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 scenario.

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 Netherlands

- The 5th European Motor Directive, implemented in the Netherlands on 1 January 2012, established new minimum limits for insurance cover. The limits were increased as of 1 January 2017 to EUR 6,070,000 per accident for personal injury and to EUR 1,220,000 per accident for property damage, regardless of the number of victims. These limits are reviewed every five years to take account of the development of the European consumer price index.

- A proposed Dutch law “Affectieschade” for 2018 foresees compensation for close relatives of seriously injured victims or deceased due to traffic and industrial accidents, medical error or violent crime (moral prejudice). Until now Dutch law has included only the right of the victim to claim for moral damages and/or pain and suffering. Awarding compensation to relatives has been under discussion for some time, however. The House of Representatives (“Tweede Kamer”) has agreed to the proposal and passed it to the Senate (“Eerste Kamer”). The law should allow for a fixed compensation between EUR 12,500 and EUR 20,000 depending on the cause as well as injury or death.

- In 2017 a working group at “De Letselschade Raad” (committee engaged in developing guidelines and standard non-binding procedures for bodily injury losses) reviewed a Dutch law proposal on healthcare. The group recently published a guideline about healthcare claims (“Handreiking Zorgschade”), which outlines processes for serious personal injury claims.

- As of 1 January 2015, the Exceptional Medical Expenses Act AWBZ (“Algemene Wet Bijzondere Ziektekosten”) was revised with four new laws:
  - The law “Wet maatschappelijke ondersteuning 2015” (WMO 2015) stipulates that municipalities are responsible for providing care and support at home as of 1 January 2015. With this new law some tasks have been transferred from national public level to municipality level so as to deliver cost reductions and bring care closer to the victim, for example support at home. The victim pays a contribution to the costs (“eigen bijdrag”) based on their income and assets.
  - The “Jeugdwet” stipulates that municipalities are responsible for providing all care for children and adolescents as of 1 January 2015.
  - Care and nursing at home will become part of the “Zorgverzekeringswet” (Zvw), which is the Health Insurance Law.
  - The law “Wet langdurige zorg” (Long-term Care Act, Wlz) pays care costs for people who need intensive care or full-time supervision; the victim pays a contribution based on their income and assets (personal contributions may add up to EUR 27,991 per year (EUR 2,332.60 per month)). Besides aiming to improve the quality of care, the law should encourage victims and their families to return to their home for care, thus reducing the need for long-term care. If victims are insured under the Wlz scheme they are also automatically insured under the Zvw.

- 2013 saw the introduction of the “Vermogensinkomensbijtelling VIB voor AWBZ”. The law required that the income and assets of bodily injury victims also be taken into account when determining payouts. The result was an increase in own contributions required of victims when paying for permanent care outside their homes. The assets of the victim form the basis of own contributions. The amount of claimed bodily injury compensation (not yet awarded) is also considered under the assets of the victim, leading to an overall increase in their assets and consequently in the contribution they have to pay themselves. A political initiative to revoke this law was launched in 2017.

- 2010 Special Court Procedure: the law part dispute (“Wet deelgeschillen”) came into force on 1 July 2010 for cases of bodily injury and fatality. The judge decides only on a single part of a dispute such as the extent of contributory negligence or discrepancy on extrajudicial costs. It is only possible if it can contribute to a final settlement agreement between the parties.
Different agreements and redeeming recovery rights are in place. These include:

- Similar to the AWBZ “Convenant collectieve afkoop regressrecht AWBZ 2011 – 2014” between the Association of Insurers (“Verbond van Verzekeraars” (VvV)) and the “College voor Zorgverzekeringen”, the 2015 WMO provides the option of collective compensation of the recourse right. As of 1 January 2017 a new agreement (“Overeenkomst afkoop regressrecht Wet maatschappelijke ondersteuning 2017”) was reached between the Association of Insurers and the Association of Dutch municipalities (“Vereniging van Nederlandse Gemeenten” (VNG). The agreement covers the recovery right for 2017. One of the most important differences vs the previous 2015/2016 agreement is that the victim’s own contribution is no longer included in the compensation for recovery. The victim can thus claim the costs of their own contribution separately from liability insurers. The VNG and the VvV are negotiating an agreement for 2018.

- Wlz, the “Convenant collectieve afkoop regressrecht Wlz” between the Dutch Association of Insurers and the Dutch National Health Care Institute (“Zorginstituut Nederland”), has been agreed for the period 2016 – 2019 with regard to the collective compensation of the recourse right. All Dutch Wlz health carriers (100%) and 97% of all Dutch Liability insurers participated in the agreement.

Noticeable trends in the Netherlands:

- The number of reported accidents and fatal traffic accidents has increased since 2013.
- Electronic systems in cars and trucks are leading to increasing repair costs.
- Higher compensation for immaterial damage and whiplash claims.
- Increase in the loss of earnings component triggered by a gradual increase in the retirement age from 65 to 67, higher life expectancy and difficult reintegration of victims.
- Increase in extrajudicial costs (lawyers, labour and medical expertise; so-called BGK).
- Increase in medical care costs.
- Reduced discount rates/interest, resulting in an increase in loss components such as loss of earnings.

Procedural aspects

- Compared to the last decade, the legal community in the Netherlands has become only marginally more aggressive.
- Litigiousness is relatively low compared to other European countries. There is a strong tendency to settle cases out of court. Nevertheless agreements between parties tend to include reservations in case of future changes, for example if the medical situation of the victim worsens.
- There is no jury system. Dutch judges are appointed and not elected.
- Lawyers’ fees are not regulated with the exception of fees payable to those lawyers offering subsidised legal aid. Generally, the loser pays principle applies. Declaration of expenses is on the basis of an hourly rate.
- Contingency fees are prohibited for members of the Dutch Bar. In cases of collective actions, however, it is not prohibited for third parties to fund a collective action or settlement on the basis of a contingency fee arrangement.
- Around 60% of fraud reported is for car/motor insurance, followed by fire insurance at around 19% (Source: Anti Insurance Crime Bureau).
- Alternative Dispute Resolution, ADR, (Mediation, Arbitration, Binding Advice): most Dutch bodily injury cases are finalised in an amicable way. Mediation is the most common form of ADR. The Dutch Association of Mediators on Insurance Industry (NVMV) and the Association of Dutch Bodily Injury Mediators (LetMe) merged in 2015 (around 110 mediators in total).
- A Law proposal from 2016 (“wetvoorstel Wet Bevordering Mediation”) aims to promote the use of mediation. It introduces a legally protected title for certified mediators as well as a public register of mediators.
- Up to a third of all bodily injury claims relate to whiplash. The Insurer’s Institute on Personal Injury Claims (PIV) is aiming for a uniform practice among Dutch Liability Insurers for handling whiplash claims.
The latest legal developments (e.g. AWBZ change) and other factors have caused a significant increase in indemnification for seriously injured victims. The level of indemnification in the Netherlands is relatively low compared to other European countries such as the UK or Germany.

- Punitive damages are unavailable in the Netherlands.
- Strict liability is supported by law in cases where a car collides with a non-motor vehicle (e.g. pedestrian, cyclist), Art. 185 Wegenverkeerswet.
- The Netherlands and Switzerland are the most expensive countries in Europe for indemnification for whiplash claims. This kind of bodily injury has consequently been a frequently debated topic for several years.
- Bodily injury claims are generally paid as lump sums.
- The Dutch Government, unlike other countries, does not stipulate the rate at which bodily injury claims need to be discounted. A discount rate of 3% had been applied in personal injury cases but recent court decisions have reflected different rates. In March 2015, Hof Arnhem-Leeuwarden awarded a rate of 1% for the first 3 years until 2018; and a rate of 3% after 2018; in July 2015 Rechtbank Gelderland stipulated a rate of 2%; in July 2015 Rechtbank Midden retained a rate of 3%; in September 2015 Gerechtshof’s-Hertogenbosch awarded a rate of 2% on a whiplash case. There is a tendency to reduce the rate to 2%. “De Letselschade Raad” established a working group in order to develop a guideline on discount rates.

Loss of earnings
- Discount rates and retirement age have a significant impact on this loss component.
- Loss of earnings (LoE) are calculated up to retirement age (as of 2013 retirement age is set to increase gradually from 65 to 67 for men and women by 2021; as of 1 January 2017 to 67 and 3 months).
- For the first 2 years after the accident, LoE is paid by the employer (net income) with a recourse right against the liability insurer on net salary.
- After the first two years, the social security system takes over in form of the “Uitvoeringsinstituut Werknemers Verzekeringen” (UWV; Institute of Employee Benefit Scheme). Up to 70% of the last salary is paid but there is a fixed cap. UWV payments are based on the work and income according to the Labour Capacity Act (WIA) for employees who became ill on or after 1 January 2004 (before WAO is relevant). Employees must be at least 35% occupationally disabled.
- The UWV has a full recovery right against the liability insurer. Usually, UWV recourse is on a yearly basis, but insurers can pay a lump sum, with a specific “afkoopformule” used to calculate the amount of the payment.
- As the assessment of LoE costs for freelancers (ZZP “zelfstandige zonder personeel”) is more complex, it generally leads to higher costs.

Assistance and medication
- Healthcare insurance covers basic medical care such as hospitalisation and pharmacy prescriptions (“Zorgverzekering” Zvw – Health Insurance Act) with a full recovery right against the liability insurer.
- For long-term care, the social body “Centrum indicatiestelling zorg” (CIZ) assesses the long-term care needs of a victim under the previous AWBZ law.
- Long-term care: the victim can choose between a personal care budget (PGB) or care in kind or both combined. PGB means that the victim can choose to stay at home or at a care home with a form of direct payment to purchase care independently. With care in kind, the care services are provided directly by a private healthcare provider.
- If the victim in long-term care stays at a care home, for example, the healthcare institution pays these exceptional costs without recourse right. However, as of the age of 18 the victim has to pay an own contribution with the recourse right against the liability insurer.
- Under the Social Support Insurance Act (WMO), municipalities are responsible for home help services (domestic home help such as cleaning) and transport (wheelchairs etc). The Wlz only covers highly expensive care which is difficult to insure.
“De Letselschade Raad” publishes a non-binding guideline “Richtlijn Huishoudelijke Hulp” which sets out fixed standard compensation amounts for different categories in a table. Amounts range from EUR 65 to EUR 324 per week for help in the household (unchanged since 1 January 2014). “De Letselschade Raad” also publishes a non-binding guideline, “Richtlijn Ziekenhuizen Revalidatiedag geldvergoeding”, for hospital per diem indemnification of EUR 28 per hour and revalidation per diem compensation of EUR 14 per hour (1 January 2017 version).

Immaterial damage/pain and suffering
- To be distinguished between pain and suffering and “Affectieschade” (see above).
- A pain and suffering lump sum payment is not based on income but on the degree of disability (based on jurisprudence).
- Currently, maximum payments are up to EUR 200,000 in severe injury cases. Compared to other European countries, this is still low.
- Since 2012 the ANWB (Royal Dutch Touring Club) has published a pain and suffering booklet every year. The “Smarten geldboek” lists verdicts with a short description and the awarded pain and suffering amounts (used as a code of practice).
- Generally only the injured victim has the right to claim for pain and suffering. However, following judgments since 2000, the jurisdiction has changed and compensation for so-called “shockschade” can now also be awarded to relatives provided specific requirements are met. These requirements include a serious accident or a third party who watched/was affected by the accident and who suffered an emotional shock or mental trauma as a result. While it is not a precondition that the third party is a relative, a close emotional relationship has to be proven.

Miscellaneous compensation
- Interests (“wettelijke rente”) and costs of litigation are generally covered in addition to the sum insured.
- “Buitengerechtelijke kosten” (BGK) – extrajudicial costs are compensated. The BGK are constantly increasing and add up to 20 – 25% of the total loss amount in personal injury claims. The involvement of so-called “belangenbehartiger” (lawyers or claims handlers acting on behalf of the victim during the whole claims handling process) can lead to longer time cycles in handling/finalising the claim. Dutch Insurers have signed agreements (“Convenanten”) with legal cost insurers and external claims handling firms to cover BGK. The Dutch Insurers Institute on Personal Injury Claims (PIV) has set up a scale (“PIV-staffel” 2016 – 2018) reflecting costs linked to respective loss amounts based on an agreement with “belangenbehartiger”. The table is frequently considered by judges.
- Property damage (travel costs, clothes etc.) is compensated.
- Costs of adaption of the apartment/house or adjustment of a motor vehicle as well as wheelchairs are compensated.

“Verlies zelfwerkzaamheid”
Compensation is also applicable when a victim is no longer able to do jobs around the house/flat (e.g. gardening). “De Letselschade Raad” publishes a non-binding guideline ("Richtlijn Zelfwerkzaamheid") which reflects fixed compensation amounts for different categories ranging from EUR 125 to EUR 1,140 per year (amounts unchanged since 1 January 2014).
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.

According to the OECD (Organisation for Economic Co-operation and Development), the percentage of total health expenditure (public and private) of the GDP in the Netherlands increased from 7.6% in 2000 to 11.8% of GDP in 2012, but decreased to 10.5% of GDP in 2016 (8th position behind Canada, Japan, France, Sweden, Germany, Switzerland and the US).

The tetraplegia claims scenario assumes full loss payout within one year and thus does not include future loss inflation; Changes in loss frequency or other exposure factors will generally have an influence; and The relative growth in loss burden under a non-proportional treaty is amplified by the treaty deductible.

* With regard to the loss burden under an excess of loss reinsurance treaty, please note the following:

- The tetraplegia claims scenario assumes full loss payout within one year and thus does not include future loss inflation;
- Changes in loss frequency or other exposure factors will generally have an influence; and
- The relative growth in loss burden under a non-proportional treaty is amplified by the treaty deductible.

The entire content of this factsheet is subject to copyright with all rights reserved. The information may be used for private or internal purposes, provided that any copyright or other proprietary notices are not removed. Electronic reuse of the data published in this factsheet is prohibited. Reproduction in whole or in part or use for any public purpose is permitted only with the prior written approval of Swiss Re, and if the source reference is indicated. Courtesy copies are appreciated. Although all the information used in this factsheet was taken from reliable sources, Swiss Re does not accept any responsibility for the accuracy or comprehensiveness of the information given or forward-looking statements made. The information provided and forward-looking statements made are for informational purposes only and in no way constitute or should be taken to reflect Swiss Re’s position, in particular in relation to any ongoing or future dispute. The information on compensation levels may not be construed as to give rise to a claim at such levels and the levels indicated herein are not indicative of any future compensation levels and do not mean that compensation is actually paid out at such levels. In no event shall Swiss Re be liable for any loss or damage arising in connection with the use of this information and readers are cautioned not to place undue reliance on forward-looking statements. Under no circumstances shall Swiss Re or its Group companies be liable for any financial and/or consequential loss relating to this factsheet. Swiss Re undertakes no obligation to publicly revise or update any forward-looking statements, whether as a result of new information, future events or otherwise. This factsheet does not constitute legal or regulatory advice and Swiss Re gives no advice and makes no investment recommendation to buy, sell or otherwise deal in securities or investments whatsoever. This document does not constitute an invitation to effect any transaction in securities or make investments.