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 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 Sweden

- Typically, Swedish motor third-party liability (MTPL) insurance claims have a rather long run-off. This is because most personal injury cases, specifically the more severe among them, are settled through annuity payments (paid over a lifetime). In many instances the severity of a claim only emerges at a later stage. Swedish law prescribes that victims’ cases be re-assessed should their health deteriorate or should other circumstances come to light which could influence the level of indemnification.

- The first major forest fire in Sweden, in the summer of 2014, together with other major property damage claims, triggered a debate about the coverage of such events under the Swedish MTPL act. The first controversial question is whether a motor vehicle actually is ”in traffic”, which is a requirement to be covered by the Act. In July 2017, in the ‘Torslanda’ case, the Supreme Court of Sweden decided that the vehicle, which – due to a short circuit in the engine – was in motion and caused extensive damage to a school, was not in traffic. The Court clarified that the initial cause was a fire in the car, not someone causing the car to move. A further question was whether a causal link could be established between the specific act and the damage sustained. Here, the Court took a practical approach by considering the initial cause and the extent of damages.

- Should some events indeed fall under the scope of cover provided by the Swedish MTPL Act, the 2014 forest fire will be the first claim to exceed the SEK 300 million motor policy limit. The discussion in the market has consequently expanded to the maximum permissible limit to be insured under the Act.

Legislative changes

- A change in the limitation law has been in force since 1 January 2015. The previous legislation had two different types of limitation: 3 years from when the claimant became aware of a potential claim, or 10 years from a certain time. The latter point, however, was unclearly defined in the law. Due to this flaw, the 2015 law is enforced strictly. It stipulates a general limitation period of 10 years after the accident occurred.

- A Swedish Supreme Court decision in 2013 showed the impact of the loss of income component on a claim. For a period of time, a case was reserved at a level above SEK 100 million, which is extremely high for a Swedish bodily injury claim. The court decided that if the plaintiff could prove his asserted loss of income, he would have to be indemnified at the level of the reserve. This decision confirms that there is no cap for the loss of income element of a personal injury claim in Sweden, with the exception of the SEK 300 million limit for MTPL.

Procedural aspects

- Litigiousness in Sweden is relatively low. All bodily injury claims with a level of disability above 10% must have the respective level of compensation confirmed by the Traffic Board. The Traffic Board works to ensure that the injured party receives fair treatment, and reasonable compensation for the bodily injury sustained, irrespective of which MTPL insurer is regulating the claim. The existence of the Traffic Board helps to ensure that Sweden has a low number of lawsuits in MTPL bodily injury claims compared to other European countries.

Claims and compensation

- A major part of any personal injury claim in Sweden is carried by the social security system, not only compensating the victim for medical expenses, but also paying for assistance and rehabilitation, as well as for major parts of the loss of income claim component.
Loss of earnings

- The loss of earnings component of a claim is calculated as follows: Expected income of the claimant had the accident not occurred, less realised earnings after the accident, social benefits from the social security system, and possible insurance coverage provided by the employer. There is no cap in Sweden for this head of damage, with the exception of the SEK 300 million MTPL limit.
- The social security system carries 80% initially and then 67% of the loss of income claim, up to a cap of 7.5 times the base amount (annually adjusted, based on Sweden’s consumer price index). The base amount in 2017 was equivalent to SEK 44,800.
- In 2010, a new guideline was introduced for the calculation of loss of income for children and young persons who have not yet started working life. The guideline is intended to produce a higher predictability of such claims, and set a market standard. The whole industry applies this guideline as well as the accompanying statistics. In December 2013 the first judgment on the guideline was delivered. The question was whether the loss of income claim component should be determined according to the provisions of the new guideline only, or whether the income situation of the parents and/or siblings of the injured party should also be considered. All instances up to and including the Swedish Supreme Court held that the guideline is the only means to calculate the loss of income claim when younger people are injured in an accident. When the future career is impossible to predict, the loss of income for children is around SEK 0.26 million per year.
- The loss of income claims component is indexed, with indexation performed annually. A discount factor is applied and mortality tables are taken into consideration.
Pain and suffering

- Indemnity is based on public tables, reflecting the level of impairment and age of the victim. Immediate indemnification is granted once the case is manifest, with a clear medical picture and future prognosis. Indemnity for this part can be expected in the region of SEK 100,000 for severe cases. A respective long-term indemnification will secure the claimant another SEK 2 million, depending on factors such as age and life impairment. Pain and suffering is also paid for scarring and disfigurement.

- In fatality cases, the spouse and children of the deceased are entitled to compensation, with deductions for social benefits; the same conditions apply to individuals living in a civil partnership.
**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 – Sweden**

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 – Sweden

Source: Swiss Re

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