

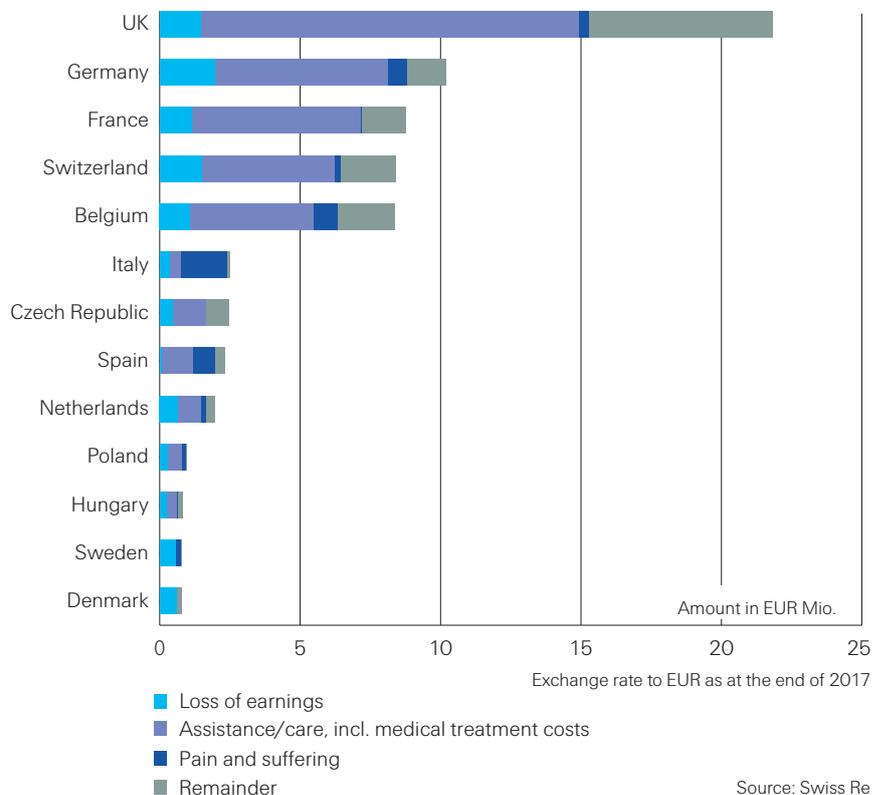
# Bodily injury landscape Europe

## Spain

Within the European Union, harmonisation of motor insurance regulations facilitates the free movement of people and vehicles. With regard to bodily injury compensation, claim components such as “loss of earnings”, “assistance”, and “pain and suffering” are already recognised across Europe. However, assessment of and compensation for severe bodily injury claims can differ considerably across countries in Europe.

In this 2018 edition of our “Bodily injury landscape Europe” series we outline the main changes in motor liability since the last overview published in 2015. The series, put together by claims experts at Swiss Re, takes a look at recent regulatory developments in 13 European countries. It also provides an overview by country of compensation levels in severe bodily injury cases based on Swiss Re’s tetraplegia and fatality scenarios.

*Tetraplegia claims scenario  
Total claims cost in selected European  
countries as of 2017*



The tetraplegia claims scenario for 2017 shows that the differences in compensation levels across European countries continue to be large. Claims costs for the tetraplegia scenario have increased to EUR 21.8 million in the UK. This compares with figures of below EUR 1 million for countries like Denmark, Sweden and Hungary.

### Costs for assistance and care still loom large

Compensation for assistance and care varies greatly from country to country. For the five countries with the highest levels of compensation, assistance and care amounts to more than 50% of the total. “Loss of earnings” is the second most important single claim component, reaching EUR 1 million in countries like the UK, Switzerland and Germany.

Differences across countries are also pronounced for pain and suffering. In Belgium, Italy and Spain in particular, pain and suffering makes up a considerable share of the total bodily injury compensation per country.

## Motor insurance market developments in Europe

In today's technology landscape, autonomous cars, telematics-based insurance and smartphone-induced distracted driving are the trends that are changing the motor insurance world – and capturing the most attention. These trends do not have a direct impact on the systems used for compensation of bodily injury to third parties, however. So, what is driving recent developments in bodily injury compensation in Europe? Two clear drivers are the reduction in the discount rate in some countries such as the UK, and far-reaching regulatory reforms in others such as the new Baremo in Spain. Also, bodily injury inflation from 2014 – 2017 varied considerably by country, from less than 5% per annum in some stable countries to more than 15% per annum in others. We highlight some of the most recent developments in bodily injury compensation in Europe here:

### Discount rates for personal injury claims

The continuing low interest rate environment has led to a downward trend in discount rates impacting the present value of future cash flow. For instance, the decision to cut the discount rate from 2.5% to minus 0.75% in the UK effective March 2017 was not fully anticipated by the industry; the rate adjustment has adversely impacted motor reserves in particular and the motor business in general.

### The new Spanish Baremo

The first compulsory compensation system for fatality or injuries in traffic accidents (the so called "Baremo") was implemented in Spain in 1995. More than 20 years later, a panel of experts appointed by the Insurance Authority carried out an in-depth review of the system. In September 2015 the Spanish Parliament approved the new "Baremo" and it came into force on 1 January 2016. Within the first two years, it appears the reform has achieved what it set out to do: adjust compensation levels for fatality and severe injuries cases and reduce the level of fraud in frequent claims such as whiplash. In terms of compensation, the most noticeable changes affect prejudiced parties in case of fatality and third-party assistance and loss of earnings in case of injuries. Prejudiced parties in case of death have been extended to close relatives and the regulation and level of compensation for third-party assistance and loss of earnings has been reviewed in line with the principle of full reparation of damage.

### ECJ case C-162/13, Damijan Vnuk v Zavarovalnica Triglav d.d.

In 2007, Mr Vnuk was knocked off a ladder by a reversing tractor on a farmyard. The insurer Triglav refused to pay as the tractor was not being used as a vehicle but as a propulsion device (tractor). The Court of Justice of the European Union ruled that compulsory insurance extends to: (i) any use, (ii) consistent with normal function of vehicles, (iii) anywhere. The ECJ Vnuk Judgment is a final judgment directly applicable in all member states.

### Motor & Terror

The recent terrorist attacks involving motor vehicles in many countries have dramatically highlighted a vulnerability of our society – one that can take a heavy human toll and cause very large losses. To find answers to the crucial questions concerning the insurance industry's potential exposure via motor third party liability covers, Swiss Re has looked at the legal regulations in selected European countries in light of likely scenarios based on past experience. We have compiled the findings in a new publication entitled: "Terrorist attacks through the use of motor vehicles in selected European countries".

For more information about the report, please contact your Swiss Re claims expert.

## The legal and claims environment in Spain

- The 8/2004 Royal Legislative Decree sets minimum third-party limits for motor insurance at EUR 70 million per bodily injury claim regardless of the number of victims, and EUR 15 million for property damage claims.
- Within the scope of motor liability insurance, Spain's Insurance Compensation Consortium (Consortio), a public corporate entity attached to the Ministry of Economy, assumes the mandatory motor cover not accepted by insurance entities, as well as the cover for vehicles belonging to the State, the autonomous regions, local corporations and public bodies. For subsidiary cover, Consortio indemnifies damages in the event of losses caused by unknown vehicles, or those that are uninsured or have been stolen; or in cases where the insurance entity has been declared bankrupt, in administration, insolvent, in liquidation with public administration intervention, or when the company has been taken over by Consortio itself.
- The national calculation basis for bodily injury claims (Baremo) was established in 1995 and validated by the Constitutional Court in 2000.

### Recent legislative changes

- Act 35/2015 of 22 September 2015, with effect from 1 January 2016, reformed the Baremo or system of compensation for fatality or injuries caused to persons in traffic accidents. The Baremo is the compulsory system for all victims of road traffic accidents and applies to pecuniary and non-pecuniary losses. Out-of-court settlements are incentivised by penalties for late payment of claims of up to 20%.

## The structure of the new Baremo and basic definitions

Act 35/2015 is made up of two chapters and three series of tables. Chapter I covers the general rules applicable to the system. Chapter II is divided into three sections: Compensation for fatality; compensation for permanent injuries and compensation for temporary injuries. The structure of the compensation tables is set out below.

### System of compensation for fatality or injuries in motor accidents (Act 35/2015)

#### Chapter I: General rules and principles

Section 1: General provisions

Section 2: Definitions

#### Chapter II: Rules to assess bodily injury:

Section 1: Compensation for fatalities

Section 2: Compensation for permanent injuries

Section 3: Compensation for temporary injuries

#### Series 1 tables:

Table 1A: Compensation for fatalities/Basic personal damage (moral damage)

Table 1B: Compensation for fatalities/Specific personal damage (moral damage)

Table 1C: Compensation for fatalities/Patrimonial damage (material damage)

Table 1C1: Loss of earnings spouse (net income/age of spouse/years of marriage 15 to 85 years)

Table 1C1d: Loss of earnings spouse with disability (net income/age of spouse)

Table 1C2: Loss of earnings sons and daughters (net income/age of son – daughter)

Table 1C2d: Loss of earnings sons and daughters with disability (net income/age of son – daughter)

Table 1C3: Loss of earnings parents (net income/age of parents)

Table 1C4: Loss of earnings siblings (net income/age of sibling)

Table 1C4d: Loss of earnings siblings with disability (net income/age of sibling)

Table 1C5: Loss of earnings grandparents (net income/age of grandparent)

Table 1C6: Loss of earnings grandchild (net income/age of grandchild)

Table 1C6d: Loss of earnings grandchild with disability (net income/age of sibling)

Table 1C7: Loss of earnings close relative (net income/age of close relative)

Table 1C7d: Loss of earnings close relative with disability (net income/age of close relative)

#### Series 2 tables:

Table 2A1: Medical Baremo

Table 2A2: Economic Baremo

Table 2B: Indemnity for permanent injuries: Specific personal damage (moral damage)

Table 2C: Indemnity for permanent injuries: Patrimonial damage (material damage)

Table 2C1: Future medical assistance

Table 2C2: Number of hours for third-party assistance

Table 2C3: Compensation for third-party assistance.

Table 2C4 & 2C7: Loss of earnings for absolute permanent disability

Table 2C5 & 2C8: Loss of earnings for total permanent disability

Table 2C6: Loss of earnings for partial permanent disability

#### Series 3 tables:

Table 3 : Indemnities for temporary injuries

### **The structure of the new Baremo and basic definitions contd.**

The new Baremo defines the different types of disability as follows:

- Severe disability/medical invalidity: the permanently disabled requires assistance to carry out the most basic activities.
- Absolute permanent disability/economic disability: unable to perform any type of work.
- Total permanent disability/economic disability: unable to carry out current profession, but still capable of working in another capacity.
- Partial permanent disability/economic disability: suffers a reduction in performance of no less than 33% for usual profession.

Some important considerations for the new Baremo:

- In case of fatality, the widowed, parents and/or grandparents, children, siblings and close relatives are entitled to compensation.
- The medical Baremo (Table 2A1) uses a points system to classify and assess permanent and temporary injuries (eg an amputated finger is rated at 7 to 21 points).
- Specific rules for assessing whiplash have been defined to reduce instances of fraud.
- In terms of moral damage the new Baremo distinguishes between basic personal damage and specific personal damage defined as the moral damage considering the personal, family, economic or social circumstances of the victim or injured party.
- Material damages include general losses, future healthcare expenses, third-party assistance, adaption of living space and/or motor vehicle, and loss of earnings.

### **Lump sum dominates vs. annuities**

From a legal point of view, annuities (also a mix of a lump sum and annuities) are allowed by law when agreed by all parties or imposed by the court. However, annuities are certainly an exception since the Baremo was established in 1995. The new Baremo includes conversion factors to transform lump sums into annuities and vice versa.

### **Retroactivity**

According to the transitory provision of Act 35/2015, the new system will only apply to traffic accidents that occurred after the law came into force on 1 January 2016. So far no significant retroactivity issues have been identified with the exception of a marginal number of cases where heads of damage previously accepted under the old Baremo (ie loss of earnings) have been quantified by courts according to the new Baremo. The insurance industry made great efforts throughout 2015 to settle complex claims in order to avoid retroactivity related adverse court decisions.

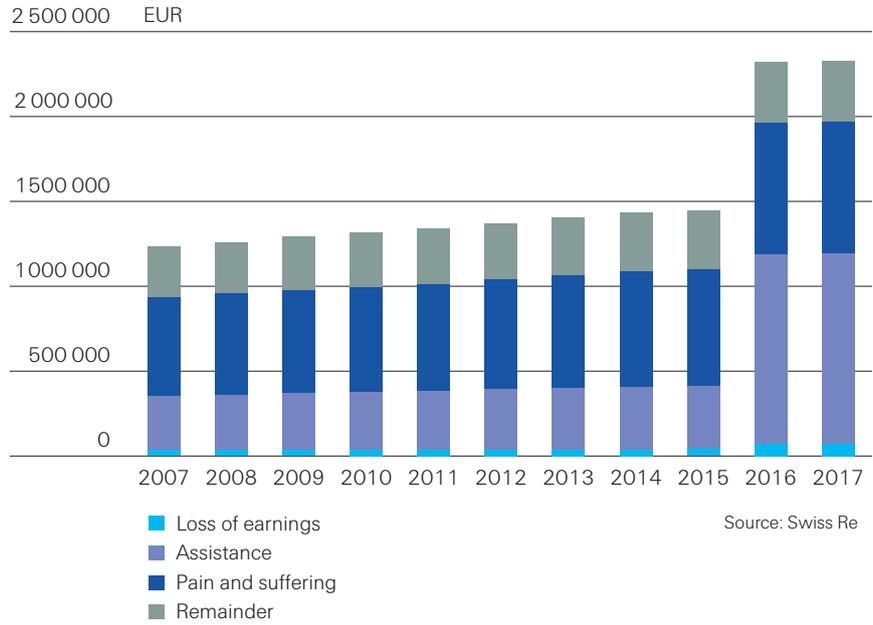
### **Regular updates of the system**

The Baremo tables are updated on a yearly basis according to the official pension index established annually in the Spanish Budget Act (0.25% for 2017). However, loss of earnings and cost of third-party assistance are updated according to relevant actuarial standards. The future healthcare expenses table is reviewed in accordance with the relevant agreements with the public healthcare services.

**Tetraplegia claim scenario**

*30-year old male, married, single earner, 2 minor children, average income in dependent employment, severe spinal or head injury, no ventilation necessary, 100% disablement, no return to work, highest level of assistance/care.*

*Tetraplegia claim scenario 2017 – Spain*



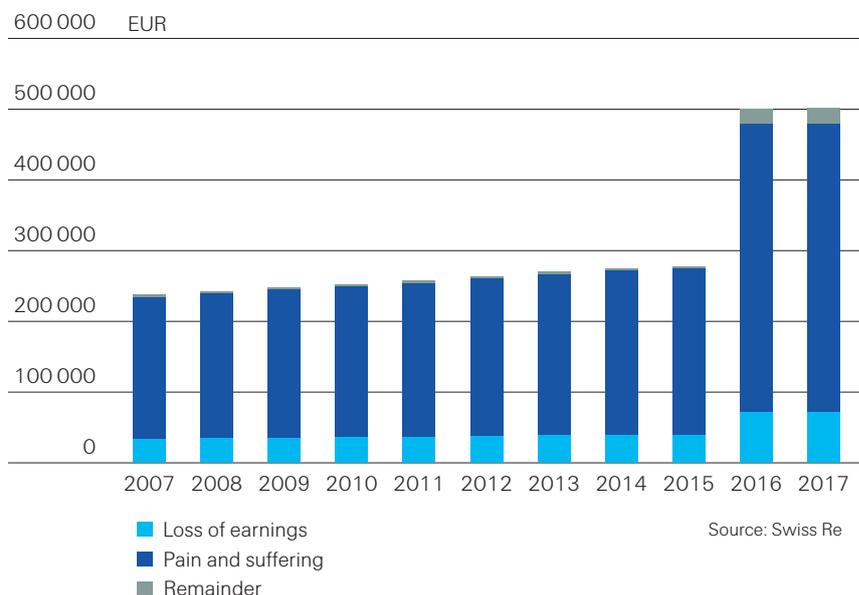
**2015-2017**

The substantial increase from 2015 to 2016 is mainly driven by the new regulation for loss of earnings and third-party assistance the new Baremo implemented as of 1 January 2016.

## Fatality claim scenario

30-year old male, married, single earner, 2 minor children, average income in dependent employment

Fatality claim scenario 2017 – Spain



### 2015–2017

The main driver of the increase in compensation for fatalities under the new Baremo is the five separate categories of victims entitled to compensation. This is in contrast to the old system where levels of compensation were informed by the structure of the victim's family.

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