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.

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 2016 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 Poland

Recent legislative changes

- The 5th European Motor Directive, implemented in Poland in January 2012, established minimum limits for insurance: EUR 5 million per accident for personal injury and EUR 1 million per accident for property damage, regardless of the number of victims. These limits are to be reviewed every five years to take account of the development of the European consumer price index. In 2018 the guaranteed sum is expected to increase to EUR 6.07 million for bodily injury and EUR 1.55 million for property damage.
- Many of our clients have reported that the legal community in Poland has become more aggressive in running personal injury claims. There has also been a noticeable increase in the number of accident management companies and legal offices.
- The right for close relatives to claim for pain and suffering in fatal injury cases was introduced in 2008.
- Poland’s average premium of PLN 550 is quite low for motor business in Europe.

Procedural aspects

- Significant court case overload; on average it takes 3–4 years to obtain a first instance judgment.
- According to a report from Axco Insurance Information Services Ltd, litigiousness is still low in Poland compared to the rest of Western Europe, but it is on the increase. In cases of less severe injuries, however, claimants tend to pursue quick settlements with low levels of compensation.
- Lawyers’ fees are based on a tariff system, with predefined minimums.
- Contingency fees, whereby attorneys only receive a fee if the action is successful, are uncommon in Poland.
- Success fees (fees outside the boundaries of the normal tariff), on the other hand, are occasionally observed and can reach up to 50% of the compensation paid.
General

- The Polish Financial Supervision Authority (KNF) issued guidelines on claims settlement in motor insurance. The guidelines apply to claims reported after 31 March 2015 and cover the following:
  - Organisation, management and supervision of claims handling processes;
  - The way claims handling is conducted; and
  - Methods of determining the amount of compensation.
- The level of indemnification in Poland is relatively low, but is increasing steadily, as is claims awareness, especially with regard to pain and suffering. This trend is mainly driven by the activities of both law firms and accident management companies.
- In general, claimants in personal injury cases prefer lump sum compensation payments to periodical annuity payments. In cases of severe bodily injury, however, the preference is for annuity payment schemes.
- Adjustment of claims due to future inflation is sometimes observed and decided by companies individually.
- Payments and reserves are only indexed if requested by the claimant.
- There is no regulation in Poland for discounting. The discount factor can vary from minus 0.3 – 0.5%, with most companies using 0%. Rates can vary depending on the assumptions of the insurer.
- In 2014 the limitation period was increased to 20 years (from 10 years). Claims resulting from an accident considered to be a criminal offence are also subject to a limitation period of 20 years from the date of the accident. With the limitation period significantly extended from 10 to 20 years, files which were closed many years ago might now be reopened.
- As of 1 January 2016, insurers are obliged to inform the claimant if the guaranteed sum is exhausted by 80% (a rare occurrence in our experience).

Loss of earnings

- Loss of earnings is calculated up to retirement age, and based on average salary, excluding the taxable part of the income.
- A law reform in 2012 provided for a gradual increase in the retirement age to 67.
- The Polish social security system pays part of the loss of earnings (allowance), which is either equal to the minimum wage (PLN 1 632 = EUR 390 per month), or constitutes a percentage of the average wage (PLN 3 823 =EUR 924 per month).
- In cases of disability, the social security department calculates the amount of monthly pension granted to the injured person based on different factors (eg. number of years in work before the accident if the disability is related to an accident at work).
- The liability insurer is responsible for the direct loss, which is the difference between the wages earned by the victim before the accident and the amount of allowance or pension paid by the social security fund.
**Assistance and medical treatment**
- The majority of medical services are provided by public health institutions; public sector insurers have no recourse to motor third party liability (MTPL) insurers.
- Emergency treatment is only provided in state hospitals and is covered by the social security system. There is no recourse against the liability insurer.
- Costs of subsequent medical treatment (care costs) are reimbursed by the private sector insurer.
- Neither the state system nor the private sector insurer covers private medical treatment.

**Pain and suffering**
- An amendment to the Civil Code in 2008 introduced the concept of pain and suffering compensation for close relatives of a person killed in a road accident. The implementation of this provision has led to increased loss amounts in respect of bodily injury.
- In case of bodily injury, damages awarded for pain and suffering can range from PLN 200 000 (EUR 48 000) to PLN 500 000 (EUR 120 000).
- In cases of fatal injury, damages for pain and suffering can amount to PLN 250 000 (EUR 60 000) per individual. Only close relatives are eligible for compensation.
- The trend towards higher compensation of relatives in fatal accident claims is, inter alia, a consequence of the air crash at Smolensk in April 2010, following which the government paid compensation for pain and suffering well above market levels.

**Remainder**
- The injured person receives compensation for the adaption of their living space and/or motor vehicle to their needs, or for the purchase of a wheelchair.
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 – Poland

Source: Swiss Re
Fatality claim scenario

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

Fatality claim scenario 2017 – Poland

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