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 the 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 the Czech Republic

In recent years there have been fewer cases of severe injuries and fatalities from road accidents in the Czech Republic. According to 2016 European Commission statistics, the number of road fatalities in the Czech Republic decreased by 16% from 2015 to 2016. This decrease in road fatalities was among the biggest across EU member states.

Recent legislative changes

With effect from 1 June 2008, minimum limits were established for motor third-party liability (MTPL) insurance:

- CZK 35 million for each injured or deceased individual.
- CZK 35 million for property damage or damages resulting from a loss of profit, regardless of the number of injured parties.

- A new Civil Code came into force on 1 January 2014, the largest change in Czech legislation in decades. Among other things, the new Civil Code superseded existing rules for the compensation of bodily injuries and gave greater power to the judges to decide what level of damages would be equitable. In response to the rather vague provisions in the new Code, the Supreme Court of the Czech Republic has published a recommendation for calculating settlements for bodily injury.

- A noticeable development is the high levels of compensation awarded in the Criminal Court. The development is directly linked to the new Civil Code, which does not specify levels of compensation. The Supreme Court (civil) recommendation is not binding in criminal procedures, making it difficult to predict Criminal Court rulings.

- A 2012 law reform has led to a gradual increase in the retirement age. Individuals born after 1977 will retire at the age of 67.

Procedural aspects

- While personal injury suits remain rare in the Czech Republic, the number of suits continues to increase. Long court delays are the main impediment to litigation. The implementation of the new Civil Code is likely to increase procedural complexity and lead to even longer delays in the future.

- Lawyers’ fees are based on a tariff system but it is also possible to work on a no win/no fee basis.

- In recent years, the insurance industry has noted an increasing number of lawyers with a special interest in traffic accident cases.

Claims and compensation

- The level of indemnification is increasing steadily alongside growing claims awareness.

- The Czech Insurers’ Bureau (CKP) has developed and is recommending a methodology for the calculation of annuity reserves for personal injury claims. The annuity parameters employed are to be updated on an annual basis. Since all insurers are using this tool, the Czech Republic is one of the few countries with consistent reserving standards for personal injury claims in the MTPL sector.

- There is no regulation in the Czech Republic for discounting. It is general practice and recommended by the CKP that claims are reserved for the full cost of settlement; however, with a discount in respect of annuities. Any anticipated recovery may be deducted from the ultimate gross loss.

- In case of a legal dispute, generally the full amount at dispute is reserved, including the cost of the proceedings.

- Generally, the future loss element in respect of bodily injury claims is compensated via a lifetime (or until retirement in case of loss of earnings) index-linked annuity.

- Due to wage inflation, but also as a result of the increased involvement of lawyers, claims costs have risen substantially over the years. This especially applies to care costs.
Loss of earnings
- Compensation for loss of earnings is based on the income before the accident, including the taxable part of the income. Loss of earnings is calculated up to retirement age (67).
- In cases of permanent disability, the Social Security Department generally pays a disability pension.
- The annuity is the difference between the state disability pension and the plaintiff’s pre-accident earnings, or the difference between the plaintiff’s pre- and post-accident earnings.
- The Czech Republic social security provider currently does not recover disability pensions paid to the victims of motor accidents from the MTPL insurer. This procedure may change in the future following the trend to shift costs from the public to the private sector.
- Since 2004, a change in the law has allowed lump sum compensation in cases of loss of earnings. Insurers base their lump sum offerings on CKP’s standard methodology. However, lump sum agreements are voluntary and therefore not at the discretion of the courts.

Assistance and medical treatment
- Any medical treatment/medication is paid upfront by the health insurance. In case of liability, the health insurer exercises recourse against the MTPL insurer.
- Healthcare in the Czech Republic is provided primarily on the basis of statutory health insurance, which is currently managed by a number of health insurance funds. Expenses paid by the health insurer are subrogated against the MTPL insurer. However, some specific forms of treatment are outside the scope of cover of health insurers and thus have to be financed by the MTPL insurer directly.
- Care cost and related expenditures caused by additional needs due to the accident are subject to full compensation.
- Social Care Services pay a care allowance. Allowances range from CZK 800 to CZK 12 000 per month according to the age of the beneficiaries (aged under or over 18) and the degree of dependency. Insurers take benefits into account and reduce their payment accordingly. The Social Care Fund currently does not recover the benefits paid from the MTPL insurer.
**Pain and suffering/Harm of social status**

**For the injured:**
- In cases where the injury is not minor, the injured party can claim compensation for pain and suffering. Until 2014, indemnity was calculated on the basis of a table valuating the indemnity amount according to a point system. One point was valued at CZK 120. This amount has been stable since 2002 without any indexation.
- The new Czech Civil Code superseded the existing rules. To avoid the risk of courts interpreting the new Civil Code differently, the Czech Supreme Court (together with lawyers and doctors) introduced guidelines to enable a uniform calculation of compensation for social impairment and damages for pain and suffering.
- The new guideline recommends a value of one point related to 1% of the monthly gross average income (in the third quarter of 2016, the gross average income was CZK 27,200). This results in a value of CZK 272 for compensation in 2017. It is intended to make regular adjustments.
- The new methodology has a major impact on small and mid-size losses.
- Though the guideline is non-binding, it is assumed that it has been adopted widely and will also be used to calculate out-of-court settlements.
- In case of permanent disability, indemnity is also paid to compensate in the event the injured party is no longer able to participate in social life as was possible prior to the accident (so called “Harm of Social Status”).
- The new Supreme Court methodology also introduced a recommendation for the compensation of permanent social impairment of the injured. The extent of the so-called “harm of social status” will be defined according to the International Classification of Functioning, Disability and Health (ICF). For severe injury (100% disability), it is recommended to use a 400-multiplicator of the average monthly gross salary (e.g. 400 * CZK 27,200 = CZK 10,880,000). This value is adjusted to take account of the individual’s personal circumstances such as age and potential future prospects. Thus the compensation for this head of damage can both be reduced and increased. There is a maximum limit of CZK 20 million, however, in cases of utmost severity. Since the harm of social status loss component had already been compensated accordingly before the introduction of the new Supreme Court methodology, no bottom line increase in the overall claims costs is expected.

**For relatives:**
- Until 2014, the law regulated fatal injury compensation for pain and suffering of family members. With the new Civil Code, the amount of compensation is now at the court’s discretion. Compensation is now possible in fatality cases, but also in cases of severe bodily injury. The new Code also allows compensation of non-family members, provided a close relationship can be proven.
- In several cases, courts have ruled an amount of CZK 500,000 for each family member for fatal or severe injuries.
- The Supreme Court has specified certain principles: Indemnification should be in relation to the harm of social status. Reasonable compensation without extraordinary circumstances should be between CZK 250,000 and 500,000. In extraordinary cases the indemnification could be up to CZK 700,000.

**Remainder**
- House adaption to the needs of the injured party is compensated as is the cost of a wheelchair, and for modifications to a motor vehicle.
- Claims for damages in relation to additional house-keeping expenses as a result of the injury can be made. Currently, however, these are the exception rather than the rule.
**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 – Czech Republic**

<table>
<thead>
<tr>
<th>Year</th>
<th>Loss of earnings</th>
<th>Assistance</th>
<th>Remainder</th>
<th>Total</th>
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<td>2017</td>
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</tbody>
</table>

Source: Swiss Re
Fatality claim scenario 2017 – Czech Republic

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

Loss of earnings
Pain and suffering
Remainder

Source: Swiss Re