier must pay for damages to the passenger and luggage. Such limitation allows the carriers to assess the risks they take and to take out the necessary insurance to cover their civil liability.⁷ Moreover, the limits set by the Regulation are binding upon Member States. Indeed, the provisions relating to the liability of the railway undertaking for damages to passengers and their luggage and its corresponding insurance are mandatory.⁸ Limiting or rejecting obligations towards passengers is forbidden, while it is possible for railway undertakings to offer more favourable conditions than those imposed by the regulation (Article 6). The establishment of temporary exemptions by Member States in relation to the liability of railway undertakings with regard to passengers and their luggage and to the mandatory coverage of such liability is also prohibited (Article 2.4 in connection with Article 2.3). Lastly, the exemption from the application of the Regulation on urban, suburban and regional railways does not operate in this matter (Article 2.5 in connection with Article 2.3).

The maximum limits of liability of the railway undertaking for damages to passengers are established in Article 30 of the CIV Uniform Rules,⁹ whose extract is incorporated

into the Appendix I of Regulation (EC) 1371/2007 of 23 October, thereby making them applicable not only to international rail transport, but also to the national one.¹⁰

The provision limits the maximum amount of compensation for damages in the event of death or injury to the passenger to 175,000 units of account per passenger, that is, to 175,000 SDRs, although, as it has been pointed out, it refers its specific determination to national law. Furthermore, when insuring its liability, the railway undertaking must take into account that, in the event of death or injury to the passenger, and within a maximum period of fifteen days after the person entitled to compensation is identified, it will have to make the necessary advance payments in order to meet their immediate financial needs, which will not be less than 21,000 euros per passenger in the event of death (Articles 13.1 and 2 of Regulation (EC) 1371/2007 of 23 October, in connection with Article 26.5 of the Uniform Rules CIV).

The CIV Uniform Rules also set the maximum quantitative limits of the carrier's liability for damage to luggage (Articles 34 and 41-43), applicable as long as such damage has not been caused with intent, or recklessly and with knowledge that such loss or damage would probably occur (Article 48). They make a distinction between damage to objects carried by passengers, such as hand luggage, and damage to registered luggage. Regarding *hand luggage*, the railway undertaking liable for the accident that causes the death or injury to the passenger will also be held liable for its loss or damage up to a limit of 1,400 units of account per passenger (Article 34 in connection with Article 33.1). Regarding *registered luggage*, the CIV Uniform Rules differentiate between its total or partial loss and its damage. In the first case, if the damage is proven, compensation will be equal to the amount of the damage and may not exceed 80 units of account per kilogramme of gross mass short or 1,200 units of account per item; if the damage is not proven, compensation will be a lump sum of 20 units of account per kilogramme of gross mass short or 300 units of account per item. In addition, the railway undertaking will have to pay the price for the carriage of luggage and the other sums disbursed as a result of the carriage of the lost item, along with the customs duties and excise duties already paid (Article 41.1.a) and 41.2). Besides, in case of damage to registered luggage, the carrier will have to pay compensation equivalent to the loss in value suffered, which shall not exceed the compensation in case of total loss, if all

5. In the wording of Directive (EU) 2016/2370 of the European Parliament and of the Council of 14 December 2016 amending Directive 2012/34/EU regarding the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure [2016] OJ L 352/1.
6. Proposal for a Regulation of the European Parliament and of the Council on rail passengers' rights and obligations, Brussels, 27 September 2017, COM(2017) 548 final <<https://eur-lex.europa.eu/legal-content/EN/TXT/DOC/?uri=CELEX:52017PC0548&from=ES>>.
7. B Romero Matute, 'Régimen jurídico privado del contrato de transporte de viajeros por ferrocarril' (2016) 18 Rdt 11, 52.
8. The Regulation also deals with other cases of contractual breach: liability for delay, cancellation of a service, missed connections, delays in departing or overbooking, which are not the object of analysis in this paper. In this regard, see M V Petit Lavall and A Puetz, 'Luces y sombras de la regulación de los derechos de los viajeros por ferrocarril: a propósito de la necesidad de reformar el Reglamento del sector ferroviario' (2015) 16 Rdt 51-76.
9. Uniform rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV) to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as modified by the Protocol for the modification of the Convention concerning International Carriage by Rail of 3 June 1999.
10. LM Piloñeta Alonso, 'Capítulo 27. El contrato de transporte terrestre de personas: Fundamentos de su régimen jurídico, elementos y contenido' in P Menéndez (ed), Régimen jurídico del transporte terrestre: carreteras y ferrocarril (Aranzadi 2014) 865; Romero Matute (fn 7) 38, 39.

the luggage has lost value through damage, or the amount that would have been payable if the depreciated part had been lost, if only part of the luggage has lost value through damage (Article 42).

2.2. Civil liability insurance of the railway undertaking

The referral by Regulation (EC) 1371/2007 of 23 October to domestic law for the regulation of the rail carrier liability coverage for damage caused to passengers and luggage must be understood as made to Act 38/2015 of 29 September of the Railway Sector (henceforth RSA) and to Royal Decree 2387/2004 of 30 December which approves the Regulation of the Railway Sector (henceforth RSR), which provides for the railway undertaking's civil liability insurance.

The applicant for a railway undertaking licence must prove, among other requirements – including that of taking out the compulsory passenger insurance (Article 63.6 RSR), which will be analysed in the following section –, to have or to commit to have at the beginning of the provision of services and during its development, 'sufficiently guaranteed' the civil liability it may incur for damages caused to passengers, luggage, third parties and railway infrastructures (Article 53.1 RSA and Articles 62.1.d) and 69.1 RSR). For that purpose, it is required to attach to the licence application the coverage commitment of its civil liability, in the form of subscription of the corresponding insurance or equivalent guarantee, that is, by means of business guarantees (Article 69.1 in connection with Article 63.1 RSR) or bank guarantees (Article 69.3 RSR), the latter of which can be redirected to the former.¹¹

Indeed, in practice, business guarantees granted by banks and other financial institutions are generally known as bank guarantees.¹² By virtue of the business guarantee, the guarantor is compelled to pay or fulfil the debt contracted by a third party (in this case, the railway undertaking) in the event that the latter does not do so (Article 1822 Civil Code), having a business nature all guarantees intended to assure fulfilment of a business contract, even when the guarantor is not a businessperson (Article 439 Code of Commerce). The guarantor's obligation is incidental (its existence and subsistence depend on the main right) and subsidiary to the main one (it can only be required when the main debtor does not discharge its

debt). Consequently, the guarantor has the so-called *beneficium excussionis*, which consists of the possibility to oppose the creditor's claim if they have been informed that the main debtor has assets to respond (Article 1830 Civil Code). However, this benefit does not apply, *inter alia*, when the guarantor is jointly and severally liable with the debtor (Article 1831.2 Civil Code).¹³ This is the case for bank guarantees and, in consequence, the guarantor's *beneficium excussionis* does not apply in this case. That is to say, the guarantor will be bound under the same terms and conditions as the main debtor, so that the creditor can, once the debt is due, go against the guarantor, without previously questioning the main debtor.¹⁴

In Spain, in addition to the established operator, Renfe Viajeros, SAU, there are twenty-six other companies that have obtained the railway undertaking licence and, therefore, have committed themselves to having their civil liability covered at the time of the beginning of the activity, although ten of them still do not have the safety certificate necessary to access the General Interest Railway Network (Article 66.1 RSA).¹⁵ However, railway capacity has been allocated, that is, the infrastructure manager has assigned those time slots, defined in the network statement, to candidates so that a train or rail vehicle can circulate, between two points, for a certain period of time (Article 33 RSA), apart from Renfe Viajeros, SAU, only to two more operators: Ouigo España, SAU, linked to the French Société Nationale des Chemins de Fer Français (SNCF), and Intermodalidad de Levante, SA (ILSA), a consortium formed by the shareholders of the Spanish airline Air Nostrum and the railway undertaking Trenitalia. Only the former currently operates, while the latter plans to start providing high-speed services from 2022.¹⁶

Renfe Viajeros, SAU has taken out civil liability insurance with QBE Insurance (Europe) Limited, 'in order to respond for damage caused to passengers, their luggage, mail or transported cargo, railway infrastructures, trains and third parties, persons or goods, under the terms, scope and amount established in Article 63 of the aforementioned Regulation, with a franchise of one and a half million euros' and 'a bank guarantee granted by Caixabank, SA to cover the precedent responsibilities below the aforementioned franchise, set in a final judicial

11. Additionally, the railway undertaking must commit to provide users with information about the amount of compensation applicable in each case and to indicate whether its liability will exceed the limits set by regulation (Article 69.2 RSR). In case that the licence is granted by the Railway Safety State Agency (Article 49.2 RSA), such coverage will be reflected in a document attached to it (Arts 63.4 and 78.3.k RSR).

12. The Spanish Code of Commerce, published by Royal Decree of 22 August 1885, gives a broad regulation of business guarantees (Articles 439-442). Thus, following Article 50 of the Code of Commerce, the content and scope of this figure depend on the contractual stipulations between the parties and, failing this, on the provisions of the Civil Code, approved by Royal Decree, dated 24 July 1889.

13. See L Díez-Picazo: *Fundamentos del Derecho civil patrimonial. Las relaciones obligatorias*, vol 2 (7th edn, Thomson Reuters Civitas 2008) 481-486, 504; VVAA: *Memento práctico. Contratos mercantiles 2011-2012* (Francis Lefebvre 2011) 353-369; M Broseta Pont, F Martínez Sanz: *Manual de Derecho mercantil*, vol 2 (26th edn, Tecnos 2019) 228-232; LJ Cortés, 'Lección 44. Las garantías de la contratación mercantil' in A Menéndez, Á Rojo (eds), *Lecciones de Derecho mercantil*, vol 2 (16th edn, Thomson Reuters Civitas 2018) 339-345.

14. See JR Cano Rico: *Manual práctico de contratación mercantil. Contratos mercantiles en general*, vol 1 (Tecnos 2002) 513; AJ Tapia Hermida: *Guía de la contratación bancaria y financiera* (Thomson Reuters Aranzadi 2020) 353; A Ávila de la Torre, I Moralejo Menéndez, J Martí Miravalls, 'Capítulo VII. Contratos de garantía' in A Bercovitz Rodríguez-Cano (ed), *Contratos mercantiles*, vol 1 (Thomson Reuters Aranzadi 2017) 1473-1539; Piloñeta Alonso: *Contratos mercantiles* (Tirant lo Blanch 2020) 612-618; Broseta Pont, Martínez Sanz (fn 13) 231; Cortés, 'Lección 40. Los contratos bancarios (II)' in A Menéndez, Á Rojo (eds) (fn 13) 262, 282.

15. <<https://www.seguridadferroviaria.es/agentes-sector-ferroviario/empresas-ferroviarias>> 'accessed 29 October 2021.

16. <<https://www.ouigo.com/es/destinos>> accessed 23 November 2021; <<https://www.ilsarail.eu/>> accessed 23 November 2021.

resolution or arbitral decision, in the event that Renfe Viajeros, SA does not pay, and within the concepts and limits established in Article 63 of the aforementioned Regulation'.¹⁷ Conversely, the other active operator in the market, Ouigo España, SAU, does not include information concerning the coverage of its liability and only declares that it will respond in the event of death or injury to the passenger and/or damage to the luggage 'in accordance with the applicable regulation'.¹⁸

Following the mandate contained in Article 53.2 RSA, the RSR establishes the amount of the minimum coverage that must be taken out by railway undertakings whose licence has been granted in Spain, distinguishing between damage to passengers and their luggage,¹⁹ on the one hand, and damage to railway infrastructures, trains and third parties, on the other hand.²⁰ However, it may occur that a railway undertaking is limited to providing railway equipment (passenger cars), but does not provide passenger transport service, which is carried out by another railway company. Apart from the insurance that corresponds to the railway undertaking that provides transport service, the railway company that owns the passenger cars will also have to take out civil liability insurance that covers damage to persons, railway infrastructure and third parties which the equipment provided could cause in the event of breach of the applicable regulations (Article 58.4 RSR).²¹

It should be noted that the Decree 271/2018 of 11 May modified the RSR with the aim of completing the transposition of Directive 2012/34/EU of 21 November, through the 2015 RSA. Nevertheless, the provisions referring to the railway undertaking liability coverage for damage to passengers and their luggage, and for damage

to railway infrastructures, trains and third parties, which are previous to the current RSA, remain unchanged. And yet they remain in force, as there is no incompatibility between these particular regulatory provisions and higher-ranking legislation. Indeed, the RSA is limited to requiring that the applicant for a railway undertaking licence have 'sufficiently guaranteed' the civil liability it may incur for damages caused to passengers, luggage, third parties and railway infrastructures (Article 53.1 RSA), whereas Regulation (EC) 1371/2007 of 23 October, while setting maximum limits, as well as some minimum limits, to the compensations the carrier must satisfy for damage to passengers and luggage, however, does not determine the specific coverage amounts railway companies must take out, referring for that purpose to national legislation.²²

2.3. *The compulsory passenger insurance*

The RSR makes it clear that the civil liability coverage of railway companies it provides for is established notwithstanding the contracting of the compulsory passenger insurance (Article 63.6 RSR), also indispensable for the concession of the railway undertaking licence. Consistent with this, the CPIR declares the compatibility of the compulsory passenger insurance with any other taken out by the passenger or related to it (Article 2.2 CPIR). For this reason, it does not release railway undertakings from the civil liability they may incur as a consequence of the transport of passengers, nor do the benefits paid under it reduce the amount of such liability (Article 2.3 CPIR).²³ This is explained because the compulsory passenger insurance only covers death, permanent disability

17. <https://horarios.ram.renfe.com/empresa/informacion_legal/LegalViajeros/SeguroViajeros.html> accessed 28 October 2021.

18. At 3.2: 'Carrier's liability towards persons and goods' of the 'General Sales Conditions', in force since 4 November 2021 <<https://www.ouigo.com/es/condiciones-generales-de-venta>> accessed 4 November 2021.

19. It sets the amounts of the mandatory coverage depending on the level of activity of the railway undertaking, that is, in accordance with the amount of its annual traffic. For its calculation, all the services provided by the railway undertaking are taken into consideration as a whole. See, D Rodríguez Ruiz de la Villa, 'Aspectos de Derecho privado de las empresas ferroviarias y su acceso a la licencia ferroviaria' (2006) 260 RDM 511, 541. The RSR considers that level one railway companies, that is, those that account for less than 1,000,000 train-km units per year, have sufficient coverage if they have taken out a civil liability insurance (or constituted a business guarantee), which covers a minimum liability for claim of 3,000,000 euros; level two railway companies, i.e. those that represent a traffic between 1,000,000 and 10,000,000 train-km units per year, of 6,000,000 euros; and, level three railway companies or those that account for more than 10,000,000 train-km units per year, of at least 9,000,000 euros. In addition, all railway undertakings, regardless of their level of activity, must take out insurance (or constitute a business guarantee) which covers the loss or damage of luggage, at most, 14.50 euros per kilogramme of gross mass short or damaged and up to a maximum of 600 euros per passenger (Arts 61.3 and 63.2.a RSR).

20. The railway undertaking has sufficient coverage if it has taken out insurance (or constituted a bank guarantee) which covers 6,000,000 euros for damage to infrastructure; 18,000,000 euros for damage to trains; 1,500,000 euros for damage to third parties' goods; and 900,000 euros for death or injury to third parties that are not passengers of other railway undertakings, amounts that may be updated by Order of the Minister of Development (Article 63.3 RSR). The concept of third parties includes both the persons and the goods affected (Article 63.1.b RSR), other than the passengers and their luggage, to whom Article 63.1.a RSR already refers and whose coverage is established in Article 63.2.a RSR.

21. In relation to damage to passengers, it must cover its liability under the same terms as railway undertakings with level one activity, that is, a minimum liability per claim of 3,000,000 euros; and, as regards damage to luggage, 14.50 euros per kilogramme of gross mass short or damaged, with a maximum of 600 euros per passenger. Referring to damage to railway infrastructures and third parties, it must take out insurance (or constitute a bank guarantee) that covers 2,000,000 euros for damage to infrastructure; 50,000 euros for damage to third parties' goods; and 900,000 euros for death or injury to third parties that are not passengers of other railway undertakings (Article 63.7 RSR).

22. This does not mean that it would not be desirable to reform the RSR as regards the liability regime of the railway undertaking and its coverage, in order to simplify its application and the problems arising from the need to jointly interpret the European Regulation, the CIV Uniform Rules and domestic law, as indicated when analysing the railway undertaking liability for delay, cancellation of a service, missed connections, delays in departing or overbooking, by Petit Lavall, Puetz (fn 8) 66, 67.

23. LF Reglero Campos, 'Notas de urgencia acerca del nuevo Reglamento del seguro obligatorio de viajeros. Ámbito de aplicación y alcance de la cobertura del seguro' (1990) 22 Actualidad civil 291, 296; A Veiga Copo, 'Capítulo V. El seguro de automóviles' in J A Badillo Arias (coord), *Accidentes de circulación: Responsabilidad civil y seguro* (Thomson Reuters Aranzadi 2018) 969.

and temporary incapacity, areas in which the damage is, strictly speaking, non-quantifiable in terms of money.²⁴

Compulsory travel insurance belongs to the category of personal insurance, ie that in which the insured object is the person concerned, who bears the risk of having their existence, bodily integrity or health compromised (Article 80 ICA). Within this category, it constitutes a form of individual accident insurance linked to the provision of the activity of transport.²⁵ The obligation of contracting it falls on the carrier, as the policyholder, while the passenger is the beneficiary of the insurance or insuree. Such insurance covers 'personal injury' (death, permanent disability or temporary incapacity) and health care²⁶ (Article 3 CPIR), due to an accident that takes place as a result of urban or interurban (and suburban) movement in means of public collective transport of people, as long as they run through national territory or when the journey has started there (Articles 1 and 4.1.a CPIR). It has been questioned whether temporary incapacity constitutes a compensable damage under the compulsory passenger insurance. The reason is that, even though such incapacity is mentioned in Articles 3 and 15.1 CPIR as a compensable damage, however, it is omitted in the Annex, in which the compensatory amounts are quantified. Despite this omission, temporary incapacity is covered by the compulsory passenger insurance, and the corresponding compensation must be assessed by judicial bodies. In this sense, the Judgment of the Spanish Supreme Court (Civil Chamber, Section 1) No 627/2011, of 19 September²⁷ states that 'it is a damage that can be compensated in accordance with the parameters of Table V of the system, which only encompasses the period that extends until the healing or stabilization of the injuries derived from the accident', whereas, from such healing or stabilization, the damage must be considered as a determinant of permanent disability (6th LF).

The insurance covers travel by train (Article 10.b CPIR) and by bus or coach (Article 10.a CPIR). On the other hand, transport carried out in vehicles with a capacity of less than nine seats is excluded from the scope of application of the Regulation, except when it is cable transport (Article 11 CPIR in connection with Article 10.c) CPIR).²⁸ Thus, the rule does not apply to travel by taxi and rental with driver. It should be added that the CPIR leaves out of its coverage scope journeys which originate in another country and end in Spain, an exclusion that

may well be criticised, since the protection of such passengers depends on whether the legislation of the journey's country of origin imposes on railway undertakings a similar obligation of insurance. Moreover, in this field, there is no uniform application instrument at the EU level, such as Regulation (EC) 1371/2007 of 23 October, governing the civil liability insurance of the railway undertaking. In this sense, the expansion by Renfe Viajeros, SA of the 'territorial scope of coverage on the return journey of international trains' is positive.²⁹

In order to be compensated under this insurance, three circumstances must be proven: first, the passenger status (Article 6 CPIR); second, that the personal injury results from the collision, overturning, reaching, leaving the road, breakage, explosion, fire, reaction, external blow or 'any other damage or abnormality that affects or comes from the vehicle' (Article 7 CPIR); finally, that the accident has not been caused by the passengers themselves in a drunken state or under the influence of drugs, narcotics or stimulants or by committing malicious acts (Article 9 CPIR). On the contrary, the fault or negligence of the driver of the vehicle in which they were travelling is irrelevant for the purposes of compensation under this insurance. In this sense, Judgment of the Spanish Supreme Court (Civil Chamber, Section 1) No 618/2010 of 8 October 2010³⁰ overturns the decision of the lower court, which rejected the claim for compensation, considering that there was no fault or negligence on the part of the driver, who had to brake abruptly to avoid a collision with another vehicle, which, without any warning entered its normal and customary path of travel. The Supreme Court declared that the judgement clearly erred in making the compensation that the bus passenger deserved conditional on the absence of fault or negligence on the part of the driver. On the contrary, the compensation requested was appropriate, taking into account that the injuries suffered by the appellant were covered by the insurance as they were caused by the braking of the bus in which he was travelling and did not fall within any of the exclusions set out in Article 9 CPIR (3rd LF).

Concerning the passenger status, it is held by any person who at the time of the accident 'is provided with the transport ticket', paid³¹ or free of charge, among them, minors who are exempt from paying the ticket and staff serving the administration in the exercise of their functions during the trip, as well as staff dedicated to the ser-

24. M García-Ripoll Montijano, 'Causalidad e imprudencia en el seguro obligatorio de viajeros. Comentario a la STS de 21 de noviembre de 2017 (RJ 2017, 5093)' (2018) 107 *CCJC* 79, 84.

25. Therefore, it applies to the legal regime provided for in Articles 80-83 and 100-104 ICA and Articles 83, 86 and 87.1 ICA, on life insurance, as well as Article 87.1 ICA, by virtue of the provisions of Article 100 *in fine* ICA.

26. At most, up to 72 hours after the moment of the accident, in the case of injuries that do not require hospitalisation or specialised treatment in ambulatory care, and up to 10 days when the insuree has it covered by any other compulsory insurance; and up to 90 days in all other cases (Article 19 CPIR).

27. Roj: STS 5838/2011.

28. In T Hualde Manso: *El Transporte de viajeros por carretera. Régimen de responsabilidad civil* (Aranzadi 1995) 235, 237 the author explains that the compulsory passenger insurance covers the inherent risks to mass transport and is thus not applicable to public passenger transport carried out in vehicles with fewer than nine seats.

29. <https://horarios.ram.renfe.com/empresa/informacion_legal/LegalViajeros/SeguroViajeros.html> accessed 28 October 2021.

30. Roj: STS 4988/2010.

31. The carrier includes the payment of the insurance premium in the price of transport (Article 12.a CPIR). Following J Garrigues: *Contrato de seguro terrestre* (2nd edn, Imprenta Aguirre 1982) 294, 295, in n 3, railway undertakings are authorized to impose on passengers compulsory insurance at the time of contracting the transport so as to avoid the injustice of hefty compensation, disproportionate to the price of transport.

vices necessary for the use or operation of the vehicle (Article 6 CPIR), among whom the driver is deemed included.³² The specific modality of issuance of the transport ticket, ie, nominative or bearer, is relevant when proving the passenger status. In practice, in Spain both nominative and bearer train tickets are issued. Renfe Viajeros, SA issues nominative tickets in daytime AVE and long distance services and to the bearer in middle distance and suburban services.³³ On the other hand, Ouigo España, SAU, only issues nominative tickets.³⁴ In nominative tickets it will be understood that the passenger is provided with them, even though they do not carry the ticket with them during the trip, physically or in digital format, since, regardless of this, they have contracted the service. In contrast, when the ticket is issued to the bearer, the CPIR presumes that the injured person was provided with it if, due to the characteristics of the accident, the loss or destruction of the ticket is plausible (para 2 of Article 6.1 CPIR). Conversely, in circumstances in which the loss or destruction of the ticket cannot be presumed, the passenger will have the burden of proving the existence of the contract 'by any other means of evidence admitted by law' (Article 13.3 CPIR).³⁵ This is a consequence of the legal nature of transport tickets as legitimacy titles that fulfil a double function: to provide evidence of the contract and payment of the price by the passenger,³⁶ and to legitimise the person who owns it. When the ticket is issued to the bearer, it legitimises anyone who owns it, whereas, if it is nominative, only the person who is specified on the ticket can claim the right to transport. In consequence, its absence, irregularity or loss do not affect the existence or validity of the transport contract.³⁷ In this sense, Judgement of the Provincial Court of Barcelona (Section 11) No 156/2017 of 24 April³⁸ that ruled on the right of the successors in title of a person found lifeless on the subway tracks, considered that 'the fact that a wallet containing documentation of the deceased was located at the scene of the incident, which was deposited at the police station and that no mention is made of the existence of the ticket, cannot rebut the presumption of its existence in view of the fact that the passenger was inside the Metro facilities, which implies his access with the corresponding ticket to travel; therefore, since the defendant has not been able

to prove in any way that the deceased had fraudulently gained access to Metro facilities, it must be understood that he was in possession of the ticket' (3rd LF).

3. Transport by bus and coach

3.1. *The impact of Regulation (EU) 181/2011 of 16 February on the liability regime of the bus and coach carrier*

The bus and coach carrier's liability regime is twofold, depending on whether such transport is included or excluded from the scope of application of Regulation (EU) 181/2011 of 16 February. The rule applies, in principle, to passengers who use regular services, that is to say, at specified intervals along particular routes, passengers being picked up and set down at predetermined stopping points, whose boarding or alighting point is located in the territory of a Member State and whose scheduled distance is 250 km or more (Articles 3.a and 2.1). However, some of its provisions also apply to regular transport whose distance is less than 250 km and to occasional services, which the Regulation considers as the 'services which do not fall within the definition of regular services and the main characteristic of which is the carriage by bus or coach of groups of passengers constituted on the initiative of the customer or the carrier himself' (Article 3.b). In particular, Articles 7 and 8 of the Regulation, referring to compensation and assistance in the event of accidents, apply to occasional services (Article 2.3), while not applying to regular services with a scheduled distance shorter than 250 km (Article 2.2).

The concept of occasional service used in the Regulation does not fully coincide with that of Spanish national legislation, according to which occasional services are those carried out without being subject to an itinerary, calendar or schedule (Article 64.1 AOLTA); therefore, unlike the Regulation, regardless of whether they aim at transferring groups of passengers or, by contrast, are for general use.³⁹ Consequently, transport provided without a specific frequency or route, but used by passengers not organised in groups — which is the case of almost all regular urban transport by bus —, are not subject to the Regulation and must exclusively be in accordance with national law.

32. In this regard, FJ Sánchez Ortiz, 'Problemática de las empresas de transporte ante el nuevo seguro obligatorio de viajeros (SOV)' (1990) 63 RES 21, 26. Also Judgment of the Provincial Court of Granada (Section 3) No 71/2006, of 10 February (AC 2006\1001) is clear when asserting that 'the consideration of the driver of the transport vehicle as insuree, within the coverage provided by the compulsory passenger insurance, although it does not contain an express reference, is clearly includible among its beneficiaries and insurees, given the open terms in which para 3 of Article 6 of the Regulation is written' (1st LF).

33. <<https://www.renfe.com/es/es/normativa>> accessed 18 November 2021.

34. <<https://www.ouigo.com/es/condiciones-generales-de-venta>> accessed 18 November 2021.

35. Veiga Copo (fn 23) 983-986.

36. They do have privileged evidentiary effectiveness, due to the great difficulty in proving, in the absence of the ticket, the aspects contained therein. In fact, Law 15/2009 of 11 November 2009, on the contract of carriage of goods by road, states that the consignment note signed by both parties, unless proven otherwise, shall attest to the conclusion and content of the contract, as well as to the receipt of the goods by the carrier. The evidentiary effect is therefore a rebuttable presumption and can be destroyed by proof to the contrary (Article 14). See Martínez Sanz, 'Capítulo VI. Transporte de mercancías por carretera (I). Transporte interno' in Martínez Sanz (ed), *Manual de derecho del transporte* (Marcial Pons 2010) 175.

37. I Quintana Carlo, R García Luengo, M Zubiri de Salinas, 'Capítulo IX. Contrato de transporte' in A Bercovitz Rodríguez-Cano (ed) (fn 14) 524; Piloñeta Alonso (fn 12) 473; VVAA (fn 13) 677; Broseta Pont, Martínez Sanz (fn 13) 459; JI Peinado Gracia, 'Lección 45. Títulos-valores. Teoría general' in A Menéndez, Á Rojo (eds) (fn 13) 361-383.

38. Roj: SAP M 5834/2017.

39. On the classification of public transport in Spanish law, see T Cano Campos, 'El transporte urbano por carretera' in P Menéndez (fn 10) 779.

All in all, the provisions of Regulation (EU) 181/2011 of 16 February referring to compensation and assistance in the event of accidents apply to regular services with a scheduled distance of more than 250 km and to occasional services referred to organised groups of passengers. In such cases, the passenger or, in the event of his or her death, the persons whom the passenger had, or would have had, a legal duty to maintain, are entitled to compensation for death or personal injury 'in accordance with applicable national law', whose minimum limit will be 220,000 euros per passenger; and 1,200 euros per item of luggage, with the particularity that, in the event of damage to wheelchairs, other mobility equipment or assistive devices, the amount of compensation will always be equal to the cost of replacing or repairing the equipment lost or damaged. The calculation of such compensation is referred to national legislation (Article 7). The carrier must also provide 'reasonable and proportionate assistance with regard to the passengers' immediate practical needs following the accident', which will include, where necessary, accommodation,⁴⁰ food, clothes, transport and the facilitation of first aid (Article 8).

As regards the reference by the Regulation to domestic law, in Spain, both the AOLTA and the Regulation developing it, enacted by Royal Decree 1211/1991 of 28 September (henceforth AOLTR), as well as the CLICMVA and the CPIR, must be taken into account. In particular, Article 23 AOLTA, in the wording given by Act 9/2013 of 4 July, reiterates, for transport subject to the Regulation, its provisions on the minimum limit of 1.200 euros per item as compensation for damage or loss of luggage. Conversely, it sets a lower minimum limit for transport not included in the Regulation, that is, 450 euros per item of luggage, and avoids any reference to the liability for death or injury of the passenger, so the minimum limit of 220,000 euros per passenger does not apply to transport not included in the Regulation, to which exclusively apply the limits established in the CLICMVA and the CPIR.

Finally, AOLTA is careful when defining what should be understood by luggage. It considers as such any object or set of objects that, at the request of the passenger, accompany them during the trip 'in the hold, the roof rack or trailer of the same vehicle'. This concept does not include hand luggage whose surveillance corresponds to the passenger, who must take charge of the damage it may suffer, unless they prove the carrier's liability, applying in this case the aforementioned liability limits.⁴¹ On the other hand, the carrier will be liable for the loss or deterioration of hand luggage consisting of small objects

intended for covering, ornament or personal use, which the passengers carry with them on board the vehicle, if they occur during a stop, when all the occupants of the vehicle have stepped out, without the driver having closed the access doors to it (paras 3 and 4 of Article 23 AOLTA).

3.2. *Liability insurance for the parties involved in the provision of bus and coach transport in national legislation*

The liability of the bus and coach passenger carrier must be insured under the terms established by the aforementioned CPIR and the CLICMVA, along with its development regulation, approved by Royal Decree 1057/2008 of 12 September.⁴²

The compulsory passenger insurance has been analysed above, as it is also required in transport by rail, so we refer to what has already been pointed out. Nevertheless, a particularity that arises in the practice of transport by bus or coach should be highlighted. In urban routes, it is usual for passengers to purchase the ticket on board, sometimes even when the driver has started the route. The contract of carriage, and with it, the insurance contract, must be understood to have been perfected before the passenger has made the payment of the price, as both parties (the transport company and the passenger) have expressed their consent in this regard (Article 1258 Civil Code) through the transport offer and its acceptance by the passenger (Article 1262 Civil Code). As the contract of carriage is consensual, in the sense that it is perfected by the simple agreement of wills, the issuance of the ticket is not an essential requirement for its existence and only fulfils an evidentiary and legitimising function.⁴³ In the case of stowaways (people embarking clandestinely) these passengers access the vehicle with no intention of paying the transport price, it must be understood that there has been no acceptance of the offer by the passenger and, consequently, there is no contract of carriage, or of insurance. In other words, the compulsory passenger insurance will not cover any damage that the stowaway may suffer.

As for the compulsory automobile insurance, it belongs to the category of damage insurance, in the form of civil liability insurance.⁴⁴ By virtue of it, the insurer covers the risk that an obligation may arise for the insuree to compensate a third party for damages caused by a motor

40. Its total cost may be limited by the carrier to 80 euros per night for each passenger and for a maximum of two nights.

41. 1,200 euros per item of luggage for transport not included in the scope of application of Regulation (EU) 181/2011 of 16 February; and 450 euros per item in all other cases.

42. It is the most widespread and significant figure of compulsory insurance in economic terms. See for example, R De Ángel Yágüez: *Tratado de Responsabilidad Civil* (Civitas 1993) 166; De Ángel Yágüez, 'Capítulo XVII. Seguros de responsabilidad civil' in P Blanco-Morales Limones (ed), *Estudios sobre el sector asegurador en España* (Fundación de Estudios Financieros, 2010) 9.

43. Quintana Carlo, García Luengo, Zubiri de Salinas (fn 37) 522-524; C Górriz López, 'Capítulo X. Transporte por ferrocarril (I). Introducción. Derecho nacional' in Martínez Sanz (ed): *Manual de derecho del transporte* (fn 36) 275, 276.

44. Morillas Jarillo: *El seguro del automóvil: el aseguramiento obligatorio de la responsabilidad civil automovilística* (Bosch 1992) 20; Veiga Copo (fn 23) 661-667. By contrast, Garrigues (fn 31) 412-414, albeit referring to the compulsory automobile insurance as a 'civil liability insurance of special characteristics', doubts that it can be deemed a liability insurance, since whether there is liability of the author of the accident or not, the victim has the right to receive compensation, and he considers it more appropriate to talk about 'insurance against the damage itself'.

vehicle in an accident that might be deemed a traffic event.⁴⁵ Those derived from the risk caused by the driving of motor vehicles, both through garages and car parks, and by roads or public and private land suitable for traffic, urban or interurban, as well as by roads or lands which lack such aptitude but are in common use, are considered as such (Article 1.6 CLICMVA in connection with Article 2.1 Royal Decree 1507/2008, of 12 September).⁴⁶

The obligation to take out the insurance rests upon the vehicle owner, who is, therefore, the policyholder, although the law allows it to be stipulated by 'any person who has an interest in the insurance, who shall express the concept in which he or she contracts' (Article 2.1 CLICMVA). Applying this to transport by bus or coach, it implies that, on most occasions, the carrier is the policyholder. This is due to the fact that bus and coach enterprises tend to be the vehicle owners and, thus, policyholders. Even when these companies do not own their transportation vehicles, for instance, when they are leased, it is only logical that they continue to be the policyholders, since they have an interest in the insurance (even though nothing prevents the lessor from being so, in which case the amount of the insurance premium will be included in the lease price).

As it is a civil liability insurance, the insuree status falls on the subject whose eventual liability is insured (Article 73 ICA). Following the CLICMVA, it corresponds to the driver of the vehicle⁴⁷ or to the non-driving owner when linked to the driver by any of the relationships of Articles 1903 of the Civil Code and 120.5 of the Criminal Code.⁴⁸ The latter may be released from liability by proving that he or she used 'all the diligence of a *bonus pater familias* to prevent the damage'.⁴⁹ It is, therefore, a contract in favour of a third party: the owner (or person with a legitimate interest in the insurance) takes out the insurance against the driver's liability.⁵⁰ Additionally, the non-driving owner of a vehicle without the compulsory insurance will respond civilly with the driver for the damage caused by the latter, unless he proves that the vehicle had been stolen from him (Article 1.3 CLICMVA).

However, the liability of the driver and the non-driving owner is different. For the driver, the liability for people's injury is objective, with two specific causes for the exclusion of liability: the exclusive fault of the victim and force majeure unconnected with driving or the functioning of the vehicle, which does not include the defects, the breakage or failure of any of its parts or mechanisms (para 2 of Article 1.1 CLICMVA). The element of fault is ignored, as the duty to compensate does not result from the voluntary action or negligent behaviour of the driver, but from the real and objective cause of a damage, although two exemptions are contemplated, and hence we should speak of 'attenuated objective liability'.⁵¹ On the other hand, regarding the damage to property (the passenger's luggage) due to a civil wrong, civil liability is subjective (Article 1902 Civil Code). When the harmful event constitutes a crime or misdemeanour, the driver will be liable to third parties when he is civilly liable in accordance with Article 109 of the Criminal Code (Article 1.1 CLICMVA).⁵²

Moreover, the non-driving owner is subjectively liable both for personal injury and material damage. From a civil perspective, among the cases of vicarious liability provided for in Article 1903 of the Civil Code to which the CLICMVA refers, the one according to which the owners or managers of an establishment or undertaking shall be liable for damages caused by their employees is relevant for public road transport, unless they manage to rebut the *iuris tantum* presumption that they did not use due diligence in the selection of their workers (*culpa in eligendo*) or in subsequent surveillance and control tasks over them (*culpa in vigilando*) (para 4 of Article 1903 Civil Code). Such liability of the non-driving owner is direct, that is to say, the plaintiff can file a lawsuit against him, without simultaneously having to sue the driver, although the employer will have the right of recovery against the latter for the amount paid (para 1 of Article 1904 Civil Code). In contrast, from a criminal perspective, the owner of the vehicle will be held civilly liable for the crimes committed in use of it by their workers,

45. Morillas Jarillo (fn 44) 20; Veiga Copo (fn 23) 809; C Pinto Andrade: *Responsabilidad civil derivada de los accidentes de circulación* (Bosch 2015) 26-31; JA Badillo Arias, *La responsabilidad civil automovilística. El hecho de la circulación* (Thomson Reuters Aranzadi 2016) 467.

46. *Inter alia*, the following are not considered traffic events: the celebration of sports events, the performance of industrial or agricultural tasks, or the use of a motor vehicle as an instrument for committing malicious crimes. Nevertheless, they will be considered traffic events when the vehicle is used for committing crimes against road safety (Article 2.2 and 3 Royal Decree 1507/2008 of 12 September).

47. Every driver of the insured vehicle, regardless of who appears as such in the policy, except in the case of a stolen vehicle, in which case the Insurance Compensation Consortium provides coverage [Article 5.3 in connection with Article 11.1.c CLICMVA]. According to Morillas Jarillo (fn 37) 21: 'it will be an indeterminate insuree *a priori*, who may or may not coincide with the policyholder'.

48. Approved by Organic Act 10/1995 of 23 November.

49. JM Marco Cos, 'Algunas cuestiones acerca de la nueva regulación de la responsabilidad civil y del seguro obligatorio del automóvil' (1996) 6 RDSP 7, 10, 11, considers that proving that the driver was given advice for his prudent driving will not be enough, otherwise he would always be exonerated.

50. By virtue of this, one of the parties undertakes to perform a service in favour of a third party, either as a single obligation, or as a concurrent obligation with another one or other ones relating to the parties. See X O'Callaghan: *Compendio de derecho civil. Derecho de obligaciones*, vol 2 (Editorial Universitaria Ramón Areces 2012) 266; MC Gete-Alonso, 'Eficacia del contrato' in L Puig i Ferriol and others, *Manual de derecho civil. Derecho de obligaciones. Responsabilidad civil. Teoría general del contrato*, vol 2 (Marcial Pons 2000) 651, 652; C Pérez Conesa, 'Capítulo 41. Contrato a favor de tercero' in MÁ Egusquiza Balmaseda, MC. Pérez de Ontiveros Baquero (eds), *Tratado de las liberalidades: homenaje al Profesor Enrique Rubio Torrano* (Thomson Reuters Aranzadi 2017) 1237.

51. De Ángel Yágüez: *Tratado de Responsabilidad Civil* (fn 42) 161.

52. Marco Cos (fn 49) 9; Pinto Andrade (fn 45) 61, 62.

failing the latter (Article 120.5 Criminal Code), that is to say, their liability is subsidiary to the driver's.⁵³

Regarding the minimum coverage amounts to be contracted, it is noteworthy that those set by the Spanish lawmakers far exceed those imposed by 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 [2009] OJ L 263/11 (henceforth Directive 2009/103/EC of 16 September), amended by Directive 2021/2118 of 24 November 2021 [2021] OJ L 430/1.⁵⁴ As a matter of fact, the European norm itself provides that Member States may prescribe higher guarantees (Article 9.1 of the Directive 2009/103/EC of 16 September). As opposed to the minimum amount of cover of 6,450,000 euros per claim, whatever the number of victims, or 1,300,000 euros per victim, in the case of personal injury, and 1,300,000 euros per claim, in the case of damage to property (Article 9(1)(a) and (b) of the Directive 2021/2118 of 24 November),⁵⁵ pursuant to the Spanish legislation, the coverage of the compulsory civil liability insurance will be, in the case of personal injury,⁵⁶ of 70,000,000 euros per claim, whatever the number of victims, and in the case of damage to property,⁵⁷ of 15,000,000 euros per claim, amounts that shall be updated in accordance with the EU Consumer Price Index (Article 4.2.a and b CLICMVA).⁵⁸

Personal injury excludes that suffered by the driver of the vehicle which caused the accident (Article 5.1 CLICMVA)⁵⁹, while nevertheless comprising injuries suffered by the owner, as there is no express exclusion,⁶⁰

and expenses for medical, hospital and burial and funeral assistance, which 'will be satisfied in any case' (CLICMVA Annex, at 1.6). In the case of damage to property, those suffered by the insured vehicle, by the things transported in it (regardless of their ownership) and by the goods owned by the policyholder, insured, owner or driver, as well as by the spouse or relatives up to the third degree of consanguinity or affinity of the above (regardless of whether or not they were transported by the insured vehicle at the time of the accident) are left out of the coverage (Article 5.2 CLICMVA).⁶¹ These are logical exclusions as the automobile insurance is one of civil liability, which aims at covering the liability the driver may incur for damage caused to third parties, not for the personal injury he or she may personally suffer and/or for the damage of goods or to third parties as a consequence of his or her death.⁶² Obviously, if the driver of a vehicle collides with another one and is not liable for the accident, his successors (in the event of the driver's death) or the injured driver himself, are entitled to the corresponding compensation under the compulsory insurance of the liable vehicle and, when there is none, of the Insurance Compensation Consortium (Article 11.1.b CLICMVA).

As the victim of a bus or coach transport accident is protected by the compulsory automobile insurance and by the compulsory passenger insurance, the claim for the corresponding compensation under one or another will

53. De Ángel Yáguez, '1903' in JC Paz-Ares Rodríguez and others (eds), *Comentario del Código Civil*, vol 2 (Ministerio de Justicia 1991) 2013-2021; Pinto Andrade (fn 45) 44-46, 48, 49; J Garralda Valcarcel, 'Consideraciones en torno al ejercicio de las acciones para el resarcimiento de daños, en el ámbito del seguro obligatorio del automóvil' (1991) 67 RES 7, 9; F Corral García, 'La responsabilidad contractual indirecta del propietario de un vehículo por los daños causados por un conductor autorizado' (1995) 612 RGD 9573, 9590, 9591.
54. The Directive slightly increases the limits of liability included in the Proposal for a Directive, of 30 May 2018, Institutional File: 2018/0168 (COD) <https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=CONSIL:ST_9365_2018_INIT>: 6,070,000 euros per claim, whatever the number of victims, or 1,220,000 euros per victim, in the case of personal injury, and 1,220,000 euros per claim, in the case of damage to property (Article 1.3 of the Proposal for a Directive).
55. Before the amendment by Directive 2021/2118 of 24 November, the minimum amount of cover was 1,000,000 euros per victim or 5,000,000 euros per claim, whatever the number of victims, in the case of personal injury, and 1,000,000 euros per claim, whatever the number of victims, in the case of damage to property (Article 9.1.a and b).
56. The concept includes, in addition to strict personal injury (which affects the body or mind, e.g., non-material damage), another type of material or property damage, such as the loss of income (Article 1.2 CLICMVA).
57. This will comprise all damage unable to be classified as personal injury in accordance with Article 1.2 CLICMVA. See Veiga Copo (fn 23) 722.
58. The last update of the amounts has been carried out by Resolution of 2 February 2021, of the General Directorate of Insurance and Pension Funds, which publishes the amounts of the updated compensation of the system for the assessment of damage caused to persons in traffic accidents.
59. Judgment of the Provincial Court of Murcia (Section 4) No 216/2019, of 14 March (Roj: SAP MU 579/2019), citing a large number of previous resolutions, dismisses the claim to revoke the instance judgment, filed by the driver who caused the accident in which his wife died, who requested to be compensated for the non-material damage under the compulsory automobile insurance. It states that the driver does not have the victim status with a right to claim, pursuant to Article 5 CLICMVA, in accordance with the nature of the civil liability insurance, in which the vehicle driver and insured does not have third party status for the purpose of being compensated for the non-material and material damages derived from his wife's death (Article 73 ICA).
60. Except, as asserted by Reglero Campos, 'Capítulo IX. Responsabilidad civil y seguro en la circulación de vehículos a motor' in LF Reglero Campos (coord), *Tratado de Responsabilidad Civil* (Thomson Reuters Aranzadi 2003) 860, 861, when the accident is due to the poor condition of the vehicle, driven by another person who cannot be blamed. This would be a case of sole negligence of the victim (para 2 of Article 1.1 CLICMVA); also, Veiga Copo (fn 23) 809, 810.
61. The exclusion is absolute, regardless of who the liable person is. See Morillas Jarillo, 'La adaptación del derecho español al ordenamiento comunitario en materia de seguros' in Marco Cos (ed), *Derecho de seguros* (Consejo General del Poder Judicial 1995) 555, 556; Marco Cos (fn 49) 7-35; Veiga Copo (fn 23) 823.
62. Badillo Arias (fn 45) 346, 347; Veiga Copo (fn 23) 809, 812, 814, 811-818; Marco Cos (fn 49) 13.

depend on the specific characteristics of the accident.⁶³ In some cases, only the claim based on the compulsory automobile insurance will proceed, for instance, because the damage has been caused to luggage (Article 4.2.a and b CLICMVA), a concept not covered by the compulsory accident insurance, which only includes personal injury and expenses for medical assistance (Articles 3 and 15.1 CPIR). In other cases, the claim based on the compulsory passenger insurance applies exclusively, since the damage has been caused on the driver who caused the accident, who holds the insuree status in such insurance (Article 6.3 CPIR), but not in the compulsory automobile insurance (Article 5.1 CLICMVA). It may also happen that the action based on the compulsory automobile insurance is time-barred after a two-year period has passed, as stipulated in the case of actions derived from damage insurance, while, in the case of personal insurance, as is the compulsory passenger insurance, the time limit is longer, up to five years (Article 23 ICA).

However, when the events are covered by both insurances and can be duly claimed, nothing prevents both from concurring.⁶⁴ As it has been stated, the CPIR declares the compatibility of the compulsory passenger insurance with others taken out by the passengers or related to them and the accumulation of compensation under this and other insurances (Article 2.2 and 3 CPIR). Consistent with this, current Article 21.2 AOLTA refers to both insurances to cover the liability of the bus or coach carrier towards passengers.

Nevertheless, this has not always been the case, and it has led to diverging decisions in the case law, because, while some opted for the compatibility of both insurances, others denied it. Doubts arose from the wording given by Additional Provision 24 of Act 14/2000 of 29 December on fiscal, administrative and social order measures to Article 21.2 AOLTA, according to which, 'in all passenger public transport, the damage they suffer shall be covered by insurance, under the terms established by the specific legislation on the matter, insofar as such damage is not covered by the compulsory civil liability insurance provided for in the Act on Liability and Insurance in the Circulation of Motor Vehicles'. It could thus be understood that, only in the absence of damage coverage by the compulsory automobile insurance, it would be possible to claim based on the compulsory passenger insurance.

The controversy was definitely settled in favour of the compatibility of both compensations by the aforementioned Judgment of the Spanish Supreme Court (Civil Chamber, Section 1) No 627/2011, of 19 September, after this criterion was accepted, although with less detail, in the Supreme Court Judgment (Civil Chamber, Section 1) No 618/2010 of 8 October 2010.⁶⁵ The court based its

decision on the distinct nature of the compulsory passenger insurance as a personal insurance (Article 100 ICA), and the compulsory automobile insurance as a civil liability insurance (Articles 73 and 75 ICA). The former exclusively covers personal injury to passengers that cause death, permanent disability or temporary incapacity, due to any negligent or fortuitous accident, unless it had been caused by the insuree himself. On the other hand, the compulsory automobile insurance protects the assets of the carrier which can be affected by the incurrance of a civil liability debt, and does not cover the personal injury regardless of the cause of the accident, but rather focuses on the (extracontractual) liability in its causation. For this reason, the insurer may be subrogated to the actions the insuree has towards the liable person, which does not occur in the case of accident insurance (Articles 43 and 82 ICA).⁶⁶

The different regulation of both insurances determines their compatibility. What is more, understanding otherwise would mean making the transport user — who must choose between one compensation or the other, or request both of them in a subsidiary way — decide whether there is civil liability of the driver, concurring negligence or absence of liability, prior to a judicial decision. Finally, opting for the incompatibility of both insurances would also mean that, if the driver's civil liability was proven, the passenger would be compensated exclusively under the compulsory automobile insurance, despite having paid the compulsory passenger insurance premium, included in the ticket. The interpretation of the Supreme Court has been confirmed with the new wording of Article 21.2 AOLTA, given by Act 9/2013 of 4 July, in which a joint reference to both insurances can be found.

4. Transport by taxi and car rental with driver. Reference to the Uber platform

The insurance of the carrier's liability in taxi and car rental with driver transport is exclusively governed by the CLICMVA. Unlike collective transport, where users are covered by both the compulsory passenger insurance and the compulsory civil liability insurance of the carrier, for taxi and rental with driver the only insurance that must be taken out is the compulsory automobile insurance. This circumstance has little relevance from the perspective of the eventually damaged third party, as the amounts of compensation for personal injury and material damage established in the CLICMVA are so high that it seems difficult for damages derived from a traffic accident to exceed them (according to Article 4.2.a and b CLICMVA, 70,000,000 euros per claim, whatever the number of victims, in the case of personal injury; and 15,000,000 euros per claim, in the case of damage to

63. For a comparative analysis of the difference between the compulsory passenger insurance and the compulsory automobile insurance, see Reglero Campos (fn 23) 291, 292.

64. Badillo Arias (fn 45) 654; JJ Hurtado Yelo, 'Problemas de compatibilidad entre seguro obligatorio de automóviles y seguro obligatorio de viajeros (Análisis de la STS Sala 1ª, Sección 1ª, núm. 611/2011, de 19 de septiembre)' (2014) 185 *Tráfico y Seguridad Vial* 1. On the contrary, V Magro Servet, 'Acerca de si existe compatibilidad del seguro obligatorio de responsabilidad civil de automóvil con el seguro obligatorio de viajeros en los transportes urbanos' (2011) 155 *Tráfico y Seguridad Vial* 1, 12.

65. Roj: STS 4988/2010.

66. F Sánchez Calero, 'Artículo 82. Ausencia de subrogación' in Sánchez Calero (ed), *Ley del contrato de seguro* (Thomson Reuters Aranzadi 2010), 2085; Veiga Copo (fn 23) 990, 991. See also AA Estancona Pérez, 'El seguro de suscripción obligatoria en el transporte de viajeros: reforma legislativa y realidad social' (2014) 121 *Práctica de Derecho de Daños* 1.

property).⁶⁷ Moreover, Royal Decree 1057/2008, of 12 September, provides for a rule aimed at preventing the claim cover from falling outside of the limits of the CLICMVA. In particular, it establishes that, when personal injury and damage to property take place and the compensation for the latter exceeds the amount indicated in Article 4.2.b CLICMVA, the difference will be compensated through the remainder that could result from the compensation of personal injury until the limit of Article 4.2.a CLICMVA (Article 10.1).

Nevertheless, the fact that for taxi and rental with driver the only insurance that must be taken out is that of automobile does have an impact on the eventual damage the driver or his vehicle may suffer, as well as on passengers' luggage, since they are excluded from its coverage (Article 5.1 and 2 CLICMVA). It is not surprising, hence, that the US-based platform Uber,⁶⁸ which puts applicants in contact with providers of occasional passenger transport services, mainly in the form of car rental with driver —although in some Spanish cities, in that of taxi— takes out additional insurance cover for drivers who provide rental with driver transport as self-employed workers on the platform, at no cost to the latter. For the time being, the insurer is AXA XL, XL Insurance Company SE, French branch,⁶⁹ even though the company has announced that as of 1 January 2022, it will be Allianz Partners.⁷⁰

A different question is whether such drivers are actually self-employed workers or whether the link they have with the platform is one of employment, as most labour scholars and comparative case law suggest, due to the fact that the platform has a significant control on the transport activity, assuming its provision on its own behalf.⁷¹ As far as the compulsory automobile insurance is concerned, this would imply that the policyholder would not be the self-employed driver himself, as is the case in current practice, but that the mandatory subscription would fall on the platform. The reason is that the AOLTA requires carriers to carry out transport by using vehicles that they own, or on which they have a financial or ordinary lease (Article 54.2 AOLTA). That is to say, the platforms would be obliged to take out insurance as vehicle owners and it would also be logical for them to do so if they had leased them, since they have a legitimate interest in the insurance (Article 2.1 CLICMVA).

Another important question is the *inter vivos* or *mortis causa* transmission of rental with driver authorisations and taxi licences. These are administrative titles that are associated with a specific vehicle, as established in Article 38.1 AOLTR for car rental with driver, and many regional laws for taxi licences.⁷² When the transmission of the authorization or licence is not accompanied by that of the vehicle, there is no modification of the compulsory automobile insurance policyholder, as it does not change ownership. However, when the vehicle is also transferred with the administrative title, the doubt arises as to what happens with the insurance contract. The CLICMVA does not regulate this case, so the general rules on the matter contained in Articles 34-37 ICA are applicable (Article 2.6 CLICMVA). Following them, there is an automatic subrogation of the acquirer to the rights and obligations that in the insurance contract corresponded to the previous owner (Article 34 ICA). In the case law, the Judgement of the Spanish Supreme Court (2nd Chamber) of 18 September 1991,⁷³ declared that 'the expiration of the insurance contract (...) is certainly not caused by the simple sale of the vehicle' and that 'it can somehow be said that it is the vehicle itself which is the invariable object of the contract' (1st LF). More recently, the Judgment of the Provincial Court of Barcelona (Section 16) No 181/2018 of 25 April,⁷⁴ states that Article 34 ICA 'determines that, in the event of transfer of the insured object, the acquirer subrogates, at the time of the alienation, to the rights and obligations that corresponded in the insurance contract to the previous owner. In the case of automobiles, when they are sold, they are transferred with the insurance they had before the sale. This is the principle from which we must start' (4th LF). The solution, albeit contrary to the principles of law of obligations (Article 1204 Civil Code),⁷⁵ is in accordance with the practical interest in the continuation of the contract shared by the acquirer, the insurer, the Insurance Compensation Consortium and the eventual injured parties.⁷⁶

5. Conclusions

The provision of passenger land transport services is considered a dangerous activity in itself. For this reason, the parties involved in its development must take out compulsory insurance, so that they can be held liable for the damages eventually caused to passengers during

67. Badillo Arias (fn 45) 481; RM Del Peso García: *Responsabilidad civil derivada del uso de vehículos a motor. Paso a paso* (Colex 2020) 23.

68. <<https://www.uber.com/legal/terms/es/>> accessed 23 November 2021.

69. A brief explanation of the contractual coverage can be consulted at <<https://www.uber.com/es/es-es/drive/insurance/>> accessed 23 November 2021. In more detail, see 'Resumen de la póliza. Póliza de protección de Socios para Socios conductores de Uber y Socios conductores de vehículos de flota España', in force from 1 January 2021 to 31 December 2021, which is available at: <https://uber.app.box.com/s/n3pkb3g182tv94vcv55pzethi2tyhz?uclick_id=87824901-e09e-4932-a4f6-8ad16323c29c> accessed 23 November 2021.

70. <<https://www.europapress.es/comunicados/empresas-00908/noticia-comunicado-allianz-partners-uber-asocian-garantizar-proteccion-conductores-mensajeros-europa-20211207100707.html>>.

71. This question has been analysed in detail in S Boboc, *Las plataformas en línea y el transporte discrecional de viajero por carretera* (Marcial Pons 2021) 188-196.

72. eg, Article 6.2 of the Valencian Community Act 13/2017 of 8 November relating to taxis.

73. RJ 1991\6444.

74. JUR 2018\128669.

75. Article 1204 Civil Code provides that: 'For an obligation to be extinguished by another which replaces it, it is necessary that this be stated categorically, or for the old and new obligation to be wholly incompatible'.

76. Veiga Copo (fn 23), 690-698.

transport. Depending on the means of transport the insurance that the carrier, and, when applicable, the owner of the vehicle, must take out is different.

Users of collective transport, by rail and bus or coach, are covered by both the compulsory passenger insurance and the compulsory civil liability insurance of the transport company. Conversely, for taxi and rental with driver the only compulsory insurance is that of automobile. This circumstance has little relevance from the perspective

of the passengers or their successors in title (in the event of the passengers' death), as the amounts of compensation established in the CLICMVA are so high that it seems difficult for a claim cover to fall outside of them. However, it is relevant from the perspective of the carrier liable for the accident, whose damage is not covered by the automobile insurance, although it is covered by the compulsory passenger insurance, which, nevertheless, applies only to collective transport.