HØJESTERETS DOM

afsagt tirsdag den 9. september 2025

Sag BS-21188/2022-HJR
(2. afdeling)

Dansk Forening for International Motorkøretøjsforsikring
(advokat Nicolai Mailund Clan)

mod

Krone Fleet Danmark A/S
(advokat Lissi Andersen Roost)

og

Sag BS-21201/2022-HJR

Dansk Forening for International Motorkøretøjsforsikring
(advokat Nicolai Mailund Clan)

mod

Krone Fleet Danmark A/S
(advokat Lissi Andersen Roost)

I tidligere instans er afsagt dom af Østre Landsrets 21. afdeling den 6. maj 2022 (BS-3242/2019-OLR og BS-3246/2019-OLR).

I pådømmelsen har deltaget fem dommere: Poul Dahl Jensen, Michael Rekling, Hanne Schmidt, Lars Apostoli og Peter Mørk Thomsen.

Påstande
Appellanten, Dansk Forening for International Motorkøretøjsforsikring (DFIM), har nedlagt påstand om, at indstævnte, Krone Fleet Danmark A/S, i sag BS-21188/2022-HJR (den tyske sag) skal betale 28.842,12 kr. til DFIM og i sag BS-21201/2022-HJR (den spanske sag) 4.871,59 kr. til DFIM.

DFIM har endvidere nedlagt påstand om, at Krone Fleet Danmark A/S skal betale 100.000 kr. til DFIM svarende til de sagsomkostninger for landsretten, som DFIM har betalt.

Krone Fleet Danmark A/S har påstået stadfæstelse.

Supplerende sagsfremstilling
I en oversat erklæring af 29. maj 2018 fra Bundesministerium der Justitz und für Verbraucherschutz (det tyske justitsministerium) indhentet til brug for en sag i Litauen hedder det bl.a.:

> "*Den europæiske konvention af 7. juni 1968 om oplysninger om fremmed ret*
> …
>
> Som svar på spørgsmålene fra byretten i Vilnius kan jeg oplyse følgende:
>
> Hvis et vogntog (trækkende køretøj med anhænger) forårsager et færdselsuheld, er både ejeren af det trækkende køretøj og ejeren af den forsikringspligtige anhænger forpligtet til at betale erstatning jf. § 7, stk. 1 i den tyske færdselslov (Straßenverkehrsgesetz (StVG)). Hvis ejerne af det trækkende køretøj og anhængeren er to forskellige personer, hæfter de pågældende ejere solidarisk jf. § 421, stk. 1 i den tyske borgerlige lovbog (BGB). Derudover kan skadelidte gøre krav om erstatning for skaden gældende direkte over for det forsikringsselskab, som anhængeren er ansvarsforsikret i, jf. § 115, stk. 1, pkt. 1 i den tyske forsikringsaftalelov (Versicherungsvertragsgesetz (VVG)) sammenholdt med § 1 i den tyske lov om lovpligtig motoransvarsforsikring (Pflichtversicherungsgesetz (PflVG). Bestemmelsen i § 6, stk. 1 i den tyske lov om ansvarsforsikring for udenlandske motordrevne køretøjer og påhængskøretøjer (AuslPflVG) præciserer, at det også er muligt at gøre kravet gældende direkte over for et udenlandsk ansvarsforsikringsselskab for motordrevne køretøjer jf. § 115 i VVG. Endelig er det også muligt at gøre krav gældende over for Verein Deutsches Büro Grüne Karte e.V. vedrørende erstatning for skade i forbindelse med færdselsuheld i Tyskland, som er forårsaget af et udenlandsk registreret køretøj, jf. §§ 2, stk. 1, litra b, 6 stk. 1 i AuslPflVG sammenholdt med § 115 i VVG.
>
> I forholdet udadtil hæfter det udenlandske ansvarsforsikringsselskab og Verein Deutsches Büro Grüne Karte e.V. solidarisk og fuldt ud over for skadelidte. Dette gælder, uanset om begge eller kun en af vogntogets dele er motoransvarsforsikret. Skadelidte kan således gøre erstatningskrav vedr. den fulde skade gældende over for de to erstatningspligtige parter.
>
> I det indbyrdes forhold mellem ansvarsforsikringsselskabet for motordrevne køretøjer og Büro Grüne Karte bliver der ført regres i henhold til § 78, stk. 2, pkt. 1 i

> den tyske forsikringsaftalelov (Versicherungsvertragsgesetz (VVG)). Ifølge en afgørelse fra forbundsdomstolen (BGH) af 27. oktober 2010 (journalnummer IV ZR 279/08) er de respektive forsikringsselskaber forpligtet til, i de tilfælde hvor vogntogets trækkende køretøj og anhængeren er forsikret hos forskellige forsikringsselskaber, at dele ansvaret indbyrdes i forhold til den erstatning, de skal udbetale til forsikringstageren i henhold til den pågældende forsikringsaftale. I henhold hertil er de respektive forsikringsselskaber forpligtet til at dele ansvaret indbyrdes i forhold til den erstatning, de skal udbetale til forsikringstageren i henhold til den pågældende forsikringsaftale. Dette medfører normalt, at det forsikringsselskab, som har betalt det fulde erstatningsbeløb til skadelidte, kan forlange halvdelen af beløbet erstattet af det andet forsikringsselskab. Disse principper er også stadfæstet af Litauens højesteret ved kendelse af 6. maj 2016 (journalnummer 3K-3-187-701/2016, trykt i: recht und schaden [r+s] 2016, s. 441). Forbundsdomstolens afgørelse omhandlede ganske vist en sag, hvor der var tale om dobbeltforsikring, dvs. en sag, hvor både det trækkende køretøj og påhængskøretøjet var forsikrede. Men principperne finder også anvendelse i tilfælde, hvor kun den ene del af vogntoget er forsikret og hvor kravene behandles af Verein Deutsches Büro Grüne Karte e.V. I den forbindelse er omfanget af den forsikringsdækning, som et udenlandsk forsikringsselskab yder for vogntogets pågældende dele, ikke relevant for den indbyrdes regres. I henhold til § 1 i den tyske lov om ansvarsforsikring for udenlandske motordrevne køretøjer og påhængskøretøjer (AuslPflVG) skal trækkende køretøjer, der færdes på vejen i Tyskland, være ansvarsforsikret, idet forsikringsdækningen skal svare til den forsikringsdækning, der gælder for tyskindregistrerede køretøjer, jf. § 4 i den tyske lov om ansvarsforsikring for udenlandske motordrevne køretøjer og påhængskøretøjer (AuslPflVG).”

Krone Fleet Danmark A/S (Krone) har for Højesteret fremlagt bl.a. Krones almindelige betingelser for udlejning af trailere og en oversættelse af forsikringspolicen for den polske trækker (ZK7658 A) i den tyske sag med tilhørende forsikringsbetingelser.

Luk De Baere, der er juridisk direktør i Council of Bureaux (COB), har besvaret en række spørgsmål, som parterne i fællesskab den 8. februar 2023 har stillet. Det fremgår af en oversættelse af besvarelsen bl.a.:

> ”*COB’s holdning i processen*
> …
>
> Svarene er udarbejdet af Hr. Luk De Baere, juridisk direktør ved COB's sekretariat. På den måde må svarene betragtes som værende baseret på Hr. De Baeres erfaring og den viden, han har opnået via sin professionelle karriere inden for motorkøretøjsforsikring for vejtrafik på tværs af grænserne. Svarene kan ikke anses som COB's officielle synspunkt som organisation. De er hverken blevet drøftet eller godkendt i COB's kompetente beslutningstagende organer. På den måde er svarene ikke bindende for COB.
>
> Svarene gives uden beregning og alene med det formål at assistere domstolen og de stridende parter i deres søgen efter en tvistbilæggelse. Hverken COB eller Hr. De Baere kan garantere svarenes rigtighed og/eller fuldstændighed. Hverken COB

eller Hr. De Baere påtager sig nogen form for ansvar eller erstatningspligt i forbindelse med de oplysninger, der gives i svarene.
…

4.1. Spørgsmål 1
Council of Bureaux - i det følgende COB - anmodes om kort at redegøre for COB's opbygning og formål, herunder hvilke lande, der er medlem af COB, herunder i 2016, hvor uheldene i Spanien og Tyskland skete.

Opbygning: COB er en international nonprofitforening, der er registreret i Belgien som en aisbl (association internationale sans but lucratif) under navnet Conseil des Bureaux nationaux d'assurance automobile. Navnet ”COB" anvendes normalt for at henvise til foreningen. Strengt taget er lande ikke medlemmer af COB. COB's medlemmer består af nationale enheder, der fungerer i deres egenskab af nationalt bureau (nationalt forsikringsbureau eller grøntkortbureau), erstatningsorgan, garantifond og/eller informationscenter.
…

4.2. Spørgsmål 2
Hvad var baggrunden for indførelsen af grøntkortsystemet oprindeligt, og hvad skulle indførelsen af grøntkortsystemet tilsikre.

Siden dets oprettelse har grøntkortsystemet søgt at tjene to formål:

På den ene side bestræber grøntkortsystemet sig på at muliggøre vejtrafik på tværs af grænserne. Ved at oprette et garantisystem gør samarbejdet mellem grøntkortbureauerne det muligt for førere af køretøjer at krydse grænser uden at skulle tegne en ny motoransvarsforsikring i det land, der besøges. Grøntkortdokumentet giver en garanti for, at føreren af køretøjet er dækket af en motorkøretøjsforsikring i overensstemmelse med reglerne for den obligatoriske motoransvarsforsikring som gælder i det land, der besøges.

På den anden side søger systemet at undgå, at denne vejtrafik på tværs af grænserne medfører en reducering af den beskyttelse, der tilbydes ofre for færdselsuheld, der forårsages af udenlandske køretøjer. Et offer for et færdselsuheld, der forårsages af et udenlandsk motorkøretøj, må ikke befinde sig i en mindre gunstig situation end et offer for et færdselsuheld, der forårsages af et køretøj, der er indregistreret i det land, hvor uheldet finder sted.

For fuldstændighedens skyld skal det nævnes, at grøntkortsystemets kompetenceområde er begrænset til beskyttelse af ofre i det land, hvor uheldet finder sted. Grønkortsystemet har ikke til hensigt at yde beskyttelse af et offer for et færdselsuheld i udlandet. En sådan beskyttelse kan ydes af de europæiske motorkøretøjsforsikringsdirektiver og mere specifikt af bestemmelserne i det 4. motorkøretøjsforsikringsdirektiv (2000/26/EF), hvis tekst nu er indarbejdet i det kodificerede motorkøretøjsforsikringsdirektiv (2009/103/EF).

4.3. Spørgsmål 3
COB anmodes om kort at redegøre for grøntkortsystemet, herunder hvornår et færdselsuheld er omfattet af grøntkortsystemet, idet der henvises til, at færdselsuheldene i Spanien og Tyskland skete i 2016 og involverede et sammenkoblet vogntog bestående af en lastbil og en trailer samt en personbil.

Anvendelsen af grøntkortsystemet i sin oprindelige opbygning kan opsummeres som følger:

Ejeren eller indehaveren af det i ét land (land A) indregistrerede og forsikrede køretøj kan få et grønt kort fra køretøjets forsikringsgiver. Det er muligt, at der kræves en yderligere forsikringspræmie, før et grønt kort leveres. Det grønne kort lader føreren af køretøjet komme ind i territoriet i andre lande, der deltager i grøntkortsystemet, på den betingelse, at bureauet i køretøjets oprindelsesland har indgået en bilateral aftale med bureauet i det land, der skal besøges (land B). Før der gives adgang til territoriet i land B, vil køretøjets fører normalt blive bedt om at fremvise grøntkortdokumentet, hvis overensstemmelse med nummerpladen vil blive kontrolleret. Endvidere vil grænsekontrolmyndighederne normalt tjekke, om det grønne kort er gyldigt i det land, der besøges (land B) på den dag, hvor grænsen krydses. Det grønne korts tilgængelighed er en garanti både for køretøjets fører og det potentielle offer for et uheld, der forårsages ved brug af det pågældende køretøj:

Føreren af køretøiet vil få gavn af forsikringsdækningen i overensstemmelse med lovgivningen og kravene for motoransvarsforsikring, som gælder i det land, der besøges, og for det køretøj, der nævnes på det grønne kort.

I tilfælde af en ulykke vil *offeret* få mulighed for at indgive et erstatningskrav til grøntkortbureauet i land B (skadeslandet) i overensstemmelse med lovene for forsikring, erstatningsansvar og skadeserstatning, som gælder i land B. Forudsat at offeret er bosiddende i land B, giver dette system offeret en garanti for at have en kontaktperson i sit eget land og for, at de kan kommunikere på deres eget sprog og i overensstemmelse med "egen" lov i land B. Offeret behøver ikke indgive et krav til forsikringsgiveren i land A.

På baggrund af de indsendte spørgsmål kan følgende overvejelse være relevant: hvis loven i land B kræver, at et påhængskøretøj i et lastvognstog skal have en særskilt motoransvarsforsikring, kan det forventes, at føreren af lastvognstoget skal fremvise to gyldige grønne kort, før der gives adgang til territoriet i land B: ét for lastbilen og ét for påhængskøretøjet.

Anvendelsen af denne "oprindelige" opbygning af grøntkortsystemet er underlagt afsnit I, II, IV, V, VI og VII i lnternal Regulations. Sagsbehandlingsprocessen mellem bureauerne i land A og B er betinget af tilstedeværelsen af et "identificeret" grønt kort som beskrevet i lnternal Regulations og bemærkningerne til lnternal Regulations (begge tekster er tilgængelige på COB's hjemmeside).

Det "oprindelige" system gælder stadig i relationerne med flere bureauer (i 2016: AL, AZ, BY, BIH, IR, IL, MD, MNE, MA, MK, RUS, TN, TR, UA. I juli 2023: Al, AZ, IR, MD, MA, MK, TN, TR, UA).

Under indflydelse af den Europæiske Unions mål om at etablere et indre marked har grøntkortsystemets anvendelse været genstand for vigtige ændringer. Resultatet af ændringerne kan beskrives som systemet for "antaget forsikringsdækning" (se også titlen på afsnit III i lnternal Regulations).

Anvendelsen af det "oprindelige" grøntkortsystem som beskrevet ovenfor udgør væsentlige hindringer for etableringen af et indre marked, hvor personer, varer, tjenesteydelser og kapital frit kan bevæge sig (i lyset af grøntkortsystemet kan man endda tale om "køretøjers frie bevægelighed"). Lnden køretøiet krydser en grænse, skal det da også standse og fremvise eksistensen af et gyldigt grønt kort. Allerede i begyndelsen af 1970'erne blev dette af den Europæiske Union betragtet som værende i modstrid med ideen om etableringen af et indre marked. Derfor blev det første motorkøretøjsforsikringsdirektiv vedtaget i 1972: Rådets direktiv (72/116/EØF) af 24. april 1972 om indbyrdes tilnærmelse af medlemsstaternes lovgivning om ansvarsforsikring for motorkøretøjer og kontrollen med forsikringspligtens overholdelse.

Først og fremmest kræver systemet for antaget forsikringsdækning, at alle køretøjer indregistreret i det Europæiske Økonomiske Samarbejdsområde (EØS) er obligatorisk dækket af en motoransvarsforsikring. Endvidere skal denne forsikring lovpligtigt dække hele EØS' område. For eksempel: Motoransvarsforsikringen for et køretøj, der er indregistreret i Danmark, dækker automatisk i hele EØS, uden at forsikringsgiveren har mulighed for at begrænse det geografiske omfang eller forlange en yderligere præmie for motoransvarsforsikringsdækning i én eller flere stater i EØS.

På grund af forsikringsdækningen i hele EØS afskaffer motorkøretøjsforsikringsdirektivet også kontrollen af eksistensen af motoransvarsforsikringsdækning ved grænserne. Der skal ikke længere fremvises grønne kort ved de indre grænser i det indre marked. Alle køretøjer, der er indregistreret i en stat i EØS, antaqes at være gyldigt dækket af motoransvarsforsikringen. Selvom et køretøj ikke er gyldigt forsikret (og det er desværre stadig alt for ofte tilfældet), fungerer grøntkortsystemets garantier alene på den baggrund, at køretøjet er "hiemmehørende" i en stat i EØS.

Lad mig tydeliggøre dette system ved hjælp af et eksempel, der kan sammenlignes med de forhold, der ligger til grund for spørgsmålene:

Et køretøj er hjemmehørende i Danmark. For at afgøre, i hvilken stat et køretøj er hjemmehørende, henvises til artikel 1, stk. 4, i det kodificerede motorkøretøjsforsikringsdirektiv og/eller artikel 11 i lnternal Regulations. For ikke at gøre sagen for kompliceret begrænser jeg mig til her at angive, at et køretøj i langt de fleste tilfælde er hjemmehørende idet land, hvor det har nummerplade fra. Det danske køretøj krydser grænsen til Tyskland. Når køretøjet kører rundt i Tyskland, antages det at være gyldigt forsikret i overensstemmelse med bestemmelserne i motoransvarsforsikringen, som gælder i det land, der besøges (Tyskland). I tilfælde af et uheld behøver offeret ikke vise eller dokumentere eksistensen af et identificeret grønt kort. Alene det forhold, at køretøjet er hjemmehørende i Danmark, giver offeret ret til at indgive et krav til det tyske grøntkortbureau. Hvis den danske forsikringsgiver har udpeget en "grøntkorthandlingspartner" (se artikel 4 i lnternal Regulations), skal kravet indgives til handlingspartneren. Såfremt ansvaret er tydeligt, vil det tyske grøntkortbureau (eller den tyske handlingspartner) erstatte offerets skade i overensstemmelse med tysk lovgivning om motoransvarsforsikring, erstatningsansvar og skadeserstatning. Det tyske bureau (eller den tyske handlingspartner) vil bede om godtgørelse fra den danske forsikringsgiver eller fra det danske bureau. Ved fastlæggelse af, at køretøjet er hjemmehørende i Danmark, skal det danske bureau garantere godtgørelsen til det tyske bureau, også selvom det viser sig, at det danske køretøj ikke var gyldigt forsikret. I sidstnævnte tilfælde

kan det danske bureau have regresret over for ejeren, indehaveren eller føreren af det danske køretøj. Regresretten er dog fuldstændig uafhængig af grøntkortsystemet og skal være baseret på reglerne i (dansk) national ret.

Anvendelsen af systemet for antaget forsikringsdækning kan udvides til tredjelande (uden for EØS) via den multilaterale aftale (en aftale, der er indgået mellem bureauerne inden for COB's rammer). 2016 deltog bureauerne i følgende lande i systemet for antaget forsikringsdækning: alle lande i EØS, AND, CH, SRB. I juli 2023 skal bureauerne i følgende lande føjes til: BIH, MNE og UK (sidstnævnte land var stadig del af EØS i 2016 og var derfor også deltager i den multilaterale aftale i 2016). Med andre ord var og er systemet for den antagede forsikringsdækning i lyset af de stillede spørgsmål gældende for relationerne mellem bureauerne i Danmark, Tyskland, Litauen, Polen og Spanien, både i 2016 og i dag.

Anvendelsen af systemet for "antaget forsikringsdækning" er underlagt afsnit I, III, IV, V, VI og VII i lnternal Regulations.

4.4. Spørgsmål 4
I nærværende sag var der tale om færdselsuheld i 2016 i henholdsvis Spanien og Tyskland, der involverede et trækkende køretøj, en trailer og en personbil. Hvornår vil et sådan færdselsuheld være omfattet af grøntkortsystemet?

På baggrund af ovenstående forklaringer og det beskrevne eksempel under spørgsmål 3 må det være klart, at de uheld, der beskrives i det dokument, der følger med spørgsmålene, er omfattet af grøntkortsystemet. Mere specifikt imødegår de betingelserne for anvendelse af ordningen for antaget forsikringsdækning.

Bureauerne i Litauen og Polen (landene for lastbilernes indregistrering), i Danmark (landet for påhængskøretøjernes indregistrering) og i Spanien og Tyskland (skadeslandene) er alle underskrivere af den multilaterale aftale. De er alle lande i EØS. I relationen mellem de involverede bureauer gælder ordningen for den antagede forsikringsdækning (afsnit III i lnternal Regulations).

4.5. Spørgsmål 5
I forlængelse af spørgsmål 4 spørges, om et færdselsuheld, hvor lastbilen er selvstændigt motoransvarsforsikret, hvorimod traileren ikke har en selvstændig ansvarsforsikring, hvilket blandt andet gælder trailere og andre påhængskøretøjer indregistreret i Danmark, vil være omfattet af grøntkortordningen.
Har det i den forbindelse betydning for, hvorvidt færdselsuheldet er omfattet af grøntkortordningen, såfremt traileren er medforsikret på lastbilens lovpligtige motoransvarsforsikring.

Uafhængigt af forsikringssituationen for de lastbiler og påhængskøretøjer, der var involveret i uheldene, er det tydeligt ud fra ovenstående, at sådanne uheld falder ind under anvendelsen af grøntkortordningen og mere specifikt under anvendelsen af ordningen for antaget forsikringsdækning.

Som forklaret ovenfor er forsikringsstatus for det udenlandske køretøj (det være sig en bil eller et lastvognstog) faktisk irrelevant for det spanske og tyske bureau i deres egenskab af "behandlende" bureauer. Ved anvendelse af ordningen for antaget forsikringsdækning vil det spanske og tyske bureau blot undersøge, om det udenlandske køretøj, der er involveret i et uheld i det territorium, hvor bureauerne

er kompetente, er hjemmehørende i et land, hvor den multilaterale aftale gælder. Når det er afgjort, at køretøjet er hjemmehørende i et sådant land (i dette tilfælde: henholdsvis Litauen og Polen for lastbilerne og Danmark for påhængskøretøjerne), kan det spanske og tyske bureau behandle sagen under anvendelse af lnternal Regulations. De vil fungere som det "behandlende bureau".

Med andre ord er spørgsmålet om, hvorvidt lastbilen og påhængskøretøjet er uafhængigt forsikret eller ej, irrelevant for det spanske og det tyske bureau. De er blot interesserede i det territorium, i hvilket køretøjerne er hjemmehørende.

Hvad angår det andet afsnit i dette spørgsmål skal følgende nævnes: på baggrund af det brev, der fulgte med spørgsmålene, og på baggrund af den meget begrænsede viden, jeg har om tysk ret, lader det rigtignok til, at erstatningsansvaret for skade, der forårsages af lastvognstog i Tyskland, konstrueres på baggrund af medforsikring. Tysk lovgivning kræver særskilt forsikring for lastbiler og påhængskøreløjer. Som jeg vil forklare yderligere under spørgsmål 8, synes dette krav for mig at være i overensstemmelse med EU-rettens bestemmelser (motorkøretøjsforsikringsdirektivet). Ved at komme ind i Tysklands territorium falder udenlandske køretøjer (herunder lastvognstog) automatisk ind under kravene i tysk lovgivning om forsikringsdækning, og lastbiler og påhængskøretøjer skal forsikres særskilt. Da ordningen for antaget forsikringsdækning gælder for de pågældende uheld, antages de to lastvognstog automatisk at imødegå den forpligtelse: lastbilerne og påhængskøretøjerne antages at være gyldigt forsikret alene på baggrund af det forhold, at de er hjemmehørende i tre lande i EØS (Danmark, Litauen og Polen).

4.6. Spørgsmål 6
I forbindelse med det spanske og tyske grøntkortkontors behandling af færdselsuheldene i 2016, anmodes COB om at oplyse, om henholdsvis det spanske og det tyske grøntkortkontor var forpligtet til at undersøge forsikringsforholdene på henholdsvis lastbilen og traileren og i givet fald, hvorledes disse undersøgelser skulle have været gennemført.

Gør det nogen forskel, at lastbilernes og trailernes indregistreringslande og indregistreringsnumre var oplyst i de foreliggende politirapporter?

Til besvarelse af det første afsnit i dette spørgsmål kan jeg henvise til det angivne svar under spørgsmål 5 ovenfor. Da ordningen for antaget forsikringsdækning gælder for de pågældende uheld, behøvede det spanske og tyske grøntkortbureau ikke at undersøge eller tjekke forsikringsstatus for de pågældende køretøjer. I henhold til reglerne for ordningen for antaget forsikringsdækning skulle begge bureauer undersøge, om de udenlandske køretøjer var hjemmehørende i en stat, i hvilken bureauet er underskriver af den multilaterale aftale. Om de skulle undersøge dette alene for de trækkende køretøjer (lastbilerne) eller for både lastbilerne og påhængskøretøjerne afhænger af henholdsvis spansk og tysk ret. Jeg formoder, at i lande, hvor kun det trækkende køretøj kan pådrage sig ansvar, vil det lokale behandlende bureau begrænse sig til at undersøge status for, hvor det trækkende køretøj er hjemmehørende. I lande som Spanien og Tyskland, hvor ansvaret for både det trækkende og det efterspændte køretøj kan være på tale, synes det logisk, at det behandlende bureau undersøger status for, hvor både lastbilen og påhængskøretøjet er hjemmehørende.

Hvad angår den del af spørgsmålet, der lyder "hvorledes disse undersøgelser skulle have været gennemført", er det vigtigt at nævne, at lnternal Regulations foreskriver en formel procedure til bekræftelse af, at et køretøj er hjemmehørende i et land. Denne procedure anvendes i tilfælde af, at der er nogen form for tvivl om status for, hvor et køretøj er hjemmehørende, og - ofte - i tilfælde af, at et køretøj kan være uden forsikring. Under "normale" omstændigheder kan proceduren, hvor et køretøj er gyldigt indregistreret og forsikret i et land, være begrænset til at bede køretøjets forsikringsgiver om at bekræfte forsikringsdækningen. I tilfælde af tvivl eller i tilfælde af, at der ikke er nogen forsikring, kan det behandlende bureau formelt gøre proceduren, som er beskrevet i artikel 13 i lnternal Regulations, gældende. En anmodning om bekræftelse af, at et køretøj er hjemmehørende i et bureaus territorium, skal sendes via "COB online Collaboration Platform" (en online platform til kommunikationsudveksling bureauerne imellem). Det bureau, der modtager en sådan anmodning, skal give et svar (via Collaboration Platform) inden for en periode på seks uger. Foreligger der ikke et svar inden for perioden på de seks uger, antages køretøjet at være hjemmehørende i territoriet i det land, hvor bureauet har kompetence. Endelig er det relevant at nævne, at anmodninger på baggrund af artikel 13 i lnternal Regulations endnu ikke kunne sendes og besvares via COB Collaboration Platform i 2016. Det år fandt kommunikationsudveksling sted pr. e-mail. Proceduren og deadlines var dog identiske.

Hvad angår spørgsmålet i det andet afsnit kan jeg angive, at det absolut giver mening, at lastbilernes og påhængskøretøjernes indregistreringsland og indregistreringsnumre er nævnt i politirapporterne. Dette er vigtige indikatorer for de behandlende bureauer til at finde ud af, i hvilket land eller i hvilke lande køretøjerne er hjemmehørende. Hvis det ikke er angivet i en politirapport, kan andre dokumenter (såsom ulykkeserklæringer eller vidneforklaringer) give de oplysninger.

4.7. Spørgsmål 7
Henholdsvis det spanske og det tyske grøntkortkontor rettede efter opgørelsen af udgifterne regreskrav mod DFIM, og der spørges med hvilken hjemmel, henholdsvis det spanske og det tyske grøntkortkontor efter grøntkortordningen kunne rette regreskravene mod DFIM?

På baggrund af principperne i grøntkortordningen og på baggrund af spansk og tysk ret (som må antages at implementere disse principper fra grøntkortordningen) måtte begge bureauer kompensere ofrene for uheldene for den lidte skade. Det er så grøntkortordningens normale anvendelse, at disse udgifter godtgøres enten af et forsikringsselskab (der yder forsikringsdækning for det ansvarlige køretøj) eller af det garantigivende bureau (for eksempel såfremt køretøjet ikke er forsikret, eller såfremt forsikringsselskabet ikke kan eller ikke er villig til at refundere). Principperne for disse refusioner kan ses i artikel 5 og 6 i lnternal Regulations.

Da både spansk og tysk ret synes at muliggøre kombineret ansvar for lastbiler og påhængskøretøjer er det med samme logik, at regres ikke alene søges over for lastbilernes forsikringsgiver eller bureau men også over for påhængskøretøjernes forsikringsgiver eller bureau. Dette er princippet for anvendelsen af lovgivningen i skadeslandet (se artikel 3.4 i lnternal Regulations).

4.8. Spørgsmål 8
Er COB bekendt med, hvorvidt der i 2016 for det trækkende køretøj, der var involveret i færdselsuheldene i henholdsvis Spanien og Tyskland, gjaldt en

forpligtelse til selvstændigt at forsikre (egen police for traileren) eller medforsikre (det trækkende køretøjs motoransvarsforsikring dækker traileren) traileren i Spanien og i Tyskland? I bekræftende fald bedes oplyst, hvoraf denne forpligtelse fremgår. I den forbindelse spørges, hvem der havde forpligtelsen til selvstændigt at forsikre eller medforsikre traileren?

Min viden om spansk og tysk ret er yderst begrænset. Derfor kan jeg ikke oplyse det nøjagtige retsgrundlag i spansk og tysk lovgivning, der gør motoransvarsforsikring obligatorisk for både lastbiler og påhængskøretøjer. Jeg ved dog (af erfaring), at motoransvarsforsikring er lovpligtig for lastbiler og påhængskøretøjer i begge lande. Dette er i overensstemmelse med reglerne i EU-retten. Jeg ved også, at der i tilfælde af uheld er delt erstatningsansvar for lastbiler og påhængskøretøjer i begge lande.

Så vidt jeg ved, mener jeg, at dette delte erstatningsansvar i Spanien er fastlagt til en 70-30 % tilskrivning (70% for lastbilen og 30 % for påhængskøretøjet), og at denne fordeling er baseret på en aftale mellem forsikringsselskaberne. Jeg mener, men er ikke sikker på dette, at det spanske grøntkortbureau også er underskriver af denne aftale.

Hvad angår Tyskland, mener jeg, at det delte erstatningsansvar er baseret på medforsikring, hvilket medfører en fordeling på 50-50 mellem lastbil og påhængskøretøj. Der findes oplysninger omkring dette i EU-domstolens dom: EU-Domstolen, dom af 21. januar 2016, ERGO lnsurance, C-359/14, EU:C:2016:40 (forenede sager C-359114 og C-475114).

Der kan bedes om mere nøjagtige oplysninger fra blandt andet grøntkortbureauerne i Spanien og Tyskland.

Selvom jeg ikke kan oplyse de nøjagtige bestemmelser og regler i spansk og tysk ret, kan jeg oplyse det europæiske retsgrundlag for at gøre motoransvarsforsikring lovpligtig for både lastbiler og påhængskøretøjer. Naturligvis er denne forpligtelse ikke kun gældende i Spanien og Tyskland men i hele EØS.

Artikel 3 idet kodificerede motorkøretøjsforsikringsdirektiv (2009/103/EF) kræver, at hver medlemsstat træffer passende foranstaltninger til at sikre, at erstatningsansvaret for køretøjer, der er hjemmehørende i det pågældende land, er dækket af en forsikring. Termen "køretøj" er defineret i artikel 1, stk. 1, i det kodificerede motorkøretøjsforsikringsdirektiv som ethvert motordrevet køretøj, der er bestemt til trafik til lands, og som ikke kører på skinner, såvel som påhængskøretøjer, selv om de ikke er tilkoblede.

I lyset af definitionen af et køretøj i det kodificerede motorkøretøjsforsikringsdirektiv er et påhængskøretøj at betragte som et køretøj. Sammen med artikel 3 i det kodificerede motorkøretøjsforsikringsdirektiv er der en forpligtelse om, at erstatningsansvar for så vidt angår brug af påhængskøretøjer skal være dækket af forsikringen.

I lyset af bestemmelsen i EU-retten er det tvivlsomt, hvorvidt den danske juridiske situation som beskrevet i spørgsmål 5 ("hvorimod traileren ikke har en selvstændig ansvarsforsikring, hvilket blandt andet gælder trailere og andre påhængskøretøjer indregistreret i Danmark") er i overensstemmelse med EU-retten. Dette er

dog et spørgsmål, der skal vurderes af Europa-Kommissionen og i sidste ende af EU-Domstolen.

Endelig stilles der et spørgsmål for at præcisere, hvem der havde forpligtelsen til selvstændigt at forsikre eller medforsikre traileren. Dette er igen et spørgsmål, der er underlagt reglerne i den nationale ret, hvilket jeg ikke kan besvare. Dette spørgsmål kan blandt andet gives til grøntkortbureauet i Spanien og Tyskland. Motorkøretøjsforsikringsdirektivet foreskriver alene, at erstatningsansvar for så vidt angår brug al køretøjer skal dækkes af forsikringen. Som forklaret gælder dette også for brug af påhængskøretøjer. Direktivet foreskriver ikke, hvem der er ansvarlig for at forsikre køretøjet. Afhængig af national ret kan dette være ejeren, indehaveren og/eller køreren af køretøjet. Dette skal ses ud fra den nationale rets perspektiv.

4.9. Spørgsmål 9
I forbindelse med DFIM's modtagelse af regreskravene fra henholdsvis det spanske og det tyske grøntkortkontor stilles et spørgsmål til afklaring af, hvilke forpligtelser DFIM havde efter grøntkortsystemet i forhold til at sikre sig, at regreskravene fra henholdsvis det spanske og det tyske grøntkortkontor var behandlet og opgjort korrekt.

For overskuelighedens skyld vil jeg gerne skelne mellem:

Behandling og beregning af de krav, der indgives af ofrene til det spanske og tvske grøntkortbureau.

I henhold til grøntkortordningens regler er der ingen forpligtelse til at bekræfte rigtigheden af den af begge bureauer betalte erstatning til ofrene. Der henvises blandt andet til artikel 3.4 i lnternal Regulations. Det spanske og det tyske bureau er de bedste til at vurdere anvendelsen af henholdsvis spanske og tyske regler for forsikringsret, erstatningsansvar og skadeserstatning.

Behandling oq beregning af regreskrav fra det spanske og det tyske grøntkortbureau.

På baggrund af den erstatning, der betales til ofrene, kan de spanske og tyske (behandlende) bureauer få deres udgifter godtgjort af de garantigivende bureauer. For de pågældende uheld synes disse at være det litauiske, polske og danske bureau. Det spanske og tyske bureau har ret til at få den betalte erstatning godtgjort sammen med eksterne sagsomkostninger og ekspertomkostninger samt et administrativt gebyr. Der henvises til artikel 5.1 i lnternal Regulations. Grøntkortordningens regler foreskriver ikke en forpligtelse til at bekræfte eller kontrollere regreskravene. Selvom samarbejdet mellem bureauerne er baseret på tillid, kan det forventes, at det "garantigivende" bureau ofte vil udføre en begrænset kontrol af regreskravet (f.eks. for at kontrollere, om beregningen af det administrative gebyr (15 % af den betalte erstatning med et minimum på EUR 200 og et maksimum på EUR 3.500) var foretaget korrekt). Dette er en mulighed men så absolut ikke en forpligtelse. I lyset af, at grøntkortordningen er en garantiordning, gælder endvidere, at princippet "betal først, diskuter senere" finder anvendelse. For fuldstændighedens skyld henvises der også til artikel 5.4 i lnternal Regulations, som giver det garantigivende bureau mulighed for at bede om bilag, dog uden at forsinke refusionen. Endelig forudses der en mekanisme til konfliktløsning (kombination af mægling

og voldgift) ved uenighed mellem bureauerne vedrørende refusion af udgifterne. Se artikel 19 i lnternal Regulations.

4.10. Spørgsmål 10
I forlængelse af spørgsmål 9 stilles et spørgsmål til afklaring af, i hvilke tilfælde/situationer DFIM havde pligt til at gøre indsigelser mod henholdsvis det spanske og det tyske regreskrav.

I henhold til grøntkortordningens regler var det danske grøntkortbureau ikke forpligtet til at gøre nogen form for indsigelse mod de spanske og tyske regreskrav. Såfremt regreskravet/regreskravene havde indeholdt tydelige beregningsfejl eller andre fejl, kunne en indsigelse eller i det mindste en anmodning om oplysninger eller rettelse forventes, men dette er ikke en forpligtelse.

4.11. Spørgsmål 11
Kan COB vurdere, hvorvidt henholdsvis det spanske og det tyske grøntkortkontor konkret behandlede færdselsuheldene og opgørelserne af udgifterne forkert efter lnternal Regulations/grøntkortsystemet, når der henses til, at lastbilerne var motoransvarsforsikringsdækket, mens trailerne ikke havde en selvstændig ansvarsforsikring, jf. dansk lovgivning.

Hvad angår "behandlingen af færdselsuheldene" er det ikke op til mig at vurdere eller kontrollere, om det spanske eller tyske grøntkortbureau håndterede kravene korrekt og/eller kompenserede ofrene korrekt. I overensstemmelse med artikel 3.4 i lnternal Regulations skal begge bureauers autonomi respekteres. Kun såfremt der foretages tydelige fejl, eller reglerne overtrædes, ville der være grund til at bede om yderligere forklaring. På baggrund af den meget begrænsede undersøgelse af tilfældene har jeg ikke grund til at betvivle det spanske og det tyske bureaus korrekte håndtering af kravene.

Hvad angår krav om refusion fra de behandlende bureauer synes der igen ikke at være grund til at betvivle rigtigheden. I lyset af det delte ansvar for lastbiler og påhængskøretøjer, der regnes med i reglerne i spansk og tysk ret, og i lyset af anvendeligheden af reglerne i skadeslandet (både for så vidt angår forsikringsret og erstatningsansvarsret og skadeserstatningsret) synes regresretten mod bureauerne i Litauen, Polen og Danmark fuldstændig berettiget. Dette kan ikke ændres af det forhold, at de danske påhængskøretøjer ikke var forsikrede, heller ikke af det forhold, at dansk lovgivning ikke ville foreskrive en forpligtelse til at forsikre påhængskøretøjer. Under spørgsmål 8 udtrykte jeg min tvivl om dansk lovgivnings overholdelse af EU-retten på dette punkt. For mig virker det som om, at det ikke ville være fair at lægge en højere refusionsbyrde på de litauiske og/eller polske bureauers skuldre alene på baggrund af, at de danske påhængskøretøjer ikke var forsikrede på trods af en forsikringsforpligtelse i spansk og tysk ret og EU-ret.

4.12. Spørgsmål 12
Hvilken eventuel hjemmel var der i 2016 for DFIM til at rette et regreskrav mod en privat virksomhed internal regulations/grøntkortsystemet?

Såfremt hjemlen ikke fremgår af regulations/grøntkortsystemet men af national Ret/EU-ret, anmodes COB om at oplyse dette.

Hvis hjemlen fremgår af internal regulations/grøntkortsystemet bedes oplyst, hvorfor det i 'Explanatory Memorandum to the lnternal Regulations" af kommentaren til artikel 1 Purpose internal regulations fremgår følgende:

"Formålet med lnternal Regulations er af regulere de gensidige relationer mellem de nationale motorkøretøjsbureauer og dermed håndhæve bestemmelserne i Henstilling nr. 5. I overensstemmelse med dokumentets navn - INTERNAL REGULATIONS - omfatter definitionen af formålet ikke nogen organer eller personer ud over bureauerne. således at bureauerne alene har direkte rettigheder i henhold til lnternal Regulations. I særdeleshed kan medlemmer (se definition i artikel 2.3) og handlingspartnere (se definitionen i artikel 2.4) alene gennemtvinge rettigheder, der opstår på grund af lnternal Regulations, via bureauerne.

Tredjeparters rettigheder og forpligtelser (førere, bilister, ofre, skadelidte osv.) reguleres af de relevante bestemmelser i gældende lov og ikke af lnternal Regulations. Dette gælder også bureauernes eller deres medlemmers regreshandlinger mod tredjeparter."

Jeg vil gerne besvare de første to underspørgsmål i spørgsmål 12 samlet.
Jeg kan bekræfte, at reglerne i grøntkortordningen og lnternal Regulations alene regulerer relationerne mellem grøntkortbureauerne (som det korrekt er angivet i citatet fra bemærkningerne i det tredje underspørgsmål). Derfor skal en regresret for det garantigivende bureau mod tredjeparter (forsikringsselskaber, uforsikrede lørere eller indehavere af et køretøj...) være baseret på national ret og/eller det garantigivende bureaus interne regler. Sådanne regresrettigheder ligger uden for grøntkortordningen.

I lyset af svaret på de første to underspørgsmål er der ingen grund til at svare på det tredje underspørgsmål. Citatet fra bemærkningerne i det tredje underspørgsmål bekræfter mit svar på de første to underspørgsmål.

4.13. Spørgsmål 13
Hvilke regler for forsikring af lastbilen og de omtvistede trailere gjaldt ved kørsel i henholdsvis Spanien og Tyskland i 2016, når der henses til, at trailerne ikke var indregistreret i Tyskland eller Spanien og ikke havde fast ophold i nogle af disse lande men var indregistreret i Danmark og på uheldstidspunktet var efterspændt lastbiler indregistreret i henholdsvis Litauen og Polen, der ubestridt var motoransvarsforsikringsdækket.

Gjaldt der en pligt til, at henholdsvis lastbilerne og trailerne skulle være forsikret enten hver enhed for sig (selvstændigt) eller ved medforsikring af traileren på lastbilernes forsikring, når der henses til, at trailerne ikke var indregistreret i Tyskland eller Spanien og ikke havde fast ophold i nogle af disse lande men var indregistreret i Danmark og på uheldstidspunktet var efterspændt lastbiler indregistreret i henholdsvis Litauen og Polen, der ubestridt var motoransvarsforsikringsdækket.

Indledende bemærkning: termen "havde fast ophold" synes lidt mærkelig i forhold til påhængskøretøjer. Termen "hjemmehørende" synes mere passende. Dette kan være et oversættelsesspørgsmål.

For så vidt angår det første underspørgsmål: på baggrund af svarene i de tidligere spørgsmål mener jeg, at jeg kan begrænse mig selv til at angive, at det er reglerne i henholdsvis spansk og tysk forsikringsret, der fastlagde forpligtelsen til, at de pågældende lastvognstog skulle dækkes af en motoransvarsforsikring.

For så vidt angår det andet underspørgsmål: også her kan jeg henvise til forklaringerne, der allerede er givet i tidligere svar. Uafhængigt af, hvor lastbilerne og påhængskøretøjerne er hjemmehørende, var de underlagt reglerne om obligatorisk motoransvarsforsikring, der er gældende i henholdsvis Spanien og Tyskland, fra det øjeblik de kom ind i territorierne i disse lande. På baggrund af det velfungerende indre marked er disse regler i et vist omfang harmoniseret på EU-plan via motorkøretøjsforsikringsdirektiverne. Så ja, der var en forpligtelse til, at lastbilerne og påhængskøretøjerne skulle have en motoransvarsforsikring, når de kører rundt i territorierne i Spanien og Tyskland.

4.14. Spørgsmål 14
I hvilke tilfælde ville traileren i 2016 i henholdsvis Spanien og Tyskland blive betragtet som uforsikret, når der henses til, at trailerne ikke var indregistreret i Tyskland eller Spanien og ikke havde fast ophold i nogle af disse lande men på uheldstidspunktet var indregistreret i Danmark og efterspændt lastbiler indregistreret i henholdsvis Litauen og Polen, der ubestridt var motoransvarsforsikringsdækket.

Jeg kan ikke give en fuld vurdering af reglerne i spansk og tysk ret, men på baggrund af ovenstående forklaringer virker det for mig, som om påhængskøretøjerne ville være blevet betragtet som uforsikrede i både Spanien og Tyskland.

4.15. Spørgsmål 15
Hvilke regler gjaldt der i 2016 i henholdsvis Spanien og Tyskland i forhold til procentuel fordeling af skaderne/udgifterne ved færdselsuheld i henholdsvis Spanien og i Tyskland involverende en lastbil, en trailer og en personbil som i nærværende sager under forudsætning af, at traileren var uforsikret.

Jeg henviser til mit svar under spørgsmål 8 ovenfor.

Jeg er ikke den rette person til at beskrive og forklare reglerne i spansk og tysk ret. Hvis der kræves yderligere forklaring, vil jeg foreslå, at I kontakter det spanske og tyske grøntkortbureau og/eller en anden ekspert med speciale i henholdsvis spansk og tysk ret.

4.16. Spørgsmål 16
Hvilke regler gjaldt der i 2016 i henholdsvis Spanien og Tyskland i forhold til procentuel fordeling af skaderne/udgifterne ved færdselsuheld i henholdsvis Spanien og i Tyskland involverende et skadevoldende vogntog bestående af en lastbil med en efterspændt trailer a) i forholdet til skadelidte og b) i det interne forhold mellem lastbilens og trailerens indehaver/bruger.

Mit svar er identisk med svaret under spørgsmål 15.

4.17. Spørgsmål 17
Er COB bekendt med, om der i 2016 for de to lastbiler, der var involveret i

færdselsuheldene i henholdsvis Spanien og Tyskland gjaldt, at indehaverne af disse lastbiler hæftede solidarisk med trailerindehaveren over for skadelidte for vogntogets (lastbil sammenkoblet med trailer) samlede ansvar, hvis lastbilen i uheldsøjeblikket var sammenkoblet med en trailer.

Mit svar er igen identisk med svaret under spørgsmål 15.

Jeg ville på ingen måde være overrasket, hvis en sådan regel gjaldt i 2016 (og stadig gælder i dag). En sådan regel ville så være gældende for at beskytte den skadelidte (og ville give dem ret til at kræve fuld kompensation fra både (forsikringsgiveren for) lastbilen og påhængskøretøjet) men uden skadevirkning for yderligere regresrettigheder mellem (forsikringsgiverne for) lastbilen og påhængskøretøjet."

Det tyske grønkortbureau, Deutsches Büro Grüne Karte e.V., har i en erklæring af 3. juni 2024 besvaret parternes fælles spørgetema vedrørende den tyske sag således:

"[*Questions from Appellant DFIM*

Question 1
Please provide a short explanation of the rules applicable in 2016 to liability for road traffic accidents where a tractor unit coupled to a non-resident trailer was involved in a road traffic accident with another vehicle and caused damage to property and/or personal injury. Please also include and enclose relevant references to statutory rules and case law.]

The German liability law never distinguished between resident and non-resident vehicles. In 2016 the law provided for a 50/50 liability between a towing vehicle and a trailer because based on the interpretation of the German High Court (BGH IV ZR 279/08 from October 27, 2010). All the statutory rules as well as the decisive case law can be found in this verdict. We explicitly would like to draw your attention to reference 14 and 16.

[Question 2
Did a trailer coupled to a tractor unit which was not resident in the country in 2016 and which was involved in a road traffic accident with another vehicle have separate liability for damage to property and/or personal injury to the injured party as a result of a road traffic accident? Did the trailer have separate liability for damages? Please also include and enclose relevant references to statutory provisions and case law.]

Yes and yes. For references, please again have a look into the already mentioned decision of BGH. § 1 Pflichtversicherungsgesetz (PflVG) obliges the keeper of a vehicle or a trailer to take separate MTPL insurance. § 4 Ausländerpflichtversicherungsgesetz (AuslPflVG) said that on the territory of the German State the same rules apply for foreign vehicles than for domestic ones.

[Question 3
Was there in 2016 an obligation to take out motor vehicle liability insurance for a resident tractor unit and trailer either by taking out insurance for both the tractor

and the trailer or by the tractor unit's insurance covering the trailer? Please also include and enclose relevant references to statutory provisions and case law.]

Yes, based on § 1 PflVG all type of vehicles including trailers need(ed) to be insured separately.

[Question 4
Was there in 2016 an obligation to take out motor vehicle liability insurance for the tractor unit and the trailer if the tractor unit and the trailer were non-resident, but used in the country? Either by taking out insurance for both the tractor unit and the trailer or by the tractor unit's insurance covering the trailer? Please also include and enclose relevant references to statutory provisions and case law.]

Indeed. The MTPL-insurance obligation never distinguished between domestic and foreign vehicles and trailers. The law in 2016 was as clear as it is today, a trailer, whether coupled or uncoupled, needs to be insured ((§ 1 des Straßenverkehrsgesetzes (StVG): Der Halter eines Kraftfahrzeugs oder Anhängers mit regelmäßigem Standort im Inland ist verpflichtet, für sich, den Eigentümer und den Fahrer eine Haftpflichtversicherung zur Deckung der durch den Gebrauch des Fahrzeugs verursachten Personenschäden, Sachschäden und sonstigen Vermögensschäden nach den folgenden Vorschriften abzuschließen und aufrechtzuerhalten, wenn das Fahrzeug auf öffentlichen Wegen oder Plätzen verwendet wird).

(§ 4 AuslPflVG: Der Versicherungsvertrag nach § 3 muß den für die Versicherung von Kraftfahrzeugen und Anhängern mit regelmäßigem Standort im Inland geltenden gesetzlichen Bestimmungen über Inhalt und Umfang des Versicherungsschutzes sowie über die Mindestversicherungssummen entsprechen.)

[Question 5
Would a non-resident trailer used in the country and not separately covered by liability insurance or not covered by the tractor unit's insurance be considered uninsured in 2016? Under what authority would the trailer be considered uninsured? Please also include and enclose relevant references to statutory provisions and case law.]

Yes, from a technical legal point of view a non-resident trailer without any MTPL insurance cover -neither a domestic nor a frontier insurance- was (and still is) an illegally uninsured vehicle as no insurance company provides cover. Another question is whether based on the guarantee provided through the Green Card System (normally based status) the trailer is deemed to be insured.

[Question 6
Where a non-resident trailer coupled to a tractor unit caused a road traffic accident in 2016 in the country, state what percentage allocation of the losses/expenses should be attributed to the tractor unit and the trailer. State the apportionment formula for the losses/expenses to be applied to the tractor unit and the trailer respectively in relation to the injured party. In this context, indicate whether it has an impact on the percentage allocation of the losses/expenses if the trailer was separately insured (double insurance), co-insured or uninsured. Please also include and enclose relevant references to statutory provisions and case law.]

Based on the interpretation of the BGH (see question 1) the internal liability between truck and trailer in 2016 was 50/50.

[Question 7
Reference is made to the reply to question 6. State the rules or regulations that provide for the percentage allocation of the losses/expenses. Please also include and enclose relevant references to statutory provisions and case law.]

Again reference is made to the decision of BGH, especially references 14 ff.
The BGH has decided that according to § 78 Versicherungsvertragsgesetz (VVG) [which was § 59 VVG then] truck and trailer have a double insurance. Therefore the percentage of each insurer is basically 50% (see reference 24 of the said decision).

[Question 8
Assuming that the accident in 2016 was covered by the Green Card System and was subject to Internal Regulations and that the trailer in question was uninsured, state whether the percentage allocation of the losses/expenses attributable to the tractor unit and the trailer also applied to the national green card bureau when the national green card bureau was to calculate the losses/expenses. In this context, indicate whether it affected in 2016 and affects the application of the percentage allocation of losses/expenses to be applied to the tractor unit and the trailer, whether the reimbursement claim was to be made against an insurer or an uninsured person responsible for the accident such as the owner or user of the tractor unit or the trailer. In this context, please also state the legislation, case law, practice etc. providing the statutory authority for his. Please also include and enclose relevant references to statutory provisions and case law.]

A claim covered by the Green Card System is in its handling and legal applications equal to all other kind of claims. Insofar any involvement of the Green Card Bureau as substitute of the non-existing insurer is to be treated in exactly the same way as if an insurer would have been involved. Consequently the 50/50 liability rule also applies for the Green Card Bureau.

[Question 9
Was there in 2016 and is there today any statutory authority empowering
(1) the national green card bureau which has paid compensation to the injured party, or
(2) the green card bureau which has reimbursed the national green card bureau in the injured party's home country for the compensation paid to the injured party to bring a recourse claim against the uninsured owner or user of a trailer for compensation paid to (1) the injured party or (2) the national green card bureau and, if so, what is such statutory authority? Please also include and enclose relevant references to statutory provisions and case law.]

If the Bureau has indemnified a claimant, then subrogation takes place and the Bureau is entitled to take recourse against the other joint and several debtor (§ 426 Bürgerliches Gesetzbuch, BGB).

[Question 10
If, in 2016, the national green card bureau in Germany was faced with a demand for reimbursement under the green card system from another green card bureau where a German resident tractor unit coupled to a German trailer, and where the trailer was not separately insured or covered by the tractor unit's motor vehicle liability insurance, had caused a road traffic accident in the other green card member country, would the national green card bureau in Germany be able to raise such a recourse claim against the uninsured owner or user of the trailer in Germany?]

Yes.

[Question 11
In continuation of question 10, state whether the right of recourse is limited to claims against insurance companies or whether it is also possible to make a recourse claim against the uninsured owner or user of the trailer in Germany. Which statutory provisions, case law and/or practice etc. provide the statutory authority for this? Please also include and enclose relevant references to statutory provisions and case law.]

The recourse right is not limited to insurance companies. § 7 Straßenverkehrsgesetz (StVG) states the liability of the keeper and § 18 StVG the liability of the driver of the vehicle. If the Green Card Bureau as guarantor has indemnified the victim (who has a direct right against it according to § 117 Versicherungsvertragsgesetz, VVG) instead of the owner or the driver, it has a right of recourse.

[Questions from Respondent Krone Fleet Danmark A/S

In relation to DFIM's question 2, the bureaux are asked to answer the following question A:
Was the owner of a trailer which was not resident in the country in 2016, and which was coupled to a tractor unit which was not resident in the country in 2016, and where the combined road train was involved in a road traffic accident with another vehicle, jointly and severally liable with the owner of the tractor unit to the injured party for damage to property and/or personal injury caused by the road traffic accident. State whether the owner of the trailer was jointly and severally liable with the owner of the tractor unit towards the injured party.Please also include and enclose relevant references to statutory provisions and case law.]

Yes and yes.

[In relation to DFIM's question 4, the bureaux are asked to answer the following question B:
Was there in 2016 an obligation to take out motor vehicle liability insurance for a trailer if it was a non-resident trailer which was used in the country? If the answer is yes, please state the type of non-resident trailers subject to the obligation to take out insurance. Please also include and enclose relevant references to statutory provisions and case law.]

Same answer than in question 4.

[In relation to DFIM's question 4, the bureaux are asked to answer the following question C:
If, in 2016, there was an obligation to take out motor vehicle liability insurance for a trailer if it was a nonresident trailer used in the country, please state whether this motor vehicle liability insurance was required to be taken out as a separate motor vehicle liability insurance for the foreign trailer, so that there were two policies (double insurance) covering the liability that the owner of the trailer and the owner of the tractor unit, respectively, may incur towards the injured party, or whether the liability that the owner of the trailer may incur to the injured party may be covered by the motor vehicle liability insurance taken out on the tractor unit, as is standard practice in Denmark, for example. In Denmark, there is no requirement for two policies (double insurance), i.e. separate insurance covering the tractor unit and the trailer, but there is a requirement for co-insurance, which requires the liability that the owner of the trailer may incur to the injured party under Danish law to be covered by the motor vehicle liability insurance policy covering the tractor unit to the effect that there will be only one motor vehicle liability insurance, which however covers the liability that all owners and users of the combined road train may incur to the injured party. Please also include and enclose relevant references to statutory provisions and case law.]

Every vehicle including trailers had to be separately insured.

[In relation to DFIM's question 5, the bureaux are asked to answer the following question D:
When would a non-resident trailer used in the country be considered uninsured by the green card bureau? Would this already be the case when it is impossible to identify a liability insurer when looking up the trailer's registration number, or would it be the case when it can be established that the trailer is not covered by the tractor unit's motor vehicle liability insurance (see Danish motor vehicle liability insurance legislation described in question C)? Under what authority would the trailer be considered uninsured by the green card bureau? Please also include and enclose relevant references to statutory provisions and case law.]

The trailer would be considered as uninsured, if there is no insurer and no cover by the guaranteeing Bureau.

[In relation to DFIM's question 6, the bureaux are asked to answer the following question E:
Where a non-resident trailer coupled to a tractor unit caused a road traffic accident in 2016 in the country, would the owner of the trailer and the owner of the tractor unit each be liable for the full loss (100%) suffered by the injured party, and would the injured party therefore be able to choose which of the owners the injured party wanted to be fully (100%) compensated by, or would the two owners only be liable to the injured party for a portion of the losses suffered by the injured party (for example 50/50 or 70/30). Please also include and enclose relevant references to statutory provisions and case law.]

The two owners would each be liable for 100 % towards TP. The TP could chose one of the two owners to claim for 100%.

[In relation to DFIM's question 6, the bureaux are asked to answer the following question F:
If the owners of the trailer and the tractor unit were each fully liable to the injured party for the loss (100%) suffered by the injured party and jointly and severally liable to the injured party for the full loss (100%) (see question A above), and the motor vehicle liability insurer of the tractor unit paid full compensation for the injured party's loss (100%), please state whether such motor vehicle liability insurer had recourse against the owner of the trailer, and if so, to what extent and under what conditions - especially if the liability of the owner of the trailer to the injured party was covered by the motor vehicle liability insurance for the tractor unit and was therefore co-insured by the same motor vehicle liability insurer as under the Danish scheme described in question C. Please also include and enclose relevant references to statutory provisions and case law.]

As there is joint and equal liability for truck and trailer and if the insurer of the truck has compensated the victim for 100 %, the insurer of the truck has a recourse right of 50% against the owner of the trailer.

[In relation to DFIM's question 7, the bureaux are asked to answer the following question G:
Reference is made to the reply to question 6. Is the percentage allocation only relevant in relation to an internal recourse settlement between the owner of the trailer and the owner of the tractor unit after the injured party has received full compensation (100%) for his losses, or does the percentage allocation also apply in relation to the payment of compensation to the injured party to the effect that the tractor unit only needs to pay compensation to the injured party equal to 50/70% of the losses suffered by the injured party. Please also include and enclose relevant references to statutory provisions and case law.]

The percentage allocation is only relevant in relation to an internal recourse settlement.

[In relation to DFIM's question 7, the bureaux are asked to answer the following question H:
Reference is made to the reply to question G. If the percentage allocation is only relevant in an internal settlement of recourse claims between the owner of the trailer and the owner of the tractor unit after the injured party has received full compensation (100%) for his losses, then why does the green card bureau interfere in such settlement between the owner of the trailer and the owner of the tractor unit and their respective motor vehicle liability insurers when the injured party has received full compensation (100%) for his losses. Please also include and enclose relevant references to statutory provisions and case law.]

The insurer who has indemnified the victim for 100% is legally subrogated in the rights of the victim and is an injured party according to article 2.7 of the Internal Regulations.

[In relation to DFIM's question 8, the bureaux are asked to answer the following question I:
Assuming that the accident in 2016 was covered by the Green Card system and should be governed by Internal Regulations, and that the owner of the tractor unit was jointly and severally liable with the owner of the trailer for the full loss

(100%) suffered by the injured party, then why did the green card bureau not claim the full amount of loss (100%) from the tractor's motor vehicle liability insurer or refer the injured party to such insurer? If the green card bureau is of the opinion that the motor vehicle liability insurer covering the tractor unit was not obliged to pay full compensation to the injured party for the loss suffered by the injured party, please state the statutory provisions and/or case law used as the basis for the reply. Please also include and enclose relevant references to statutory provisions and case law.]

It is on the victim and not on the Green Card Bureau to choose the one from whom it wants to be compensated.

[In relation to DFIM's question 9, the bureaux are asked to answer the following question J:
Was there in 2016 and is there today any statutory authority empowering (1) the national green card bureau which has paid compensation to the injured party, or (2) the green card bureau which has reimbursed the national green card bureau in the injured party's home country for the compensation paid to the injured party to bring a recourse claim against the owner or user of a trailer in respect of the compensation paid to (1) the injured party or (2) the national green card bureau, if the liability of the owner of the trailer to the injured party was covered by the motor vehicle liability insurance covering the tractor unit, and the trailer was thus insured as described in question C concerning the Danish liability insurance scheme. If the answer is yes, please state the statutory provisions or case law used as the basis for the reply. Please also include and enclose relevant references to statutory provisions and case law.]

As already mentioned, in 2016 every vehicle and every trailer had to take separate insurance cover according to § 1 PflVG and § 4 AuslPflVG."

Det spanske grønkortbureau, Oficina Española De Aseguradores De Automóviles, har i en erklæring af 18. september 2024 besvaret parternes fælles spørgetema vedrørende den spanske sag således:

"[*QUESTIONS FROM THE APPELLANT DFIM*

Question 1
Please provide a short explanation of the rules applicable in 2016 to liability for road traffic accidents where a tractor unit coupled to a non-resident trailer was involved in a road traffic accident with another vehicle and caused damage to property and/or personal injury. Please also include and enclose relevant references to statutory rules and case law.]

In the case of Spain, the rules applicable to the determination of civil liability for traffic accidents, including those caused by a tractor unit attached to a semi-trailer, are essentially two:

- The Law on civil liability and insurance in the circulation of motor vehicles, the consolidated text of which was approved by Royal Legislative Decree 8/2004, of October 29 (hereinafter "Law 8/2004").
- The Regulation of compulsory civil liability insurance in the circulation of

motor vehicles, which develops the previous Law, approved by Royal Decree 1507/2008, of September 12 (hereinafter "Regulation 1507/2008").

On the other hand, taking into account that the case under analysis involves vehicles with license plates from different countries, all of them member states of the European Union, European regulations on the matter will have to be followed, particularly Directive 2009/ 103/EC, of the European Parliament and of the Council, of September 16, 2009, relating to civil liability insurance resulting from the circulation of motor vehicles, as well as the control of the obligation to insure this liability.

[Question 2
Did a trailer coupled to a tractor unit which was not resident in the country in 2016 and which was involved in a road traffic accident with another vehicle have separate liability for damage to property and/or personal injury to the injured party as a result of a road traffic accident? Did the trailer have separate liability for damages? Please also include and enclose relevant references to statutory rules and case law.]

Trailers and semi-trailers are, without a doubt, considered motor vehicles for the purposes of civil liability and insurance obligations. The Regulation 1507/2008 is clear in this regard, since article 1.1 establishes that "For the purposes of civil liability in the circulation of motor vehicles and the insurance obligation, motor vehicles are considered to be all vehicles suitable for traveling on the earth's surface and powered by a motor, including mopeds, special vehicles, trailers and semitrailers, whose putting into circulation requires administrative authorization". Once it has been established that the semi-trailer is considered a vehicle for the purposes of civil liability against third parties, regarding its separate liability from that of the tractor unit, it is necessary to refer to article 19.2 of the Regulation, which establishes the following fundamental rules:

a) When two or more vehicles covered by their mandatory insurance intervene in an accident and cause damage to third parties, each insurer of the causing vehicles will respond in proportion to the amount of fault of each one, when it can be determined. If it cannot be determined, they will respond in proportion to the power of the vehicles.

b) When the two vehicles involved were a tractor unit and a trailer or semi-trailer and the percentage of fault could not be determined, each insurer will contribute to the fulfillment of the obligations in accordance with the agreements between insurers or, failing these, in proportion to the amount of the annual premium that corresponds to each vehicle in the policy subscribed.

In relation to this last point b), in Spain an Agreement has been signed between automobile insurance companies for the settlement of civil liability claims caused by articulated vehicles, whose components are insured by different companies, the last update of which dates back to June 2021. Its fifth clause establishes that:

"The entire distributable cost of the accident will be assumed in the proportion of 70% by the insurance company of the tractor head, and 30% by the insurance company of the trailer (in force since June 1, 1997). In the event that two or more

trailers are involved, 30% will be distributed equally among the number of insurance companies of the trailers involved in the accident."

However, it is important to remember that this solution is contained in an agreement signed between insurance companies. It is not transposed into a standard with the status of law or regulation, but is applied as a result of the referral of a regulation to the agreement between insurers. Consequently, it can be stated that the semitrailer has independent and separate civil liability from the tractor unit (which is why it is required to have its own insurance) except in the case in which another distribution of responsibilities is determined that completely exonerates the semitrailer, as could occur due to the exclusive fault of the tractor unit or the injured party.

[Question 3
Was there in 2016 an obligation to take out motor vehicle liability insurance for a resident tractor unit and trailer either by taking out insurance for both the tractor unit and the trailer or by the tractor unit's insurance covering the trailer? Please also include and enclose relevant references to statutory rules and case law.]

In the case of Spain, the Regulation 1507/2008 considers in its article 1 that trailers and semi-trailers, as motor vehicles, are subject to the obligation of insurance, provided that their maximum authorized mass exceeds 750 kg. This is stated in section 1 of article 1 in its final part:

"Trailers, semi-trailers and special towed machines whose maximum authorized mass does not exceed 750 kilograms are exempt from the insurance obligation, as well as those vehicles that have been temporarily or permanently removed from the Vehicle Registry of the General Directorate of Traffic".

In Spain, it is mandatory that semi-trailers with a maximum authorized mass greater than 750 kg have their own civil liability insurance, so it cannot be considered, when this mass is exceeded, that the insurance of the tractor head covers the civil liability of the trailer.

[Question 4
Was there in 2016 an obligation to take out motor vehicle liability insurance for the tractor unit and the trailer if the tractor unit and the trailer were non-resident, but used in the country? Either by taking out insurance for both the tractor unit and the trailer or by the tractor unit's insurance covering the trailer? Please also include and enclose relevant references to statutory rules and case law.]

It can be understood that the circulation of motor vehicles in Spanish territory is subject to the requirements established by Spanish law. In this case and as previously explained, the regulations are clear regarding the obligation to take out specific civil liability insurance for the semi-trailer when its maximum authorized mass exceeds 750 kg.

The doubt lies in whether this obligation extends to vehicles registered in another member state of the European Union that have different regulations in this regard. The answer is found in Directive 2009/103/EC, whose article 5.2 refers to exceptions to the obligation to insure motor vehicles, empowering each member state to

establish exceptions to the insurance obligation in relation to certain vehicles, with obligation to notify the rest of the member states and the Commission. Thus, article 5.2 provides:

"Any Member State so derogating shall ensure that vehicles referred to in the first subparagraph are treated in the same way as vehicles for which the insurance obligation provided for in Article 3 has not been satisfied.

The guarantee fund of the Member State in which the accident has taken place shall then have a claim against the guarantee fund in the Member State where the vehicle is normally based.

From 11 June 2010 Member States shall report to the Commission on the Implementation and practical application of this paragraph.

The Commission, after examining those reports, shall, if appropriate, submit proposals for the replacement or repeal of this derogation".

It follows that the spirit of the Directive is to apply the principle of compulsory insurance to all motor vehicles circulating in the territory of the European Union and that, although each Member State may establish some exceptions to this general principle, this power is exceptional, it must be communicated to the other Member States and to the Commission, which will present, where appropriate, proposals aimed at eliminating this exception. In any case, it is established that the guarantee fund of the Member State in which the accident took place does have a claim against the guarantee fund of the Member State in which the vehicle is normally based.

In any case, the relevant question in this accident is not whether or not the semi-trailer was considered an insured vehicle in Spain, a question on which it is not up to the Spanish national bureau to rule. The criterion that Ofesauto must attend to is the country in which the vehicle is normally based, in the case of this semi-trailer, Denmark. This circumstance, in itself, is what determines Ofesauto's intervention in the accident, so that it pays compensation to the injured party as required by law and subsequently requests reimbursement of the corresponding amount from the Danish bureau, as the State in which the semi-trailer was normally based on.

[Question 5
Would a non-resident trailer used in the country and not separately covered by liability insurance or not covered by the tractor unit's insurance be considered uninsured in 2016? Under what authority would the trailer be considered uninsured? Please also include and enclose relevant references to statutory rules and case law.]

As a continuation of the previous answer, what determines the intervention of the Spanish national bureau and subsequent request for reimbursement to the Danish national bureau is the fact that the semi-trailer was normally based in Denmark, not the question of whether or not the vehicle was insured, which is a question of Danish law on which this bureau cannot rule.

The Regulation 1507/2008 is clear in its article 1.1 when considering the semi-trailer as a motor vehicle and establishing the obligation for it to have its own civil liability insurance when its maximum authorized mass exceeds 750 kg. Therefore, according to Spanish law, it is not possible to consider that the civil liability of the semi-trailer is covered by the insurance of the tractor head. This solution is not in accordance with Spanish Law, which would be applicable to the resolution of the case as it corresponds to the place where the accident occurred (EU Regulation 864/2007 "Rome II", article 4).

In any case and as answered in the previous question, in cases in which the legislation of a Member State establishes exceptions to the insurance obligation (such as the case in which Denmark considers that the semi-trailer does not need its own insurance and is covered by the insurance of the tractor unit) the right of the guarantee fund of the Member State in which the accident occurred to have a claim against the guarantee fund of the Member State in which the vehicle is normally based is guaranteed.

[Question 6
Where a non-resident trailer coupled to a tractor unit caused a road traffic accident in 2016 in the country, what percentage allocation of the losses/expenses should be applied to the tractor unit and the trailer. State which apportionment formula for the losses/expenses is to be applied to the tractor unit and the trailer respectively in relation to the injured party. In this context, state whether it has an impact on the percentage allocation of the losses/expenses whether the trailer was separately insured (double insurance), co-insured or uninsured. Please also include and enclose relevant references to statutory rules and case law.]

In accordance with article 19.2 of the Regulation 1507/2008 and other applicable regulations cited in this report, the tractor unit and semi-trailer are considered two separate vehicles. Thus, each of them will respond in proportion to the responsibility they have in the accident. If the percentage of fault that corresponds to each of them cannot be determined in the Judgment, the Regulation refers to the agreements between insurers, which in the case of Spain have been conventionally set at 70% for the tractor unit and 30% for the semi-trailer. However, this solution i) is a conventional agreement between Spanish insurers, not a standard elevated to the rank of Law or regulation, but instead applicable through referral from a Regulation and ii) should be understood as a subsidiary criterion, which is applied only when the Court cannot establish the percentage of fault that corresponds to each vehicle. Thus, we find examples in the Spanish Courts in which other percentages of fault have been applied (provided that the Judge makes a reasoned explanation of this distribution of blame) or even cases in which it has been considered proven that the damages caused are solely and exclusively due to negligence on the part of the driver of the tractor unit.

These criteria essentially apply to cases in which the semi-trailer was independently insured or there was coinsurance, given that in cases in which the insurer of the tractor unit was also insured for the semi-trailer, there would be no conflict. In the event that the vehicle lacked insurance, it should be understood that the civil liability would be assumed by the guarantee fund of the State in which the responsible vehicle was normally based, analogously to the assumption of this responsibility, in the case of vehicles normally based in Spain, by the Insurance Compensation Consortium as a Spanish guarantee body, in accordance

with article 11 of Law 8/2004 and 20 of Regulation 1507/2008. This solution is consistent with article 10.1 of Directive 2009/103/EC, which establishes that each Member State will create a body that will assume compensation, at least up to the limit of mandatory insurance, for vehicles that do not satisfy the insurance obligation of article 3 of said Directive.

[Question 7
Reference is made to the reply to question 6. Please state the rules that provide statutory authority for the percentage allocation of the losses/expenses.
Please also include and enclose relevant references to statutory rules and case law.]

The rule applicable to determining the percentage of compensation that corresponds to the insurer of each of the vehicles involved is, mainly, article 19.2 of Regulation 1507/2008, which establishes a series of criteria in order of preference:
a) Firstly, the degree of culpability of each of the vehicles in causing the accident will be considered.
b) If it had not been possible to determine the percentage of fault that corresponds to each one, in the case of a tractor unit and a semi-trailer, it will be up to agreements between insurers. In the case of Spain, the conventional solution reached by insurers is the already explained 70% for the tractor head and 30% for the semi-trailer.
c) In the absence of an agreement between insurance companies, the responsibility will be distributed in proportion to the annual premium paid for each vehicle.
Therefore, the rule that grants statutory authority for the distribution of percentages is Regulation 1507/2008, which expressly establishes that, in the absence of determination of fault, agreements between insurers will be followed, which in Spain have reached the conventional solution of distribution 70%-30%.

[Question 8
Assuming that the accident in 2016 was covered by the Green Card System and was subject to Internal Regulations and that the trailer in question was uninsured, state whether the percentage allocation of the losses/expenses applicable to the tractor unit and the trailer also applied to the national green card bureau when the national green card bureau was to calculate the losses/expenses. In this context, indicate whether it affected in 2016 and affects the application of the percentage allocation of losses/expenses to be applied to the tractor unit and the trailer, whether the reimbursement claim was to be made against an insurer or an uninsured person responsible for the accident such as the owner or user of the tractor unit or the trailer. In this context, please also state the legislation, case law, practice etc. providing the statutory authority for this. Please also include and enclose relevant references to statutory rules and case law.]

The distribution of compensation following the 70%-30% criterion for the tractor unit and the semi-trailer, respectively, is the result of applying the provisions of article 19.2 of Regulation 1507/2008 and the fifth clause of the Agreement between Spanish insurers, both in force at the time of the accident (2016). Thus, what the Regulation establishes is a subsidiary criterion by which, in the absence of determination (through Judgment) of the percentage of responsibility corresponding to each of the vehicles involved in causing the accident (the tractor unit and the semi-trailer), we must refer to the agreements between insurers. What the Spanish bureau did, therefore, was to apply what was stated in the Order that

regulated its functions at that time, that is, to address civil responsibilities up to the limit established by the Regulation in force at that time (article 2 of the Order of September 25, 1987). The most appropriate way to distribute responsibilities, considering the Regulations, the Agreement between insurers and the usual practice regarding traffic accidents in Spain, was the 70%-30% distribution, in the absence of any circumstance or judicial ruling in this case that justifies altering this general rule.

[Question 9
Was there in 2016 and is there today any statutory authority empowering
(1) the national green card bureau which has paid compensation to the injured party, or
(2) the green card bureau which has reimbursed the national green card bureau in the injured party's home country for the compensation paid to the injured party to bring a recourse claim against the uninsured owner or user of a trailer for compensation paid to (1) the injured party or (2) the national green card bureau and, if so, what is such statutory authority? Please also include and enclose relevant references to statutory rules and case law.]

In 2016, the Order of September 25, 1987, regulating the operation of the Spanish national insurance bureau (Ofesauto), was in force, currently replaced by Order EIC/764/2017. The previous order established the obligation of Ofesauto to address civil liabilities for accidents suffered in Spanish territory by motor vehicles registered in member countries of the EEC (article 2), up to the limit established by the Vehicle Civil Liability Insurance Regulations, the aforementioned Regulation 1507/2008 being in force at the time of this incident.

As will be developed in answers 10 and 11, Law 8/2004, in force at the time of the accident and currently, grants the recourse claim in its article 10, allowing the insurer, once the compensation has been paid, to exercise a recourse claim against the third party responsible for the damages. Likewise, in the subsequent Order EIC/764/2017, regulating the functions of Ofesauto, it has been clearly established that in the case of uninsured vehicles, the Spanish bureau, once the compensation has been paid, will become a creditor of the guarantee fund (in the case of Spain, the Insurance Compensation Consortium) and this in turn may exercise a recourse action against the owner of the uninsured vehicle, as guaranteed by article 11.3 of Law 8/2004.

[Question 10
If, in 2016, the national green card bureau in Spain was faced with a demand for reimbursement under the Green Card system from another green card bureau where a Spanish resident tractor unit coupled to a Spanish trailer, and where the trailer was not separately insured or covered by the tractor unit's motor vehicle liability insurance, had caused a road traffic accident in the other green card member country, would the national green card bureau in Spain be able to raise such a recourse claim against the uninsured owner or user of the trailer in Spain? Which statutory provisions, case law and/or practice etc. provide the statutory authority for the answer to this question? Please also include and enclose relevant references to statutory rules and case law.]

In the event that in 2016 (and at the present time), the Spanish national insurance bureau (Ofesauto) received a reimbursement request from another national bureau

for an accident caused by a towing vehicle normally based in Spain, attached to a trailer without its own insurance, once the reimbursement has been attended to, the Spanish bureau would become a creditor and, therefore, could claim from the guarantee fund in the event that the vehicle was uninsured (article 6.b.2º of Order EIC/764/2017, which regulates the functions of Ofesauto). In turn, this guarantee fund would have recourse claim against the owner in the case of uninsured vehicles (article 11.3 of Law 8/2004). Therefore, the answer is affirmative, Spanish law grants the recourse claim against the owner of the uninsured vehicle.

[Question 11
In continuation of question 10, state whether the right of recourse is limited to claims against insurance companies or whether it is also possible to make a recourse claim against the uninsured owner or user of the trailer in Spain.
Which statutory provisions, case law and/or practice etc. provide the statutory authority for this? Please also include and enclose relevant references to statutory rules and case law.]

The recourse claim in Spanish Law can not only be directed against the insurance companies, but it is also possible to exercise it against the owner of the vehicle or the person responsible for the accident. It is true that, in the case of uninsured vehicles, there is an intermediate step in Spanish Law, so that the national bureau should claim reimbursement from the guarantee fund (Insurance Compensation Consortium in Spain) and this in turn would exercise the recourse claim against the owner of the vehicle or the responsible of the accident, but the recourse claim as such can be exercised against a natural or legal person who owns the vehicle, not only against an insurance company, as can be seen from the aforementioned articles 10 and 11.3 of the Law. 8/2004, as well as, in general, article 43 of the Insurance Contract Law and article 1145 of the Civil Code.

[QUESTIONS FROM RESPONDENT KRONE FLEET DANMARK A/S

In relation to DFIM's question 2, the bureaux are asked to answer the following question A:
Was the owner of a trailer which was not resident in the country in 2016, and which was coupled to a tractor unit which was not resident in the country in 2016, and where the combined road train was involved in a road traffic accident with another vehicle, jointly and severally liable with the owner of the tractor unit to the injured party for damage to property and/or personal injury caused by the road traffic accident. State whether the owner of the trailer was jointly and severally liable with the owner of the tractor unit towards the injured party. Please also include and enclose relevant references to statutory rules and case law.]

In general, the response of Spanish jurisprudence in cases of traffic accidents with a plurality of parties responsible has been the existence of joint and several liability between all of them (or between the insurers of all of them), giving rise to what has been called commonly “improper solidarity” (among others, Supreme Court Decision of December 5, 1989). However, it must be taken into account that the basis of this improper solidarity is precisely not to hinder the claim of the injured party, so that he can claim against any of those responsible for causing the damage, or against several, or against all of them, indistinctly, so that any of those responsible must attend to the claim, but at the same time will acquire the right to

exercise a recourse claim against the others for the part of responsibility that corresponds to each of them.

Thus, it should not be understood that the existence of joint and several liability between the causes of damage, when there are several (as could occur in the case of a tractor and a trailer), excludes the recourse claim of the one who has paid against the other responsible parties. Article 1145 of the Civil Code provides that "the party who made the payment can only claim from his co-debtors the part that corresponds to each one, with the interest on the advance." In Spanish Law, the obligation to compensate will be proportional to the amount of fault of each cause of the damage or, when it cannot be determined, it will be based on agreements between insurers, when they exist, being the conventional solution given by the insurers in the case. of trailers the 70%-30% rule already explained. Therefore, the possibility that the injured party can take action against any of the responsible parties, that there is a joint and several liability between them, does not mean in any way that the responsible person who has paid cannot exercise a recourse claim against the others for the fee that corresponds to each one in the accident.

[In relation to DFIM's question 4, the bureaux are asked to answer the following question B:
Was there in 2016 an obligation to take out motor vehicle liability insurance for a trailer if it was a nonresident trailer which was used in the country? If the answer is yes, please state the type of non-resident trailers subject to the obligation to take out insurance. Please also include and enclose relevant references to statutory rules and case law.]

Trailers and semi-trailers are required to take out their own civil liability insurance when their maximum authorized mass exceeds 750 kg. In these cases, it cannot be understood, in Spanish law, that the liability of the semi-trailer is covered by the tractor head insurance. Directive 2009/103/EC allows in its article 5.2 to establish exceptions to the principle of compulsory insurance but communicating this to the other Member States and to the Commission, which may, in turn, introduce proposals aimed at eliminating the exception. Therefore, it must be understood that the general principle that governs the rule is mandatory insurance. Furthermore, in any case, the guarantee fund of the Member State in which the accident has taken place shall then have a claim against the guarantee fund in the Member State where the vehicle is normally based

[In relation to DFIM's question 4, the bureaux are asked to answer the following question C:
If, in 2016, there was an obligation to take out motor vehicle liability insurance for a trailer if it was a non-resident trailer used in the country, please state whether this motor vehicle liability insurance was required to be taken out as a separate motor vehicle liability insurance for the foreign trailer, so that there were two policies (double insurance) covering the liability that the owner of the trailer and the owner of the tractor unit, respectively, may incur towards the injured party, or whether the liability that the owner of the trailer may incur to the injured party may be covered by the motor vehicle liability insurance taken out on the tractor unit, as is standard practice in Denmark, for example. In Denmark, there is no requirement for two policies (double insurance), i.e. separate insurance covering the tractor unit and the trailer, but there is a requirement for co-insurance, which requires the liability that the owner of the trailer may incur to

the injured party under Danish law to be covered by the motor vehicle liability insurance policy covering the tractor unit to the effect that there will be only one motor vehicle liability insurance, which however covers the liability that all owners and users of the combined road train may incur to the injured party. Please also include and enclose relevant references to statutory rules and case law.]

According to Spanish law, it is necessary to have this double insurance in the case of articulated vehicles, an insurance that covers the civil liability of the tractor unit and another insurance that covers the civil liability of the semi-trailer whose maximum authorized mass exceeds 750 kg. In semi-trailers that exceed this mass, it cannot be considered that the liability is covered by the insurance of the tractor head, precisely because the law expressly requires the existence of its own insurance, so if this requirement is not met, the semi-trailer would be considered an uninsured vehicle, not a vehicle subsidiarily covered by the tractor's insurance, in case of vehicles normally based in Spain.

Regarding foreign vehicles involved in an accident in Spain, what determines the intervention of the Spanish national bureau is the fact that the responsible vehicle is normally based in another Member state.

[In relation to DFIM's question 5, the bureaux are asked to answer the following question D:
When would a non-resident trailer used in the country be considered uninsured by the green card bureau? Would this already be the case when it is impossible to identify a liability insurer when looking up the trailer's registration number, or would it be the case when it can be established that the trailer is not covered by the tractor unit's motor vehicle liability insurance (see Danish motor vehicle liability insurance legislation described in question C)? Under what authority the trailer be considered uninsured by the green card bureau? Please also include and enclose relevant references to statutory rules and case law.]

The question of whether the semi-trailer should be considered to have been insured or not is a matter on which this national bureau cannot and should not rule. The intervention of the Spanish bureau is due to the fact that the accident occurred in Spanish territory and was caused by foreign vehicles. Consequently, the Spanish bureau must intervene by paying the corresponding compensation to the injured third party and requesting reimbursement from the national offices of the countries in which the vehicles are normally based. This is what determines the reimbursement request to the Danish bureau for the proportion of fault that corresponds to the Danish vehicle.

[In relation to DFIM's question 6, the bureaux are asked to answer the following question E:
Where a non-resident trailer coupled to a tractor unit caused a road traffic accident in 2016 in the country, would the owner of the trailer and the owner of the tractor unit each be liable for the full loss (100%) suffered by the injured party, and would the injured party therefore be able to choose which of
the owners the injured party wanted to be fully (100%) compensated by, or would the two owners only be liable to the injured party for a portion of the losses suffered by the injured party (for example 50/50 or 70/30). Please also include and enclose relevant references to statutory rules and case law.]

Jurisprudence tends to consider that when there are several people responsible for the damage caused in a traffic accident, there is “improper solidarity” among them, which implies that the injured party can claim any of them for the entire compensation and the claimed party must address this claim. The injured party can also claim against several or all the jointly responsible parties at the same time. This decision aims to make it easier for the injured party to make the claim. However, once the proportion of responsibility that corresponds to each of the causes of the damage is determined or, in the absence of determination, another subsidiary rule is applied for the distribution of blame (such as the well-known 70%-30% rule), The one who had paid the compensation may claim from the others the part that corresponds to them, according to their percentage of fault. That is to say, the injured party can turn against any person responsible, when there are several, and it must address the claim, but once the compensation is paid, it will have the right to claim against the other persons responsible for the part that proportionally corresponds to each one.

[In relation to DFIM's question 6, the bureaux are asked to answer the following question F:
If the owners of the trailer and the tractor unit were each fully liable to the injured party for the loss (100%) suffered by the injured party and jointly and severally liable to the injured party for the full loss (100%) (see question A above), and the motor vehicle liability insurer of the tractor unit paid full compensation for the injured party's loss (100%), please state whether such motor vehicle liability insurer had recourse against the owner of the trailer, and if so, to what extent and under what conditions - especially if the liability of the owner of the trailer to the injured party was covered by the motor vehicle liability insurance for the tractor unit and was therefore co-insured by the same motor vehicle liability insurer as under the Danish scheme described in question C. Please also include and enclose relevant references to statutory rules and case law.]

Spanish law requires that both the tractor unit and the semi-trailer that exceeds 750 kg have their own civil liability insurance. Likewise, unless another distribution of blame is determined due to proven circumstances, the 70%-30% rule applies. For this reason, according to Spanish law, once the compensation has been paid by the Spanish bureau, it is not possible to request a 100% refund of the amount from the national bureau of the country in which the tractor unit is normally based, because in our law there is separate civil liability for the tractor and the semi-trailer.

[In relation to DFIM's question 7, the bureaux are asked to answer the following question G:
Reference is made to the reply to question 6. Is the percentage allocation only relevant in relation to an internal recourse settlement between the owner of the trailer and the owner of the tractor unit after the injured party has received full compensation (100%) for their losses, or does the percentage allocation also apply in relation to the payment of compensation to the injured party to the effect that the tractor unit only needs to pay compensation to the injured party equal to 50/70% of the losses suffered by the injured party. Please also include and enclose relevant references to statutory rules and case law.]

The distribution of the percentages of responsibility is relevant for each of the vehicles causing the damage. The injured party has suffered damage that must be

fully compensated by the vehicles causing this damage and it is irrelevant which of the responsible parties pays the compensation. Joint and several liability means that you have the right to demand compensation from any of those responsible, while the percentages of fault will be a relevant issue for those responsible to each take charge of the part that corresponds to them as determined in the Judgment or by through another criterion (such as the conventional 70%-30%), or the responsible person who has paid claims against the others in the proportion that corresponds to each one, but these percentages are not enforceable against the injured third party in a first claim.

[In relation to DFIM's question 7, the bureaux are asked to answer the following question H:
Reference is made to the reply to question G. If the percentage allocation is only relevant in an internal settlement of recourse claims between the owner of the trailer and the owner of the tractor unit after the injured party has received full compensation (100%) for their losses, then why does the green card bureau interfere in such settlement between the owner of the trailer and the owner of the tractor unit and their respective motor vehicle liability insurers when the injured party has received full compensation (100%) for their losses. Please also include and enclose relevant references to statutory rules and case law.]

The green card bureau does not interfere in an agreement between owners, but is limited to carrying out its functions in accordance with current legislation. Thus, both in accordance with the Internal Regulations that govern relations between national insurance offices (particularly articles 5 and 6), and the ministerial orders that regulate the functions of Ofesauto (the previous one in force at the time of the accident and the current one), the Spanish office paid the compensation that the injured party was entitled to receive and claimed from the Danish office the reimbursement of 30% of said compensation (given that the semi-trailer was normally based in Denmark and that Spanish law refers to conventional agreements between insurers that in turn have established the 70%-30% rule). The Danish office paid, in accordance with current regulations and is now pursuing a recourse claim against the third party responsible for the damage. All these actions are in accordance with the law.

[In relation to DFIM's question 8, the bureaux are asked to answer the following question I:
Assuming that the accident in 2016 was covered by the Green Card system and should be governed by the Internal Regulations, and that the owner of the tractor unit was jointly and severally liable with the owner of the trailer for the full loss (100%) suffered by the injured party, then why did the green card bureau not claim the full amount of loss (100%) from the tractor unit's motor vehicle liability insurer or refer the injured party to such insurer? If the green card bureau is of the opinion that the motor vehicle liability insurer covering the tractor unit was not obliged to pay full compensation to the injured party for the loss suffered by the injured party, please state the statutory provisions and/or case law used as a basis for the reply. Please also include and enclose relevant references to statutory rules and case law.]

The green card bureau did not claim 100% of the losses nor did it refer the injured party to the tractor unit's insurer because none of these actions are in accordance

with the rules that regulate the operation of the bureau. The bureau paid compensation to the third party injured by an accident caused in Spanish territory by a vehicle from another Member State and, once paid, became the creditor of the national bureaus of the vehicles that caused the accident. Spanish law refers to agreements between insurers in this type of accident (with tractor and semi-trailer), unless another distribution of blame has been determined in a judicial resolution (which was not the case). These agreements establish the 70%-30% rule, so the bureau could not demand 100% of the compensation from the national tractor bureau, but rather distribute it as it did.

At this point we must remember that the Court of Justice of the European Union, in its Judgment of June 10, 2021 (C-923/19), has indicated, in interpretation of Directive 2009/103, that article 1.1 of The Directive clearly establishes that trailers constitute an autonomous category of vehicles, they do not form a single vehicle when transported by the tractor unit, stating in its point 31 that:

"If a trailer, or a semi-trailer, ceased to be a 'vehicle' within the meaning of Article 1, point 1, of Directive 2009/103 when coupled to a tractor vehicle, that would undermine the predictability, stability and continuity of the obligation laid down in the first paragraph of Article 3 of that directive, compliance with which is, however, necessary in order to ensure legal certainty (see, by analogy, judgment of 29 April 2021, Ubezpieczeniowy Fundusz Gwarancyjny, C-383/19, EU:C:2021:337, paragraph 52)".

[In relation to DFIM's question 9, the bureaux are asked to answer the following question J:
Was there in 2016 and is there today any statutory authority empowering (1) the national green card bureau which has paid compensation to the injured party, or (2) the green card bureau which has reimbursed the national green card bureau in the injured party's home country for the compensation paid to the injured party to bring a recourse claim against the owner or user of a trailer in respect of the compensation paid to (1) the injured party or (2) the national green card bureau, if the liability of the owner of the trailer to the injured party was covered by the motor vehicle liability insurance covering the tractor unit, and the trailer was thus insured as described in question C concerning the Danish liability insurance scheme. If the answer is yes, please state the statutory provisions or case law used as a basis for the reply.]

In accordance with the Internal Regulations of the Council of Bureaux and the Ministerial Orders that regulate the functions of the Spanish bureau, both those in force at the time of the accident and the current ones, the Spanish bureau provided compensation to third parties injured by an accident in the territory Spanish caused by vehicles with establishment in another Member State, becoming from the moment of payment a creditor of the national bureaus of the causing vehicles, who in turn can exercise the recourse claim against whomever corresponds in accordance with their own legislation."

Anbringender

Dansk Forening for International Motorkøretøjsforsikring (DFIM) har anført navnlig, at grønkortordningen går ud på bl.a., at når køretøjer indregistreret i Danmark viser sig ikke at være forsikret, uanset formodningen herom, er DFIM

forpligtet til at erstatte skadeudgiften for den del, som det uforsikrede køretøj er ansvarlig for efter skadestedets lovgivning. Efter grønkortordningen betales udgiften i første omgang af grønkortbureauet i skadelidtes hjemland, som herefter indtræder i skadelidtes rettigheder. Når grønkortbureauet efter grønkortordningen har opnået refusion af grønkortbureauet i det land, hvor det skadevoldende køretøj er registreret, indtræder sidstnævnte grønkortbureau i skadelidtes rettigheder. Efter såvel dansk, tysk som spansk ret kan grønkortbureauet herefter søge regres direkte mod skadevolderen, hvis køretøjet er uforsikret.

Skadelandets ret finder anvendelse på sagens tvist, både for så vidt angår pligt til at tegne forsikring, ansvarsfordelingen og hjemlen til regres. I den tyske sag er det således tysk ret, og i den spanske sag er det spansk ret. Subsidiært gøres det gældende, at der er regresadgang efter dansk ret, jf. § 21 i dagældende bekendtgørelse om ansvarsforsikring for motorkøretøjer mv.

Bevisbyrden for, at trailerne var forsikrede, påhviler Krone, der som ejer og udlejer er nærmest til at dokumentere forsikringsforholdene. Denne bevisbyrde har Krone ikke løftet.

Efter tysk og spansk ret anses en trailer for uforsikret, når der ikke er tegnet selvstændig ansvarsforsikring for traileren. Det er ubestridt, at der ikke var tegnet selvstændig ansvarsforsikring for trailerne. Da det er tysk og spansk ret, der finder anvendelse, er det uden betydning, at trailerne efter dansk ret ville være dækket af trækkerens motoransvarsforsikring. Det er i øvrigt udokumenteret, at trailerne i denne sag var dækket af trækkernes ansvarsforsikring. De to trailere var således uforsikret efter både tysk og spansk ret.

Ansvaret er korrekt fordelt efter tysk ret med 50 % af skadeudgiften til traileren og efter spansk ret med 30 % af skadeudgiften til traileren.

DFIM har som dansk grønkortbureau herefter ret til regres mod Krone som uforsikret skadevolder for den skadeudgift, som DFIM har afholdt over for det tyske og spanske grønkortbureau i anledning af færdselsuheldene.

Krone Fleet Danmark A/S har anført navnlig, at de to dansk indregistrerede trailere, som var involveret i de to færdselsuheld, var dækket af en ansvarsforsikring, selv om der ikke var tegnet selvstændig ansvarsforsikring for dem.

Dansk indregistrerede trailere vil altid være medforsikret på europæisk indregistrerede trækkeres motoransvarsforsikring, når sådanne vogntog benyttes i Tyskland og Spanien.

Det følger af artikel 3 i det 5. motorkøretøjsforsikringsdirektiv (2009/103), at en trækkers motoransvarsforsikring skal dække skader, der forårsages i andre medlemsstater, i overensstemmelse med disse staters lovgivning.

Efter tysk og spansk ret gælder desuden et solidarisk ansvar for indehaveren af den trækkende enhed og indehaveren af et påhængskøretøj for den fulde skade, som det sammenkoblede vogntog måtte forvolde skadelidte. Da den trækkende enhed herefter over for skadelidte hæfter for den fulde skade forvoldt af det sammenkoblede vogntog, hvilket erstatningsansvar skal være dækket af trækkerens motoransvarsforsikring, er det erstatningsansvar, som indehaveren af påhængskøretøjet måtte pådrage sig over for skadelidte i anledning af skaden, automatisk medforsikret på den trækkende enheds motoransvarsforsikring.

Bevisbyrden for, at trailerne var uforsikrede, påhviler DFIM, og den bevisbyrde er ikke løftet.

Spørgsmål om lovvalg og ansvar uden for kontrakt har ikke relevans for sagen, da retsforholdet mellem DFIM og Krone, der begge er hjemmehørende i Danmark, ikke er internationalt.

DFIM's adgang til regres følger hverken af tysk ret eller af spansk ret. Det vil alene være aktuelt for det spanske og tyske grønkortbureau at rette refusionskrav mod det grønkortbureau, hvor det skadevoldende køretøj er hjemmehørende (indregistreret), hvis det skadevoldende køretøj er ukendt eller uforsikret. Krones trailere var imidlertid ikke uforsikrede, da de er dækket af trækkerens lovpligtige ansvarsforsikring.

Selv hvis grønkortordningen måtte indebære, at det tyske og spanske grønkortbureau kunne rette refusionskrav mod DFIM, alene fordi trailerne er indregistreret i Danmark, må spørgsmålet om DFIM's adgang til regres mod Krone afgøres efter dansk ret. Adgang til regres mod Krone vil i den situation forudsætte, at DFIM har betalt refusionen, fordi trailerne var uforsikrede, hvilket som nævnt ikke er tilfældet.

Højesterets begrundelse og resultat

Sagernes baggrund og problemstilling
Den 6. juni 2016 påkørte et vogntog bestående af en polsk indregistreret sættevognstrækker (herefter trækker) og en dansk indregistreret sættevogn (herefter trailer) en tysk indregistreret personbil. Ved færdselsuheldet, der fandt sted i Tyskland, blev personbilen beskadiget.

Den 13. september 2016 påkørte et andet vogntog bestående af en litauisk trækker og en dansk indregistreret trailer en spansk indregistreret personbil, sådan at personbilen blev beskadiget. Færdselsuheldet fandt sted i Spanien.

De to trailere, der var indblandet i færdselsuheldene, var udlejet af Krone Fleet Danmark A/S (Krone).

I sagerne har henholdsvis det tyske grønkortbureau (Deutsches Büro Grüne Karte e.V.) og det spanske grønkortbureau (Oficina Española de Aseguradores de Automóviles) erstattet skadelidtes udgifter til reparation af de to beskadigede personbiler.

Herefter har det tyske og spanske grønkortbureau med henvisning til artikel 5 i de såkaldte Internal Regulations (grønkortaftalen), som regulerer de gensidige relationer mellem grønkortbureauerne, anmodet det danske grønkortbureau, Dansk Forening for International Motorkøretøjsforsikring (DFIM), om refusion for betalingerne i anledning af de to færdselsuheld. Det tyske grønkortbureau anmodede om refusion af hele reparationsudgiften vedrørende færdselsuheldet i Tyskland, mens det spanske grønkortbureau anmodede om et beløb svarende til 30 % af reparationsudgifterne i anledning af færdselsuheldet i Spanien.

DFIM har betalt i henhold til refusionsanmodningerne og har efterfølgende modtaget refusion fra den polsk indregistrerede trækkers forsikringsselskab, TVM Verzekeringen, svarende til omkring halvdelen af det fulde erstatningsbeløb vedrørende uheldet i Tyskland.

Sagerne for Højesteret angår, om DFIM har krav på, at Krone refunderer DFIM's udgifter i anledning af de to færdselsuheld.

DFIM's regreskrav svarer til halvdelen af det fulde erstatningsbeløb i den tyske sag og til 30 % af det fulde erstatningsbeløb i den spanske sag.

Lovvalget
Færdselsuheldene omhandler parter fra flere forskellige lande og et skadested uden for Danmark. De krav, der udspringer af de to færdselsuheld, er krav om erstatning uden for kontrakt. Spørgsmålet om, hvilket lands ret sagerne skal afgøres efter, beror på dansk rets almindelige (uskrevne) deliktretlige lovvalgsregler.

Som anført i Højesterets kendelse af 31. august 2020 (UfR 2020.3747) må lovvalget i sager om erstatning ved færdselsuheld foretages under inddragelse af de tilknytningsmomenter, som er relevante for den konkrete sag. Det sted, hvor skaden er sket, må indgå med betydelig vægt, således at det kræver stærk tilknytning til et andet land, hvis dette lands lovgivning skal finde anvendelse.

I de foreliggende sager er færdselsuheldene som nævnt sket i henholdsvis Tyskland og Spanien. Uheldene involverede bl.a. personbiler forsikret og indregistreret i henholdsvis Tyskland og Spanien. Under hensyn hertil, og da der ikke foreligger omstændigheder, der kan føre til et andet resultat, finder Højesteret, at spørgsmålet om Krones pligt til at betale erstatning til de skadelidte – eller parter som er indtrådt i de skadelidtes sted – skal afgøres efter tysk ret i den tyske sag og spansk ret i den spanske sag.

Tysk og spansk ret
Der foreligger en erklæring fra det tyske justitsministerium fra maj 2018 og besvarelser fra det tyske og fra det spanske grønkortbureau om retsstillingen i Tyskland og Spanien på tidspunktet for færdselsuheldene i 2016.

Af erklæringen fra det tyske justitsministerium og af besvarelsen fra det tyske grønkortbureau fremgår, at ansvaret ved færdselsuheld med vogntog bestående af en trækker og en trailer i en situation som den foreliggende i Tyskland blev fordelt med halvdelen til trækkeren og halvdelen til traileren, jf. det tyske grønkortbureaus besvarelse af spørgsmål 1, 6 og 7. Ifølge besvarelsen fra det spanske grønkortbureau fordeles ansvaret i en tilsvarende situation i Spanien med 70 % til trækkeren og 30 % til traileren, jf. det spanske grønkortbureaus besvarelse af spørgsmål 2, 6, 7 og 8. I begge lande kan skadelidte rette sit fulde krav mod de to erstatningspligtige parter. Dette gælder, uanset om begge eller kun en af vogntogets dele er motoransvarsforsikret.

Det fremgår af besvarelserne fra de to grønkortbureauer endvidere, at der på tidspunktet for færdselsuheldene i såvel Tyskland som Spanien var krav om selvstændig ansvarsforsikring af trailere (i Spanien trailere med en totalvægt på over 750 kg), jf. det tyske grønkortbureaus besvarelse af bl.a. spørgsmål 3, C og J og det spanske grønkortbureaus besvarelse af bl.a. spørgsmål 2, 3, B og C.

Det fremgår desuden af grønkortbureauernes besvarelser, at i tilfælde, hvor sådan selvstændig forsikring ikke forelå, blev traileren anset som uforsikret, jf. besvarelsen af bl.a. spørgsmål 5 og D i den tyske sag og besvarelsen af spørgsmål 3 og C i den spanske sag.

Endelig fremgår det af besvarelserne fra de to grønkortbureauer, at retsstillingen efter tysk og spansk ret er sådan, at grønkortbureauet, der har udbetalt erstatning i anledning af en uforsikret skadevolders ansvar, indtræder i skadelidtes rettigheder og kan gøre regres mod ejeren af det uforsikrede køretøj, jf. besvarelsen af spørgsmål F og H i den tyske sag og besvarelsen af spørgsmål 9, 10 og 11 i den spanske sag.

Den konkrete bedømmelse

Parterne er enige om, at der ikke er tegnet selvstændig ansvarsforsikring for de involverede trailere.

På baggrund af besvarelserne fra grønkortbureauerne i Tyskland og Spanien må Højesteret herefter lægge til grund, at de to dansk indregistrerede trailere, der var involveret i færdselsuheldene i Tyskland og Spanien, må anses for uforsikret efter tysk og spansk ret. Det bemærkes i øvrigt, at Krone ikke har godtgjort, at trailerne i de to sager var medforsikret under trækkernes motoransvarsforsikringer.

Kravene må herefter rettes mod Krone som ejer af de to trailere. Da DFIM som dansk grønkortbureau har afholdt reparationsudgifterne i de to sager svarende til andelen af Krones ansvar efter henholdsvis tysk og spansk ret, er DFIM berettiget til at rette regreskrav mod Krone som sket.

Højesteret tager på den anførte baggrund DFIM's påstande til følge i begge sager med i alt 33.713,71 kr.

Højesteret tager endvidere DFIM's påstand om tilbagebetaling af sagsomkostningerne på samlet 100.000 kr. for sagernes behandling ved landsretten til følge.

Efter sagernes udfald skal Krone betale sagsomkostninger for landsret og Højesteret med i alt 330.387,50 kr. til DFIM. Heraf er 250.000 kr. til dækning af advokatudgift, 4.500 kr. til dækning af retsafgift og 75.787,50 kr. til dækning af omkostninger ved oversættelse af dokumenter. Der er ved fastsættelsen af beløbet til dækning af advokatudgift taget hensyn til sagernes karakter og betydning.

THI KENDES FOR RET:

Krone Fleet Danmark A/S skal betale 133.713,71 kr. til Dansk Forening for International Motorkøretøjsforsikring.

I sagsomkostninger for landsret og Højesteret skal Krone Fleet Danmark A/S betale 330.387,50 kr. til Dansk Forening for International Motorkøretøjsforsikring.

De idømte beløb skal betales inden 14 dage efter denne højesteretsdoms afsigelse.

Sagsomkostningsbeløbet forrentes efter rentelovens § 8 a.