



## **Direct claim under an insurance contract: Can a Dutch party claim damages from a Czech insurer?**

This article concerns the international transport of goods by road.

### **Case study**

A Dutch party ordered and paid for goods (in this case, expensive solar panels) from a Czech party. The delivery was to take place in the Netherlands. The Czech party used a carrier for the delivery. During transport, the goods were stolen by thieves. It transpired that the theft was attributable to the Czech party. Among other things, the Czech party had failed to take measures to prevent the theft.

The Czech party is insured with a Czech insurer. The Czech party submits the claim to that insurer. The insurer rejects the claim because, according to the policy conditions, damage caused by theft is not compensated if it is established that the theft is attributable to the insured party.

The Dutch party then claims damages from the Czech party, but the Czech party does not have the funds to pay for the damage. In order to obtain compensation for the damage, the Dutch party turns directly to the Czech insurer, arguing that this is a case of “direct action” and that the Czech insurer must compensate the Dutch party for the damage.

### **Insurance agreement**

The insurance terms and conditions state who the beneficiary is.

In this case, the beneficiary was the Czech party. This is logical, as the Czech party is the one who took out the insurance. This means that, under the insurance agreement, only the Czech party can claim on the insurance.

### **Direct action**

Whether direct action is possible depends on the applicable national law.



The insurance terms and conditions specify which law applies. In this case, Czech law applied to the insurance contract. This means that it must be determined whether direct action against the insurer is possible under Czech law.

In a few exceptional cases, it is possible to take direct action against an insurer, for example in the case of motor vehicle liability insurance. This is compulsory insurance. In the event of damage caused by a vehicle to another property or person, the injured party has a “personal right to compensation” against the insurer. However, this is not the case here.

This case concerns a different type of damage, namely damage to goods. This involves voluntary insurance taken out by one party. Under Czech law, direct action is not possible for this type of damage.

### **What does this mean for you?**

If a Dutch party claims to have a claim on the basis of direct action, it is important to first determine what damage is involved and which law applies. It is good to know that direct action is not possible under Czech law. Only if the damage arises from motor vehicle liability insurance (compulsory insurance) is direct action possible.

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