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 France

Compulsory in France since 1945, third party liability is the minimum requirement for motor insurance. Bodily injury coverage is unlimited. Should there be no valid insurance coverage, a specific fund ("Fonds de Garantie des Assurances Obligatoires"; FGAO) will indemnify under certain conditions.

The Badinter law (5 July 1985) establishes the principle of compensation for all victims of road accidents. The victim can claim compensation against any vehicle “involved” in an accident, knowing that any vehicle has played a role, directly or indirectly, in an accident is considered “involved” regardless of whether the vehicle was moving, stationary, regularly parked or not. Nevertheless, the law also defines cases in which such compensation may be reduced or denied. These are:

- Non-driver aged under 16 or over 70 or suffering over 80% disability is entitled to full compensation. No compensation is paid if the victim causes his/her own injury deliberately;
- Other non-drivers are entitled to full compensation, the exception being if the victim is guilty of gross negligence ("faute inexcusable cause exclusive de l’accident"); and
- Drivers: ordinary negligence may be asserted to reduce or deny compensation (draft law to reform this principle is under discussion).

Social security can subrogate monies paid to victims against the insurer of the liable. The amount is then deducted from the amount awarded, head of damage against head of damage.

Procedural aspects

Thanks to the Badinter law and insurance market agreements, 90% of motor bodily injury victims are compensated on an amicable basis. It speeds up settlement, simplifies recoveries among insurers and limits legal proceedings. The remaining 10%, i.e. the most severe cases, are decided by the court.

- The Badinter law stipulates the settlement offer procedure. The insurer of the involved vehicle must contact the victim and set up a medical appraisal ("expertise médicale contradictoire") to assess injuries (victim can be assisted by their own medical/legal counsel). This forensic assessment details the temporary and permanent impairments and serves as the objective basis for calculating damages. The insurer must then make an interim indemnity offer within a certain timeframe (e.g.: either 8 months after the accident or 3 months after the victim’s claim). The final offer has to be submitted a maximum of 5 months after the insurer is informed of the medical stabilisation of the victim’s injuries.
- The Badinter law foresees financial penalties if the indemnity offer is delayed and/or “obviously” insufficient. These penalties are totally or partially excluded in reinsurance treaties.
- The victim can at any time, for any purpose, bring the case to court provided it is not time-barred. This does not prevent amicable discussions from continuing or restarting.
- In case of a court ruling, the judge decides on the reality, extent and quantum of indemnities allocated and whether the payment is made as a lump sum or an annuity. Judges are not bound by medical experts’ conclusions or by any statistical table and indemnification scale. However, they can consult local and national specific case law, bodily injury indemnification documents, as well as capitalisation tables.

In recent years, the average cost of severe bodily injury compensation has increased by around 5% a year. At the same time, there has been increased specialisation on the part of those actors involved, such as victims’ medical counsels and victims’ lawyers. These professionals are very influential in shaping the evolution of the Bodily Injury Compensation law.
Compensation rules

The general principle applicable in France is full compensation ("réparation intégrale"), defined by France’s Supreme Court as restoring the situation the victim would have been in if the event had not occurred. This means restoring, as exactly as possible, the balance affected by the injury (Civ 2ème, 28 October 1954).

A victim can claim full compensation for any head of damage suffered that is directly linked to the accident.

Compensation is ruled by two main drivers: injury and damage, which are defined as follows:

- Injury is “any harm to the physical or psychological integrity of a person” and is assessed by medical statement;
- Damage is the harm to “patrimonial” and/or “extra-patrimonial” rights. This has to be compensated as soon as a third party is found responsible. The extent and quantum are assessed by lawyers and claims adjusters.

The compensation reference point is the stabilisation, i.e. the date from which the injury might not evolve in any way, favourably or unfavourably. This date is decided by a final medical appraisal. It does not prevent the victim from making a further claim for aggravation at a later stage provided there is a direct link to the accident.

The claim adjustment estimates, as fairly and comprehensively as possible, the victim’s injuries according to a non-compulsory and non-exhaustive reference document known as the "Nomenclature Dintilhac", which has been widely used since 2005.

Two main types of damage are considered (as shown in the overview of compensation rules in France on page 5):

- Patrimonial, aimed at compensating the patrimony which has been reduced by inflicted costs and losses;
- Extra-patrimonial, strictly related to the body and that cannot be seized by creditors (e.g. health authorities).
An overview of compensation rules in France

Potential changes to the legal and claims environment in France

- In March 2017, a bill for the reform of civil liability was published which will impact the French indemnification system. One of the main goals of the reform is to review the compensation system for the impaired driver. At the time of writing, discussions are still ongoing with no advice on when this is expected to pass into law.

- The reform bill may result in mandatory compensation for all future heads of damage through annuity schemes.

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<th>Direct Victim</th>
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<td>Patrimonial Damage</td>
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<td>Evolutional Damage</td>
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</tr>
<tr>
<td>Damage linked to evolutional pathologies</td>
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</tbody>
</table>

| Patrimonial Damage | Future medical costs (DSF) | House accommodation costs (FLA) | Vehicle accommodation costs (FVA) | Third-party assistance (ATP) |
| Actual medical costs (DSA) | Future loss of income (PGPF) | Professional impact (IP) | School, university or training damage (PSU) |
| Various costs (FD) | | | |
| Actual loss of income (PGPA) | | | |
| Extra-patrimonial Damage | Permanent functional deficiency (DFP) | Leisure activities damage (PA) | Permanent aesthetic damage (PEP) | Sexual damage (PS) |
| Temporary functional deficiency (DFT) | | | Founding damage (PE) | Exceptional permanent damage (PPE) |
| Pain and suffering (SE) | | | | |
| Temporary aesthetic damage (PET) | | | | |
| Evolutional Damage | Loss of consortium (PAC) | Affection damage (PAF) | | |
| Damage linked to evolutional pathologies | | | | |

Potential changes to the legal and claims environment in France

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- The reform bill may result in mandatory compensation for all future heads of damage through annuity schemes.
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. 

The graphs below illustrate current indemnification scenarios for France (capitalisation and annuity payment).
Fatality claim scenario

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

Fatality claim scenario – France 2017

1 000 000 EUR

Loss of earnings
Pain and suffering
Remainder

Source: Swiss Re

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Bodily injury landscape Europe
France

Authors:
Béatrice Andrade, Benoit Audoye, Liza Donnadieu, Alexandra Roulin

Introduction and coordination:
Andrea Biancheri, Antonio Trillo

Editing and realisation:
Liz Kelly

Managing Editor:
Urs Leimbacher

Graphic design and production:
Swiss Re Corporate Real Estate & Services/
Media Production, Zurich

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