

Motor Bodily Injury Landscape

A comparison of 14 European countries



Foreword

We're delighted to share Swiss Re's latest publication, **Motor Bodily Injury Landscape 2022**, which we hope you'll download and read with interest. This comprehensive and comparative analysis looks at **Motor bodily injury developments in 14 European countries**, and includes our latest data and insights on **compensation trends** in these markets through Q1 2022.

It's rare to find commonality amongst so many different countries – especially in Europe. Award amounts, for one, tend to vary greatly, especially given the diverse socioeconomic, legal and governmental factors at play – and, of course, the unique compensation culture of each of the 14 countries we looked at. Yet, despite the differences, one thing is universally clear from our study. Regardless of where we looked, the cost of bodily injury claims continues to rise – a development that's significantly impacting the profitability of Motor business (insurance and reinsurance alike) in Europe. It's vital that we continue to closely monitor this situation to better understand current, known drivers – and to stay on top of new ones that could further impact our ability to effectively respond and navigate adverse development.

Lastly, we'd like to mention something which we feel makes this publication particularly unique and impactful. We made sure to engage a broad range of our cross-functional market experts in creating it. Underwriting, Claims, Actuarial, Portfolio Management and our in-house Research experts all had a hand in assessing overall legal and economic trends and developments alongside individual market dynamics. Because of this close, international collaboration – we were also able to **create 2 bespoke scenarios** that accompany our readers across all 14 countries: one a tetraplegia and the other a fatality case. By applying the same 2 scenarios throughout, we were able to better highlight bodily injury cost and compensation trends for each market. Don't miss the dedicated "comparative report" section which summarizes the data in one convenient and compelling overview – or the individual market reports which cover specific developments in each country in more detail. Top tip: the table of contents also acts as a navigation to jump between sections you're interested in.

Feel free to contact us or any of our experts you find in the country reports should you have feedback or wish to discuss further.

Kind regards,



Thorsten Steinmann



Mark Hallam



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I. Comparative report



1. Introduction

Since the implementation of the Green Card system in 1953 and the introduction of the 1st Motor Insurance Directive in 1972, Europe has been successful in making the claims handling of the rising number of cross-border car accidents that came with the increasing mobility of European citizens easier for victims. Whereas the Green Card system in general aims at protecting the victims of a road traffic accident caused by a foreign vehicle, the 4th EU Motor Insurance Directive helps non-resident victims of car accidents by allowing them to bring their claims in their own language to entities established in their own country of residence. Both systems aim to make it easier for victims to get compensation after being involved in cross-border road traffic accidents.

However, when it comes to the level of compensation for bodily injury claims in Europe we do not see a lot of harmonisation yet. There are still enormous differences in the amounts of compensation awarded, the workings of the legal environment, the specific local compensation culture and the role of social security systems in Europe. Besides the lawmaker setting the rules of compensation, one must not underestimate the role that lawyers and courts play in shaping the compensation of bodily injury claims.

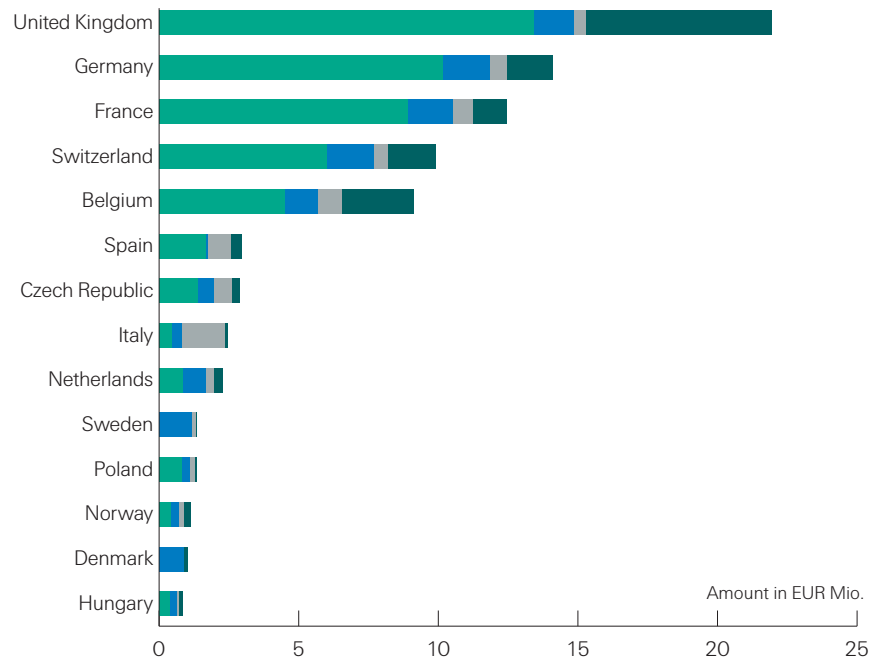
To illustrate the differences in compensation levels we asked our Swiss Re claims experts to calculate the compensation for a severely injured victim of a car accident based on the compensation system in their respective markets. In addition, the claims experts give an update on the current compensation environment in their countries as well as claims-related facts and legal information.

Please note that calculations are purely illustrative as the compensation amounts can change if more detail is added to the scenario. Claims amounts are split into four macro categories of head of damage: loss of earnings, cost of care, pain and suffering and other.

Claims scenario for comparison: Tetraplegic (total claims cost in 2021)

A 30-year old male, married, single earner, two minor children, average income in dependent employment, severe spinal or head injury, no ventilation necessary, 100% disability, no return to work, highest level of care.

- Cost of Care
- Loss of Earnings
- Pain and Suffering
- Other



Source: Swiss Re

The overview shows how costs per claim for the tetraplegia scenario compare across the 14 European countries in 2021. The differences between the countries are extreme, both in terms of total amount as well as in terms of the shares of individual heads of damage within the total amount.



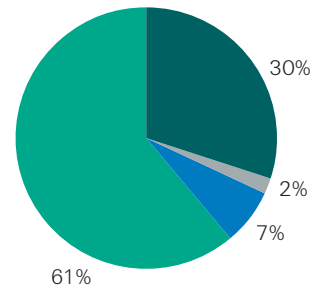
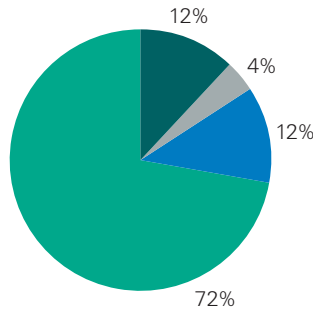
2. Care cost as cost driver

Care cost is the most important cost driver in the countries showing the highest levels of compensation. In the UK, France and Germany, third-party assistance costs make up more than 60% of the total cost (below see in our tetraplegic scenario for Germany and the UK) with the trend still increasing.

Heads of Damage Germany
(total cost: EUR 14.10m)

Heads of Damage in the UK
(total cost: GBP 18.85m)

- Other
- Pain and Suffering
- Loss of Earnings
- Cost of Care

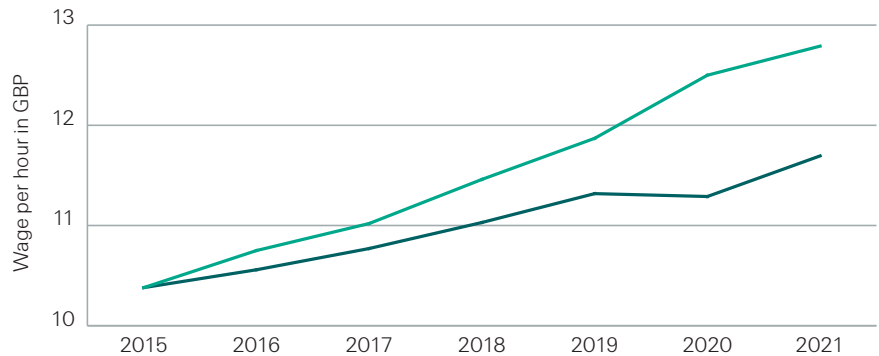


Source: Swiss Re

To illustrate the upward trend, we compared Consumer Price Index (CPI) for advanced markets like the UK, Germany and France to the UK care worker wage index ASHE (Annual Survey of Hours and Earnings). This shows that the hourly wages of care workers are increasing above CPI.

Hourly wages for care workers in the UK (ASHE Index) vs CPI Developed Europe

- ASHE Index
- CPI Developed Europe



Source: Swiss Re

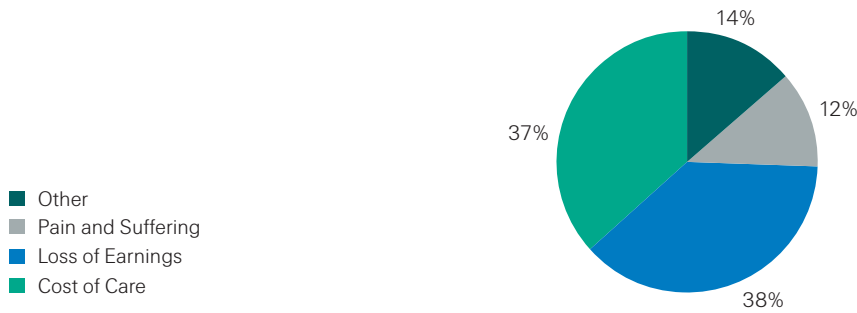
The major reasons for the steady increase of care cost are:

- The introduction of minimum wages in several European countries and their regular revision/amendment. There is a shortage of professional care workers in most western European countries, which also drives up wages per hour. This trend has been worsened for the UK by Brexit, and in all countries by Covid-19. In Switzerland, it was decided by referendum in November 2021 that care worker hourly wages must be increased and that – in general – this profession has to be made more attractive to attract more staff.
- Legislation and court rulings have resulted in stricter standards of care. In France, jurisprudence in exceptional cases allows for private care cost for the most severe illnesses to cover up to a 48-hour care schedule (two care workers) on a 400-day basis (allowing for holiday replacement).
- Compensation culture in many countries has changed. Whereas in the past – especially in southern European countries – care for a severely injured relative was a family responsibility, often without requesting compensation for such care, care cost is now claimed against the tortfeasor/the insurer. In most countries, families opt for care at home which is substantially more expensive than care in a nursing home.



However, not all highly developed markets with a strong compensation culture show these high compensation amounts for care – why is that? One of the reasons lies in the social security system, which is different in each country. In the Netherlands, for example, most of the care cost is paid by social security without health care providers and municipalities taking full recourse against the MTPL insurer. Therefore, the total amount of compensation paid by the MTPL insurers is much smaller and the split of heads of damage looks quite different in our tetraplegic claims scenario for the Netherlands compared to the UK or France.

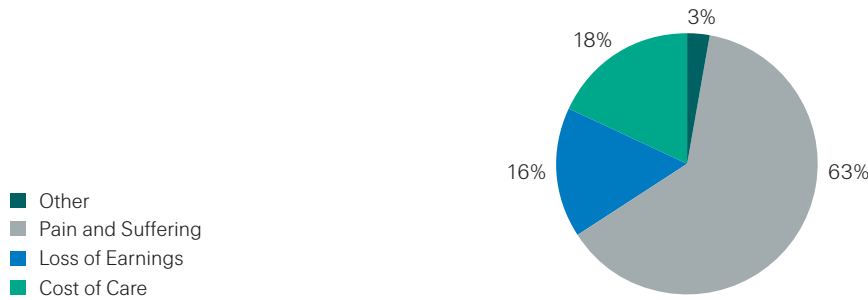
Heads of Damage Netherlands
(total cost: EUR 2.28m)



Source: Swiss Re

In Italy, the most important head of damage is the non-economic loss. The award for pain and suffering is calculated on the basis of tables that are published by the Milan Regional Court. These provide for compensation of non-economic loss (“danno non patrimoniale”) that increases in proportion to the degree of disability.

Heads of Damage Italy
(total cost: EUR 2.44m)



Source: Swiss Re



3. Predominant form of compensation

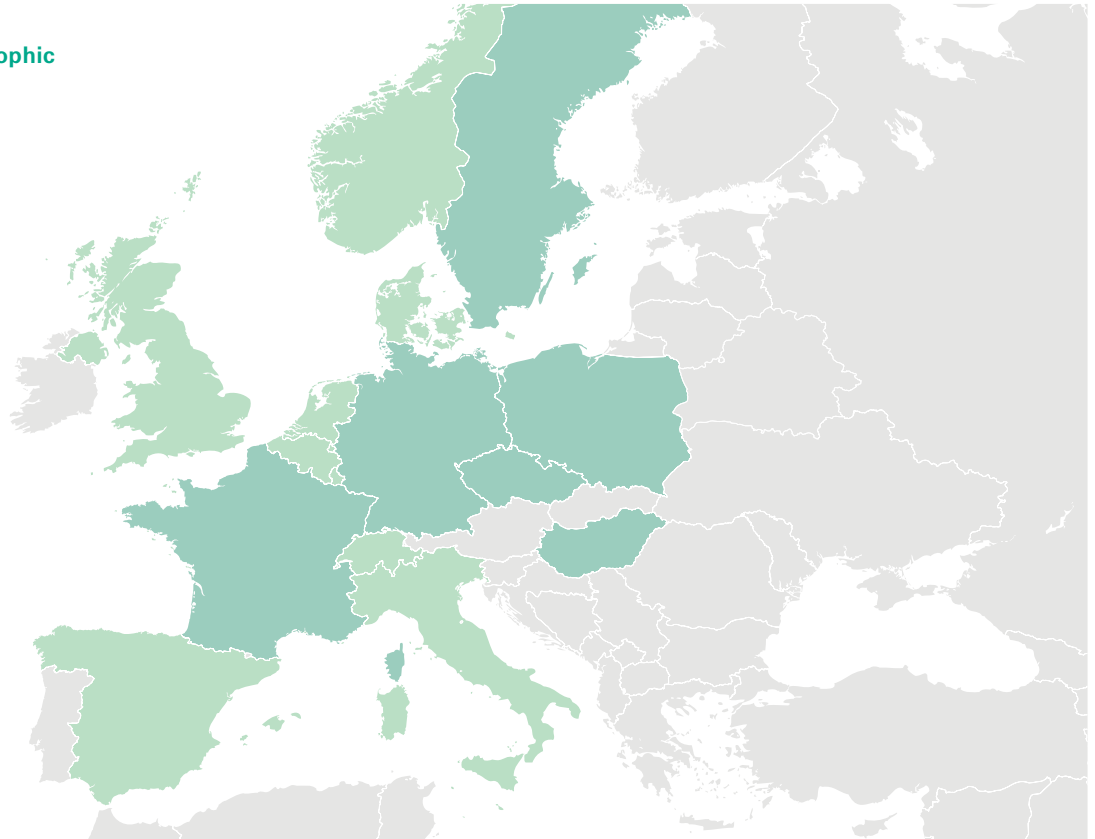
Annuities vs. lump sum

As the comparative chart on page five shows (see Tetraplegic claims scenario graph page 5), the compensation amounts differ quite substantially between countries. The United Kingdom clearly leads the pack, followed by Germany and France.

In principle, there are two ways the victim of a road traffic accident can be compensated: on an annuity basis, that provides for regular payment of a predefined amount of money for a fixed period, or on a capital basis, where the victim is compensated by a one-off single settlement amount, which is called a lump sum.

Predominant form of compensation of catastrophic bodily injury claims

- Annuities
- Lump Sum



The map shows the predominant form of compensation for the most catastrophic personal injury losses for each of the 14 countries we focus on in this publication. This does not mean that the predominant form is the only form legally allowed in a country; most countries allow for both forms of compensation (annuity payments and compensation on a lump sum basis). The introduction of the new “Baremo” system in Spain in 2016 gives victims the right to request compensation in the form of an annuity, but in practice victims stick to lump sum awards. The same applies in the UK, where victims may choose to receive their compensation on a lump sum basis or in the form of annuity payments, which are called periodical payment orders (PPO). PPOs are compensation awards in personal injury claims in the UK which, in addition to providing a lump sum for damages for pain and suffering and for past financial loss, provide regular index-linked payments for some or all of future financial loss. However, given the current discount rate environment (presently minus 0.25% in England and Wales) in the UK, victims tend to prefer a lump sum settlement. Countries that only allow for lump sum payments are Denmark and Norway.

Advantages and disadvantages of annuities and lump sum awards

In the case of a lump sum award for a personal injury claim, the claimant is essentially asked to take responsibility for investment, inflation and longevity risk, which means ensuring they properly invest and manage this – in cases of a catastrophic injury – often very large sum of money, while also budgeting appropriately so that the money does not run out before the end of their lives. At the same time, the lump sum payment brings the



advantage that the victims can invest the capital the way they wish with the opportunity to achieve a better return than calculated by the insurance company. By contrast, there is still a risk that the money will be insufficient if their needs change or they live longer than expected by the mortality tables that serve as the basis for the compensation. In France there is a legal clause that allows for the reopening of a claim and recalculation of the compensation amount if the medical condition of the victim has unexpectedly worsened. In other markets, e.g. the UK and Belgium, the criteria to reopen a case after a full and final settlement are very limited. For an insurer, a lump sum amount brings a case to a close and therefore does imply less administrative effort. Annuities need to be regularly revised and insurers have to manage the risk of change and inflation, but they can release the reserve if the victim dies earlier than the average life expectancy calculated by the mortality tables.



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Influence of discount rates on the reserves

The reserving of severe bodily injury claims represents a special challenge for actuaries. There are many reasons for this. On the one hand, a qualification in property/casualty and life actuarial science is required and, on the other hand, good knowledge of the medical and legal environment as well as claims administration is highly beneficial.

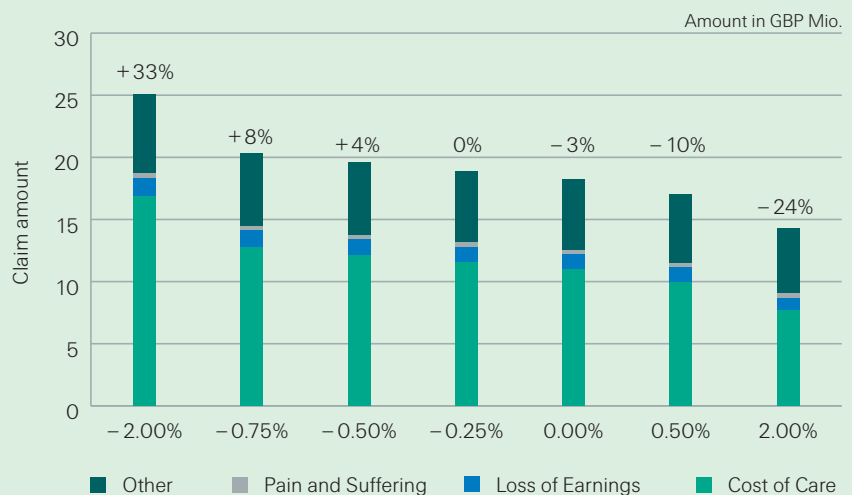
Challenges arise due to the long payment periods, which extend to the end of life for annuities. Assessing reserves for annuity payments requires assumptions for future inflation, life expectancy and investment returns, which are highly uncertain for such long periods.

Countries in which bodily injury claims are compensated by means of a lump sum instead of an annuity pose fewer challenges because of the much shorter settlement periods. Here, uncertainties arise mainly from the calculation of the lump sum amounts, which are derived using discount rates. While some countries have official discount rates that are revised regularly, such as England and Wales where the current Ogden discount rate is -0.25% , other countries do not prescribe official discount rates.

Lump sum discount rates not only discount future compensation payments, but are usually also considered equivalent to real rates net of inflation with the aim of ensuring that claimants are adequately compensated. In general, a basket of low-risk investments is used as a benchmark to set discount rates, but this varies a lot by country. Decisions to set discount rates are also quite often subject to political and social factors. Investment returns on safe assets such as government bonds have fallen in past years and

are now close to record lows. There is therefore pressure to reduce discount rates in markets with large gaps to real rates. Reductions in discount rates for lump sums can increase bodily injury awards significantly depending on the size of the discount rate reduction (see chart for UK tetraplegic claim). Note that discount rate changes for annuities (or PPOs) are less critical because they do not change the sum of future payments but impact the balance sheet due to lower expected future investment returns.

UK: Tetraplegic claim in different discount rate scenarios



4. Discount rate overview (as at Dec 2021)

Discount rates help calculate lump sum compensation payments for high value personal injury claims and reflect the fact that victims of a road traffic accident receive a lump sum payment that they will typically invest and will expect to get a return on the investment. The lower the rate, the higher the compensation awarded and the greater the cost to insurers (see graph page 9).

In the ongoing low interest rate environment, the trend to reduce discount rates continues. In England and Wales the discount rate was 2.5% for many years but was reduced to minus 0.75% in March 2017 and then raised in July 2019 to the current rate of minus 0.25% along with a change in the rules for the review of the discount rate.

The commission to review the Baremo in Spain recommended a reduction in the discount rate from 3.5% to 2.5% will be introduced over the course of 2022. Although in Germany there is no legal obligation as to which discount rate must be used for lump sum payments, German law requires insurers to create reserves for those annuity payments that are confirmed by court order or are enforceable settlements at a reduced rate of 0.25% (down from 0.9%) as of January 2022.

Country	Current discount rate	Set by/Revised by
France	<p>Annuities: Capitalisation on the basis of the mortality table 88/90 at 60% of the TME* (average rate of government loans) with a maximum of 3.5%.</p> <p>Inflation (for revaluation of annuities) 2.25%; must be deducted from capitalisation rate.</p> <p>Capital/lump sum: Various tables co-exist (e.g. Gazette du Palais).</p> <p>*taux moyen des emprunts d'État</p>	<p>Article A331-10 of the Insurance Code; insurers may use different tables if approved by an independent actuary</p> <p>Fixed by law (décret)</p> <p>Up to judge to decide</p>
Netherlands	<p>0–5 years: minus 1.5%</p> <p>6–10 years: minus 0.7%</p> <p>> 20 years: nil</p>	<p>Non-binding recommendation for judges from 2021. In practice there is no consistent approach; but a tendency towards a nil discount rate when reserving.</p>
Germany	<p>Annuity (confirmed by court order, enforceable settlement or admission): down from 0.9% to 0.25% as of 1 January 2022 for recurring annuity payments</p>	<p>German Commercial Code (Art. 341g HGB) requires security fund ("Rentendeckungsstock").</p>
Spain	<p>Reduction from 3.5% to 2.5% over the course of 2022</p>	<p>Law/"Baremo", monitoring committee</p>
Switzerland	<p>3.5%</p>	<p>Confirmed by Federal Supreme Court in 2021</p>
England/Wales	<p>Minus 0.25%</p>	<p>Lord Chancellor guided by a panel of experts under the lead of the Government Actuary (review to be kicked off in 2024)</p>
Belgium	<p>1%</p>	<p>Recommendation by judges "tableau indicatif", reviewed every 3–4 years</p>



5. Claims inflation of catastrophic bodily injury claims

By claims inflation we mean the combination of economic inflation (CPI, wages index, etc.) plus what is called superimposed inflation, which captures the costs that exceed basic inflation due to social or legal changes.

In most western European countries, the cost of compensating catastrophic bodily injury claims exceed the CPI or RPI indices (see graph UK ASHE index vs CPI, page 6). The longer the reserves for compensation sit on the books of insurers/reinsurers ("long tail"), the longer these reserves are open to the risk of change, like discount rate changes and changes in compensation culture or legal changes. When reserving high value bodily injury claims it is therefore of utmost importance for insurers and reinsurers to calculate future losses taking the risk of change and the superimposed inflation thoroughly and consistently into account to avoid negative prior year developments impacting their balance sheets.



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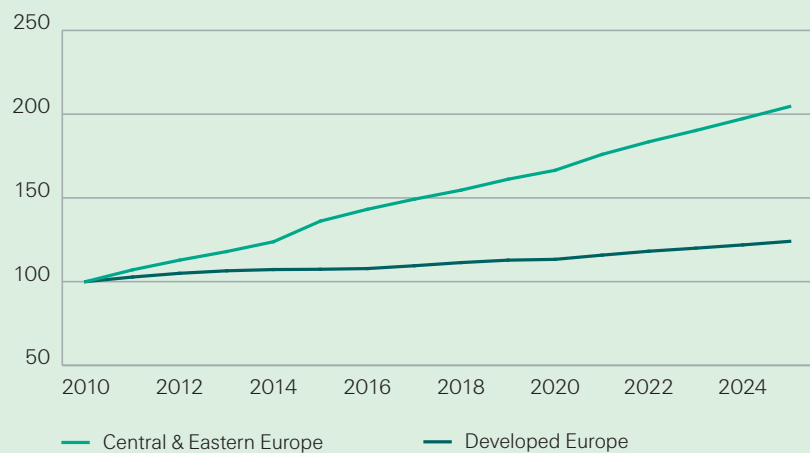
The economic environment for bodily injury compensation

Consumer Price Index (CPI) in Europe

CPI was increasing steadily over the past 10 years, and according to the forecasts by Swiss Re's Group Economic Research & Strategy (GERS) this trend is expected to continue, with slightly higher growth after 2020 due to Covid. Growth is clearly higher in CEE than in more developed European countries.

Source: GERS, Oxford Economics

CPI Index

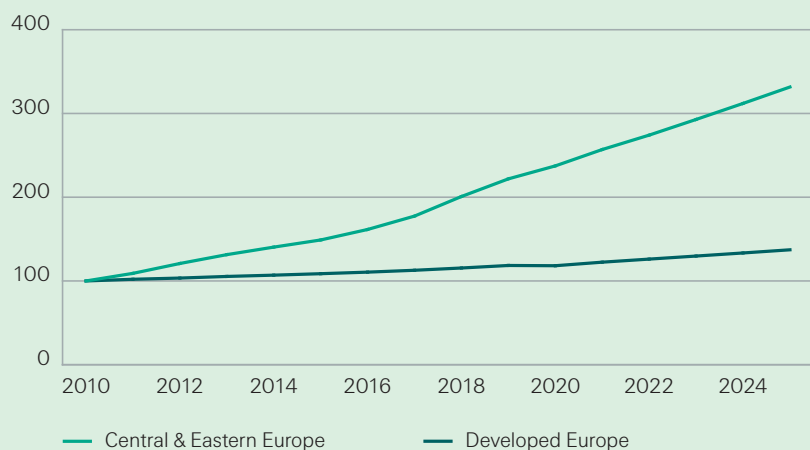


Wage index

As wage inflation is closely linked to overall CPI inflation, the trend for wages looks similar, again with higher growth in the CEE region.

Source: GERS, Oxford Economics

Wage Index

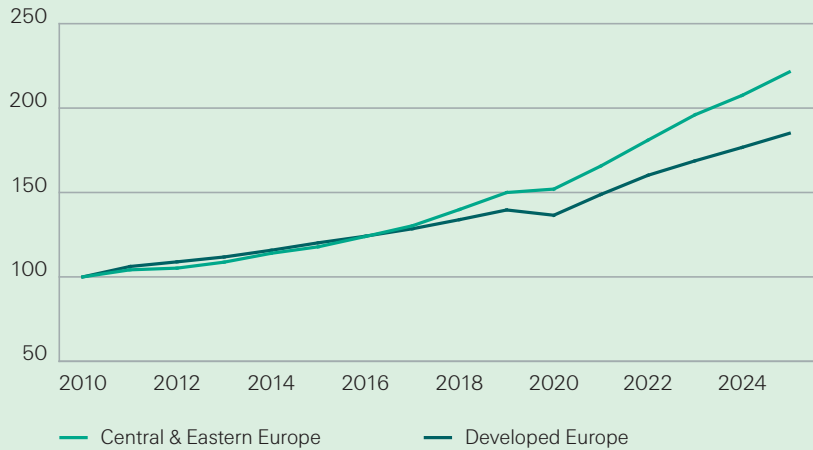


Health care expenditure normalised by population

For health care expenditure, growth was also relatively constant over the past 10 years. In 2020, a clear dip could be seen. This pandemic-induced dip is mainly due to the large-scale cancelling of planned operations during the pandemic, to keep intensive care units free for Covid patients. Following the pandemic-induced dip, the growth is expected to increase from 2021 onwards over the coming years. Whereas we can observe this pandemic-induced dip for the health care sector, we do not observe the same for the care workers (see ASHE index graph, page 6) and therefore we do not expect to see this effect applied to the Bodily Injury claims to the same extent.

Source: OECD, Oxford Economics

Health Care Index (cost per 1m population)



What does this mean for bodily injury claims?

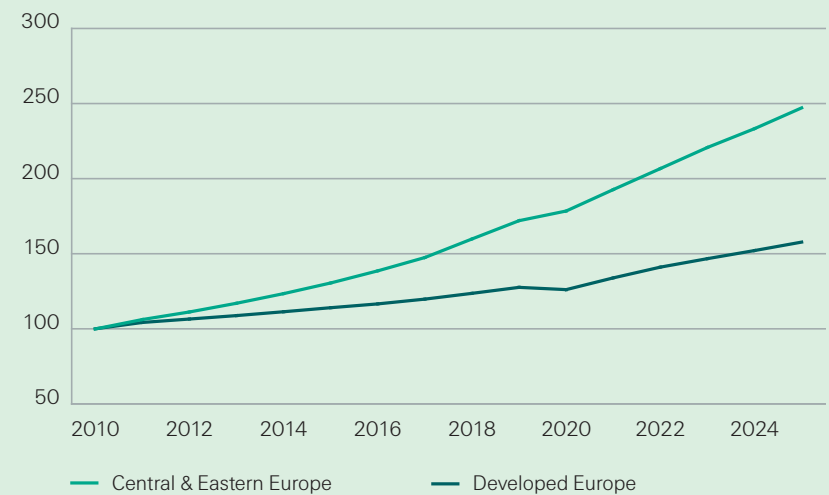
For bodily injury claims, the severity is influenced by all of the three above mentioned indices.

An inflation study conducted by Swiss Re’s Casualty R&D department has defined weights for the three indices and developed a bodily injury severity index for Motor Insurance.

According to the internal study, the weighted inflation for bodily injury costs based on this weighted index would look as follows:

Source: OECD, Oxford Economics

Bodily Injury Severity Index



As can be seen, growth overall is higher in CEE than in Developed Europe. However, for Developed Europe it can be seen that after-pandemic growth is slightly above pre-pandemic levels, whereas in CEE growth is expected to get back to pre-pandemic levels.

However, to construct a proper index for bodily injury claims severity per market, the three indices would have to be weighted per head of damage and per injury scenario, also taking market specifics into account.

Please note that all forecasts for above indices date from December 2021 and could change substantially depending on the development in the current volatile economic and political environment.



Brexit**6. Other key trends in the compensation of motor bodily injury claims****Cross-border traffic accidents**

Before Brexit the 4th EU Motor Insurance Directive strengthened the rights of injured parties who are resident and domiciled in the UK, but who had been involved in a road traffic accident in a European Union member state. If a UK citizen was involved in a road traffic accident in Spain, they could – under the 4th Motor Insurance Directive – claim against the responsible party in English in the UK, i.e. against the nominated UK based claims handling agent of the Spanish defendant’s motor insurer.

Brexit marked a fundamental shift in the rights of individuals injured by negligent foreign third parties. For those who failed to submit their claim before 31 December 2020 it will be more difficult to claim compensation.

If an individual now wishes to pursue a claim, they will no longer be able to serve the UK claims handling agent of the Spanish insurer with proceedings. The claim must now be brought in the Member State where the accident occurred; either against the at-fault driver directly, if they have been identified, or the at-fault motor insurer in the member state where the accident took place (if a direct right of action is permitted, which will be determined by the applicable law of that jurisdiction.)

It is worth noting that currently the accession by the UK to the Lugano Convention is being blocked by the EU Commission.

No implementation of the Vnuk case ruling by the European Court of Justice

In February 2021, the UK government announced it intended to remove from UK law the effects of the 2014 European Court of Justice’s (ECJ) ruling in the Vnuk case. Since the ruling in 2014 the UK government has been clear that it does not agree with the ruling. The ECJ decision is regarded as an unnecessary extension of the provisions requiring motor insurance for private land as well as a greater range of vehicles that potentially includes motorsports, agricultural machinery and light electric vehicles.

Implementing the Vnuk jurisprudence is regarded as costly; according to the Government Actuary’s Department (GAD), insurance policyholders could face an estimated additional cost of GBP 1.227 billion if Vnuk was implemented – expressed as a potential increase in individual insurance premiums of around GBP 50 for 25 million consumers.

New Motor Insurance Directive**7. Update on EU legislation**

After nearly three years of legislative process, the European Parliament and Council reached provisional agreement in June 2021 on the revision of the Motor Insurance Directive providing more protection, transparency and smoother cooperation throughout the EU. The amended rules aim at better protecting injured people when accidents occur in any EU member state, including domestic victims of an accident caused by a driver from another EU country. Victims of accidents will also be protected if a liable party’s insurance company goes bankrupt, as the new rules require national compensation bodies to meet costs arising from such cases. The rules harmonise minimum amounts of cover across the EU:

- for personal injuries: EUR 6 070 000 per accident or EUR 1 220 000 per injured party
- for damages to property: EUR 1 220 000 per accident.

To tackle uninsured driving, the amended directive allows cross-border insurance checks on vehicles. The agreement introduces mandatory use of a Single Claims History Statement and obligations to inform citizens how they can apply for compensation. Additionally, insurance providers will have to treat all EU citizens equally by accepting claims history statements from another member state as equal to a domestic statement and applying any discounts based on that (such as bonus-malus discounts). Citizens will be able to compare prices, tariffs and coverage offered by different providers more easily thanks to new free-of-charge and independent price comparison tools. To avoid over-regulation, the amended rules allow non-road vehicles (such as garden tractors, mobility scooters, toy cars) as well as electric bicycles to be excluded from insurance obligations. Vehicles intended exclusively for motorsports are also excluded. The deal has been formally approved by Parliament and Council in December 2021.



Covid-19 impact

8. Covid-19 impact

2020 and 2021 were clearly unprecedented years for motor re-/insurance. The average distance travelled by vehicle reduced due to restrictions such as lockdowns and other mitigating effects to break the various Covid-19 waves. This led to an overall reduction in motor accidents and therefore claims frequency. The impact on motor claim frequency varied between different countries due to a number of factors such as the timing and strength of Covid-19 waves and the various governments approaches to lockdowns both in severity and duration. The motor landscape also changed during this period, restrictions on movement and increased working from home meant private car mileage dropped dramatically whereas commercial vehicle mileage increased to satisfy the surge of online ordering.

While the impact on smaller claims is well-known, the frequency and severity impact to larger bodily injury claims has not been fully established yet (due to both the time lag of reporting of such claims and lower number of these type of claims). Whilst the reduction in base distance driven is the same, there are various drivers why large bodily injury claims frequency has not reduced to the same extent and severity continued to increase:

- The reduction of smaller claims frequency is mostly driven by reductions in peak rush hour driving in cities and towns; this is primarily not the time window or place in which large bodily injury claims occur
- Some evidence of high-speeding on less congested roads, leading to higher-velocity collisions
- At least a relative increase in claims with vulnerable road users such as pedestrians, cyclist, e-scooter drivers, etc.
- Continued increases in severity inflation throughout the pandemic-affected years

Looking to the near-term future, the direct impact from Covid-19 will eventually wane, but some of the changes in mobility behaviours will persist. As such, the indirect impact to motor re-/insurance catalysed by the pandemic will continue to be an important topic for the industry.

9. Outlook

As regards catastrophic bodily injury claims, compensation amounts vary greatly throughout Europe. But what all countries in our study have in common is that claims cost are increasing.

The main reasons are as follows:

- Low interest rate environment and consequently pressure on discount rates
- Annual inflation is currently at a 30-year high in most of the European countries. This impacts bodily injury compensation in all heads of damages, but specifically in care worker wage inflation
- Bodily Injury severity growth (see Swiss Re institute study above page 11)
- New technological development of medical treatment and in rehabilitation

Claims departments need to follow these trends closely to make sure that catastrophic bodily injury claims are adequately reserved to avoid under-reserving and/or adverse prior year development.

From an Underwriting point of view, in these current times of high uncertainty reinsurance can provide significant value through transfer of risks which are difficult to quantify. Excess of loss and other forms of reinsurance remain sought-after tools to mitigate the various trends that are affecting Insurer’s portfolios, despite the clear need for reinsurance prices to rise due to the exposure increase outlined in this paper.

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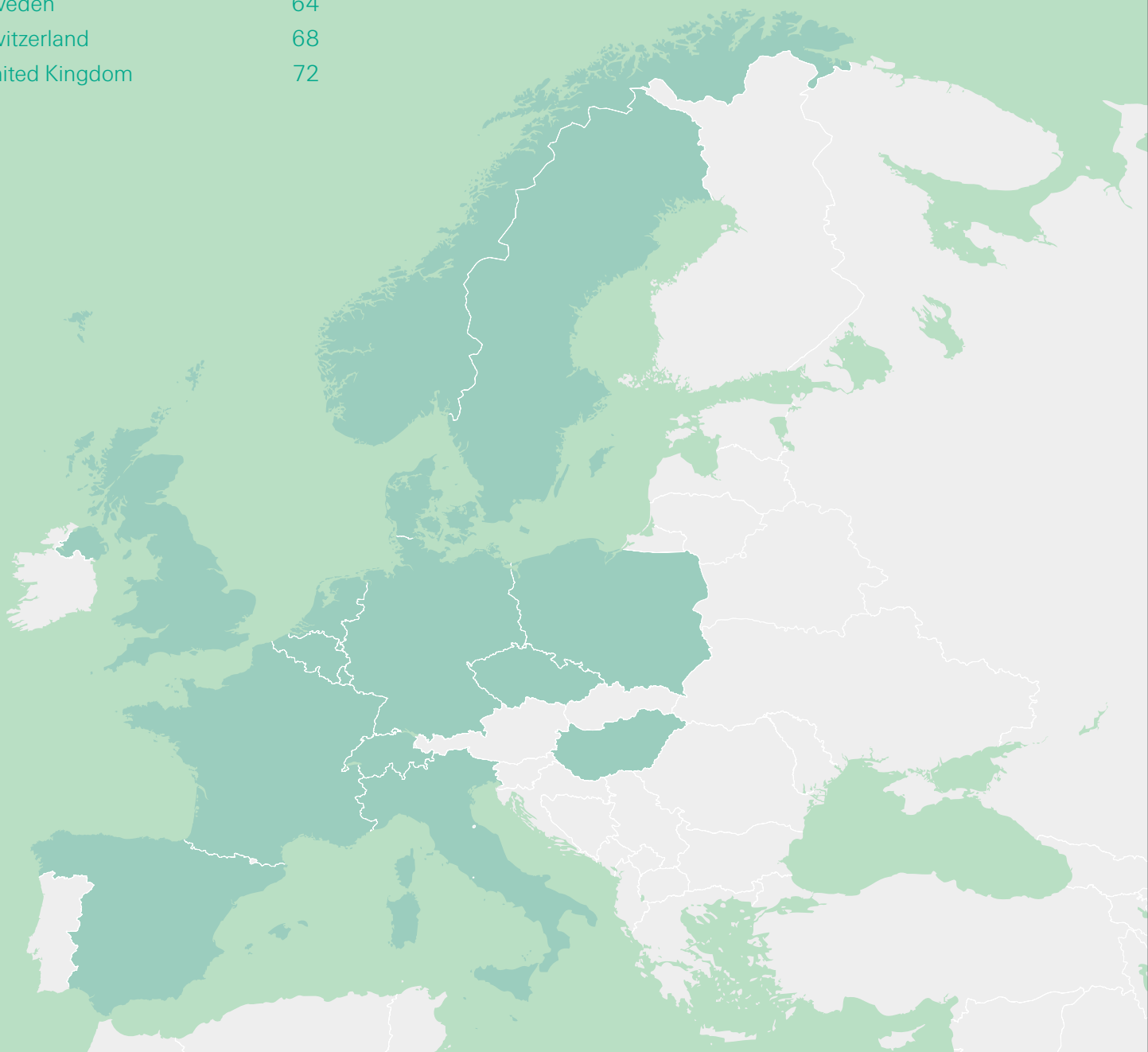


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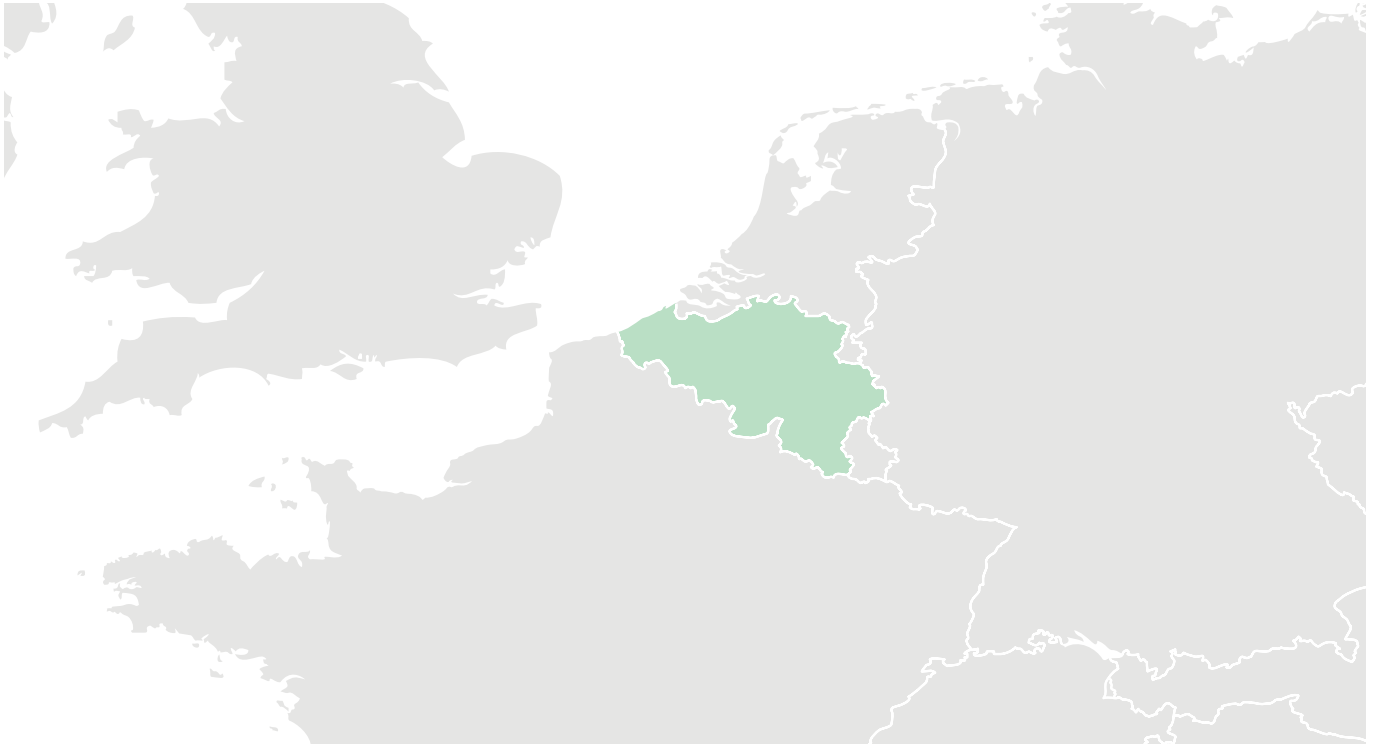


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Motor Bodily Injury Landscape Belgium



Recent legislative changes

The legal and claims environment in Belgium

In Belgium, minimum coverage for compulsory motor third-party liability insurance (MTPL) is unlimited for personal injury and EUR 100 000 000 for damage to property.

Influenced by France's "Loi Badinter", Belgian law provides for a system of automatic compensation to be paid by the liability insurer of the motor vehicle which causes an accident. Under this law, every victim must be compensated for bodily injury or death, and damage to clothing, with the exception of the driver of a motor vehicle who causes an accident and is injured as a result. This regulation applies more specifically to pedestrians, cyclists, and passengers in the insured vehicle.

Class actions are possible in Belgium as of 1 September 2014. The prerequisite is that the damage for which compensation is claimed results from violation of a contractual obligation by the company or (one of) the regulations as specified by the law. The rules are intended to protect consumers. Traffic-related incidents such as the multiple vehicle collision on the highway at Kruishoutem (27 February 1996), would probably not trigger collective redress actions in the future since they do not affect consumer rights.

Procedural aspects

Due to capacity overload, legal procedures can take 10–15 years before a final ruling is made. Advance payments and out-of-court settlements are incentivised by legal interest charged on compensation and by global agreements reached within the community of Belgian insurers (Assuralia), such as the "Code of conduct for TPL-insurers iro victims of severe accidents regardless the nature of the accident".



Litigiousness and court awards have increased due to growing consumer awareness. This is similar to other countries in western and southern Europe. In motor insurance matters, legal expenses cover has also had an impact. The cover is not mandatory, but is very often taken out by vehicle owners. 2018 saw 6.7 incoming civil and commercial litigious cases per 100 inhabitants in Belgium's first instance courts. This is nearly three times the European average of around 2.4 (Council of Europe 2020 report).

Lawyers' fees range from EUR 100 to 300 per hour. As of 1 January 2014, these fees are subject to 21% VAT.

Art. 446 of the Belgian Code of Civil Procedure states that lawyers determine their fees with the modesty expected of their profession. Any contractual provision exclusively related to the outcome of proceedings is prohibited. Consequently, contingency fees or "pacta de quota litis" are forbidden.

Claims and compensation

General

Compensation is determined by a court should parties fail to reach a settlement. The free judgement of the magistrate remains a cornerstone, but courts cannot rule "ultra petita". In the past, most courts had unofficial compensation scales. 1995 saw a first unique indicative table (IT/tableau indicatif) ratified by larger communities of judges. The aim was to use this as the basis to set compensation standards in respect of unsettled claims/loss heads. Ever since, the IT compensation scale has been reviewed and standard claim components adapted on a regular basis (tri-/quadriannual updates of the IT as of 1995).

Since 2012 Belgian magistrates have recommended that medical experts take three kinds of disability into account: "Incapacité Personnelle" (pain and suffering), "Incapacité Économique" (economic loss) and "Incapacité Ménagère" (loss of housekeeping). These replace the two previous categories: "Economic Disability" ("Incapacité") and "Medical Invalidity" ("Invalidité").

In previous IT versions (2008 and 2012), magistrates considered indexed annuities to be the most complete and adequate compensation for losses from permanent disability (PD). This preference was no longer included in the 2016 version. Magistrates appeared to have adopted the insurance sector's recommendation to consider the three compensation methods for future loss heads, without expressing any preference. The three methods as described in the IT, are as follows:

- Indexed annuities: "... an indexed and possibly revisable annuity represents an adequate form of compensation ..."; "Such a compensation method is beneficial for the victim..."
- Capitalisation: "A second compensation method for future loss ...".
- Lump sum: "The third way to compensate is to grant a lump sum amount".

However, in the most recent version of the IT, i.e. IT 2020 (published in 05.2021), the judges have re-introduced a certain preference for indexed annuities, more specifically only for damage resulting from a severe PD.

Regular reviews reveal that in daily compensation practice, annuity payments (for loss of income and/or other losses resulting from PD) still remain the exception.

In respect of capitalisation, successive editions of the IT have recommended discount factors to be used to calculate future loss components. According to the most recent IT editions, the discount rate should be 1% (instead of the previous successive rates of 4%, 3%, 2.50% and 2%). While in previous IT versions the judges recommended capitalising from 15% PD for future loss heads, this threshold is no longer included in the 2016 & 2020 ITs. Some lawyers defending injured victims' interests appear to be interpreting this as a sign to opt also for capitalisation for PD levels below 15%. Several courts appear to follow this interpretation.

For lump sum compensation methods, magistrates also recommend amounts to be taken into account per percent of PD. According to the latest IT, these vary according to the victim's age: between EUR 1 220 per kind of disability to be compensated (up to 15 years) and EUR 165 (85 years and more).



In the case of agreed full and final settlement, claims cannot be reopened. Changes to compensation are not allowed unless the victim proves that the claimed additional head of indemnity was not included in the settlement agreement. The same applies in case of a final court decision. The victim can only return to the insurer/to court when medical, tax or other reserves for the future have been explicitly granted and under the condition that the victim, (s)he proves these have materialised.

For (nearly) each severe bodily injury (BI) case, medical reserves for the future are stipulated in medical reports, explicitly claimed by victims' lawyers, and granted by court or agreed in out-of-court settlements. Whereas this was rather the exception in the past, it has become the general rule for several years now.

A clear increase is also noted in the proportion of cases where the victims seek to reopen their case (i.e. because of medical aggravation), occasionally several years after settlement.

In claims where reserves have been granted for the future, it is often recommended for insurers to keep their respective individual files open.

In recent years we have seen another development that will likely lead to an increasing number of claims having to remain open. This is mainly the case for accidents resulting in very severe bodily injuries, with the victim's status requiring extended care or institutionalisation. Certain recurring invoices are to be settled by the insurance company (after verification) without a reasonable possibility of settling these "in one go" for the future.

Loss of earnings

Compensation for loss of earnings in respect of PD is usually based upon gross salary less tax, but "reserves" are often granted if the amount is to be taxed afterwards. Loss of salary is calculated until retirement age and there is a possibility to claim compensation for loss of retirement pension or post-professional loss as from normal retirement age. The latter is currently still 65 years, but will increase to 66 years (as from 2025) and to 67 years (as from 2030).

In Belgium there is subrogation in favour of social security carriers. Health insurance providers ("les mutualités") mainly cover medical expenses and loss of income (capped), and systematically recover from third-party liability insurers. The latter are obliged to inform the social security providers in advance of the final bodily injury settlement. Workers' Compensation (WC) is also considered part of social security provisions, despite this sector being managed by private insurance companies. Recourse action from WC insurers is possible against liable third parties (or their insurers). Potential recourse against MTPL insurers has been extended by law to cases where the WC-victims are pedestrians, cyclists, or passengers, provided that the insured motorised vehicle was "involved" in the accident.

Third-party assistance, medical treatment and other

Hospital costs currently amount on average to EUR 1 000–1 250 per day for intensive care and EUR 600–750 per day in other cases. Prices include all treatments and very much depend on the type of room (single rooms being more expensive than shared rooms).

Compensation for home care is usually based upon cost per hour. In the 2016 & 2020 ITs, magistrates recommend compensating this loss head "in concreto". When determining hourly compensation for assistance from third persons (ATP), the following criteria are assessed: the need for support by a third person, their qualification and the nature and extent of assistance.

The 2012, 2016 & 2020 ITs refer to hourly rates: "In the absence of justifying documents, unqualified ATP might be compensated by an allowance of EUR 10 per hour". In practice, this is translated as follows:

- Out-of-court settlements continue to range between EUR 10 and EUR 15 per hour (an average of EUR 12.50) for non-specialised assistance ("active").
- For "non-active" assistance (e.g. presence overnight), rates may be less than EUR 10 per hour.



That said, different outcomes can happen in court with rulings occasionally based upon higher amounts (up to EUR 23.50 per hour).

For care homes, costs per month vary between +/- EUR 2 500 for a retirement home and +/- EUR 10 000 for a specialised institution.

All necessary medication and prostheses (including adaptation of the victim's home) are paid for by the third-party liability insurer. The insurers work with averages of EUR 5 000 per year (paraplegia) and EUR 10 000–15 000 per year (tetraplegia) as estimates for prostheses and medical devices. The overall cost for home-adaptations, however, varies between EUR 50 000 and EUR 150 000.

For each of these loss heads, there is subrogation for social security carriers, be they health insurance providers or WC insurers. The VAPH (Vlaams Agentschap voor Personen met een Handicap), a semi-public organisation, can also be involved. The VAPH finances certain services and appliances, prostheses and adaptations, or grants a "Persoonsvolgend Budget" – an individualised budget – to pay for care and support from the victim's own network, volunteers, individual assistants and professional carers. The VAPH has been fully subrogated to the rights of the beneficiary since 2002, and does not hesitate to use this against insurers of liable third parties (having caused the handicap). They have become much more active in individual cases and tend not to recognise the usual caps applied "en droit commun". MTPL insurers, on the other hand, strictly stick to these caps. The Agence pour une Vie de Qualité (AVIQ), VAPH's equivalent in the French-speaking part of Belgium, shows somewhat less activity in individual MTPL claims, at least for the time being.

Pain and suffering

In cases of bodily injury, pain and suffering ("Incapacité Personnelle" as per the latest ITs, previously "Dommage Moral") should be assessed separately. In recent decades, basic amounts have gradually increased. For some years now, there is a clear trend to grant indemnity based upon capitalisation of a daily amount (instead of lump sum):

- Capitalisation has become the general rule for more severe BI cases.
- This method is also more and more applied for less severe BI claims (certainly since the disappearance of the 15% PD threshold).

Usually, a subdivision is made between two periods of time.

The 2020 IT provides recommended amounts for most of the individual loss components (same as 2016 IT):

- For Temporary Disability (from occurrence until recovery): EUR 34 per day during hospitalisation; EUR 28 per day following release from hospital, for 100% disability.
- For Permanent Disability (from consolidation of the injury/ies): A typical characteristic of Belgian compensation standards is the split into various sub-elements for this overall loss head, each of these being indemnified separately:
 - 1 Pain and suffering *stricto sensu* ("Incapacité Personnelle"): Either by lump sum per percentage of PD (decreasing amount, depending on age), e.g.:
 - i for victims up to the age of 15 years = EUR 1 220 EUR
 - ii for victims as from the age of 85 years = EUR 165 EUR.

Or by capitalisation based on EUR 28 EUR per day/in proportion to the degree of PD (since 2016 IT, no minimum PD threshold provided).

- 2 **Damage to appearance ("Dommage Esthétique")**: Lump sum depending on severity (scale from 1 to 7/7) and age.
- 3 **Sexual damage**: Lump sum for damage caused by loss of sexual activity, including loss of possibility to have children, necessity of caesarean and impact on partner's sexual activity.
- 4 **"Préjudice d'Agrément/Genoegenschade"**: For deprivation of favourite sporting and/or other leisure activities.
- 5 **"Dommage des proches/Schade door weerkaatsing"**: Damage to closest relatives as a result of the victim's suffering (usually but not exclusively for most severe injuries).



In cases of fatality, pain and suffering is a separate head of damage (still labelled “Dommage Moral”). Levels of compensation largely depend on the degree of family connection with the victim. The 2020 IT proposes lump sums from EUR 1 500 per person for a grandparent or grandchild not living in the victim’s home and up to EUR 15 000 per person for the victim’s spouse/partner or for a child living together with the victim (EUR 24 000 for a child who is orphaned as a result of the accident). If a connection can be proven, relatives not included in the current list (containing 13 different kinds of relatives) can also claim compensation. Each indemnity can be adapted by considering particular circumstances.

Compensation for loss of housekeeping

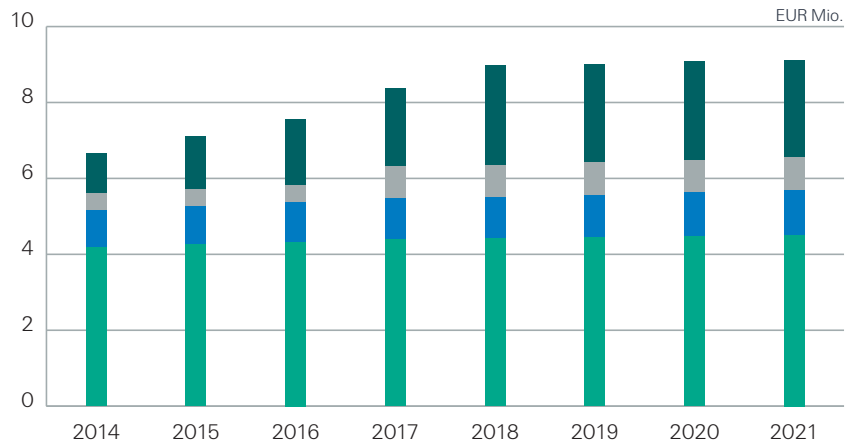
Awards for loss of housekeeping are usually granted. Compensation is based on EUR 20 per day (single person or family without children). This amount is increased by EUR 7 per child per day. The indemnity is an award per household and is split according to actual contributions (by default: 65% attributed to the female partner and 35% to the male). During Temporary Disability, the indemnity is granted per day and degree of disability. For PD, the capitalisation method may apply.

Tetraplegia claims scenario

Belgium – 2021

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 care

- Other
- Pain and Suffering
- Loss of Earnings
- Cost of Care

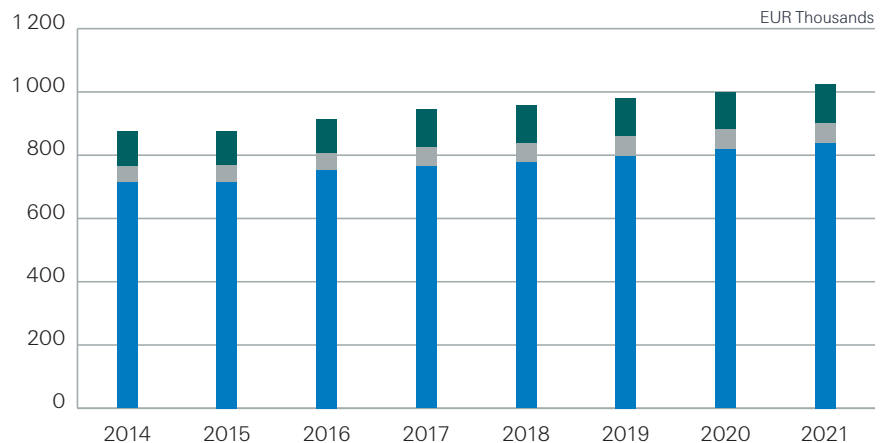


Fatality claims scenario

Belgium – 2021

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

- Other
- Pain and Suffering
- Loss of Earnings



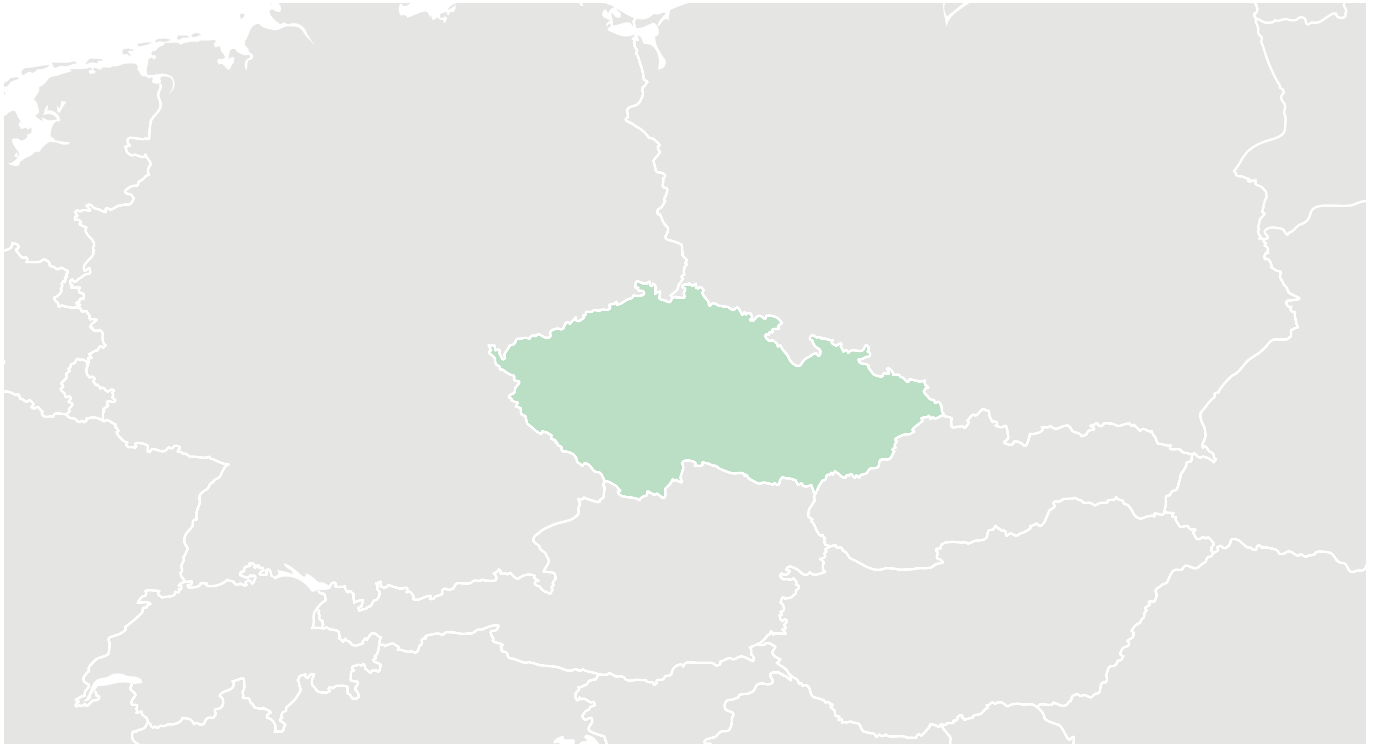
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Motor Bodily Injury Landscape Czech Republic



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 statistics from the Czech Insurers' Bureau CKP, the number of road fatalities in the Czech Republic decreased by 65% from 2002 to 2020. The number of severe injuries also decreased, by 67% from 2002 to 2020.

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

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 for those born after 1977).
- 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 offers on CKP's standard methodology. However, lump sum agreements are voluntary and therefore not at the discretion of the courts.

Third-party 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 expenditure caused by additional needs due to an 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 second quarter of 2021 the gross average income was CZK 36 780). This results in a value of CZK 368 for compensation in 2022. 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 cases 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 (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 "harm of social status" will be defined according to the International Classification of Functioning, Disability and Health (ICF). For severe injury (100% disability), a 400-multiplicator of the average monthly gross salary (e.g. 400* CZK 33 840 = CZK 14 712 000) is recommended. 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 be both reduced and increased. There is a maximum limit of CZK 20 million, however, in cases of greatest 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.

Other

- House modification 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 housekeeping expenses as a result of the injury can be made. Currently, however, these are the exception rather than the rule.

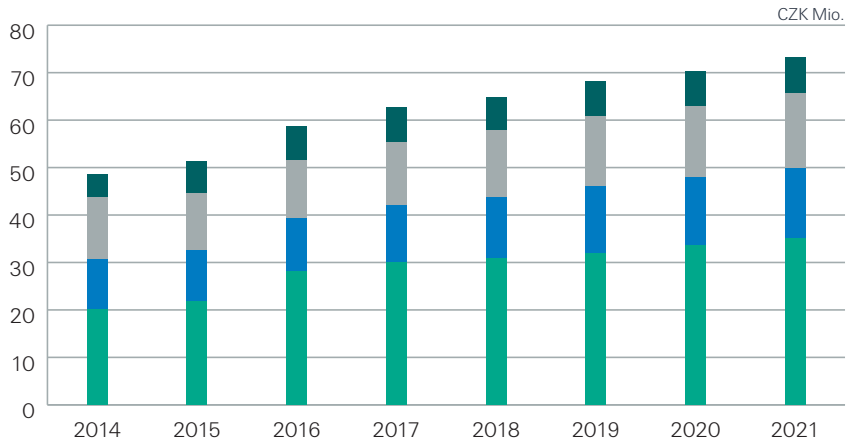


Tetraplegia claims scenario

Czech Republic – 2021

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 care

- Other
- Pain and Suffering
- Loss of Earnings
- Cost of Care

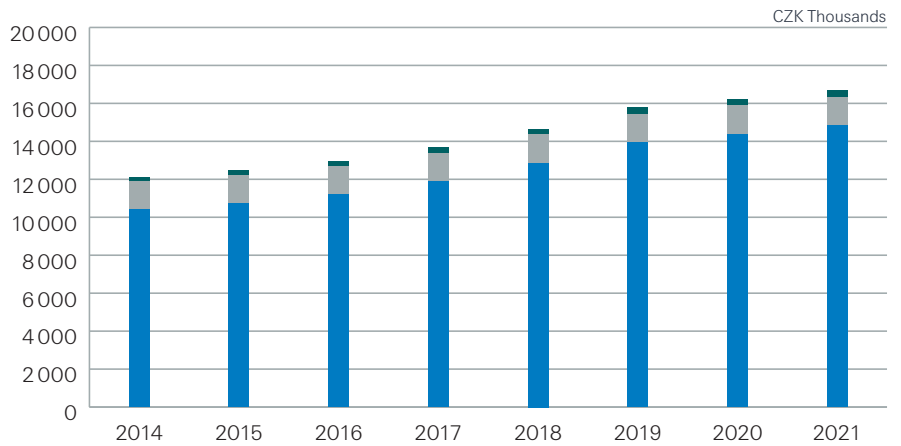


Fatality claims scenario

Czech Republic – 2021

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

- Other
- Pain and Suffering
- Loss of Earnings



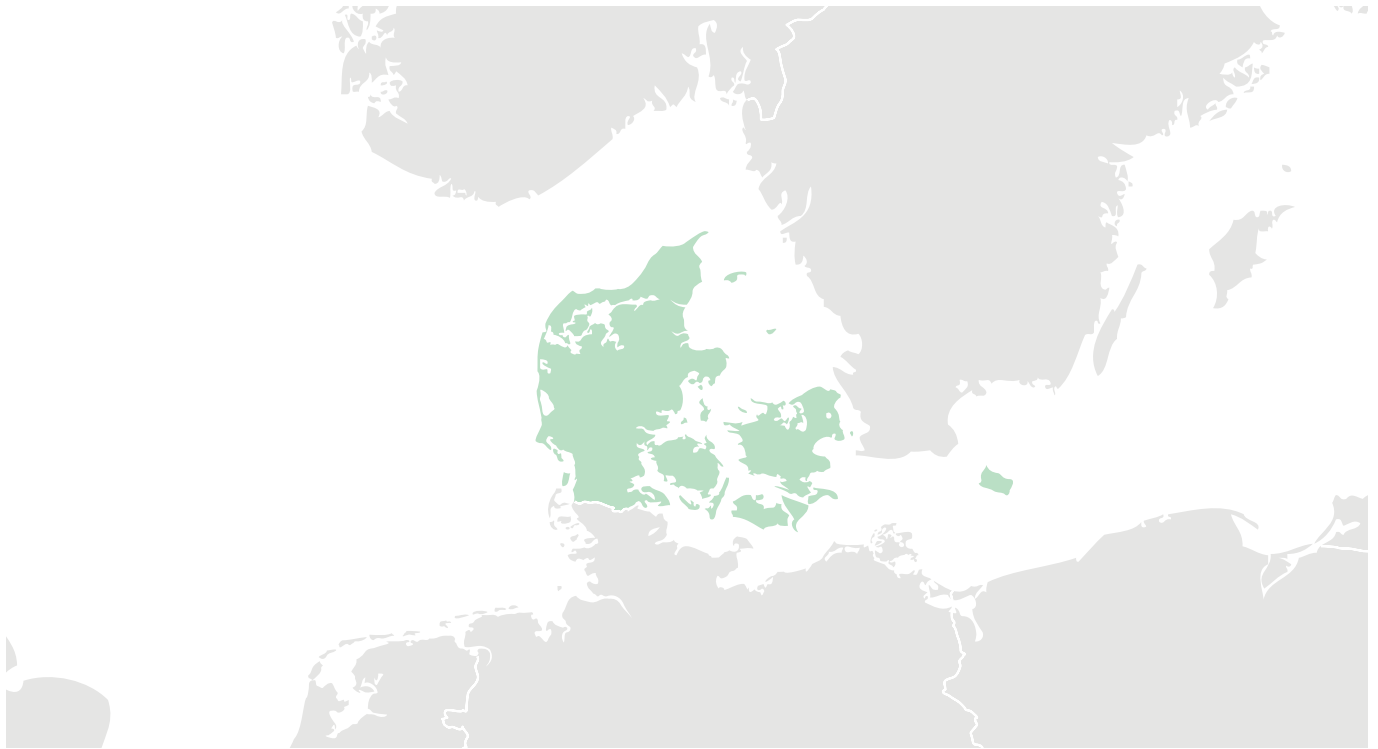
**For more information, please
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Motor Bodily Injury Landscape

Denmark



Recent legislative changes

The legal and claims environment in Denmark

The minimum requirement for Danish motor liability insurance is contained in the country's Traffic Act (Færdselslovens § 105). Minimum sums insured are regulated every year in alignment with inflation. As of 1 January 2021, these sums were DKK 129 million (EUR 17,2 million) for bodily injury claims and DKK 26 million (EUR 3.5 million) for property claims. The sums insured are accumulative and are available per event – not per claimant. It is not unusual that for some types of commercial vehicles such as buses and lorries, policyholders buy sums insured which are higher than the sums required by the Traffic Act.

The claimant has a direct claim against the motor insurance company.

The policy may state that the motor insurer can reclaim any payment under the insurance from the party responsible for the accident, typically the driver. However, this is only permissible when the accident was caused by wilful intent, or by gross recklessness on the part of the responsible party.

The question that is most often tried in bodily injury cases before Danish courts is the question of whether there is a causal link between a traffic accident and the claiming party's injuries. There are many cases in particular concerning whiplash injuries, and especially when there are competing medical disorders or the traffic collision occurred at low-speed (known as "low-energy traumas").



In 2020, the Danish Supreme Court for the first time ruled on the choice of law in a traffic accident with international aspects. U 2020.3747H. The case concerned a German-registered car that collided with a Danish-registered car in Denmark. Two passengers in the German car were injured and sued the Danish car's MTPL insurer in Denmark. The two German passengers were travelling for work at the port of Esbjerg. The German car was owned by their German employer and the driver was their German manager. The accident occurred when the German car crossed into the opposite lane and hit the Danish car. The Danish driver could not avoid the collision and was not to blame for the accident. The German victims' injuries were acknowledged as work-related injuries and compensated in accordance with German worker's compensation legislation.

According to German rules, they were not entitled to make differential claims, but under Danish law they would be entitled to compensation under the Danish Worker's Compensation Act less the amounts they had received in Germany. The question was whether their claim for compensation should be decided under Danish law because the accident had taken place in Denmark and the choice of law should therefore be decided according to the law of the place of accident (the principle of *lex loci delicti*), or whether the claimants had such a strong connection to Germany that their claim should be decided in accordance with German law and the individualising method. Denmark is not party to the Rome II Convention on the Choice of Law, so the issue had to be regulated by case law.

The Supreme Court found that the case should be decided according to Danish law, even though there were many points of connection to Germany. It must therefore be assumed it has been established that the choice of law in most cases of road accidents in future will be decided on the basis of the law of the place of accident (*lex loci delicti*) and that it will require a significant balance of factors for the individualising method to be applied.

During 2021, a change in the Danish Traffic Act was approved by Parliament. The Police may now confiscate a vehicle when its driving involves a severe violation of the Traffic Act, or if the driver violates the Traffic Act multiple times. Confiscated vehicles are sold at public auction and the revenue goes to the Treasury. Examples of situations where vehicles may be confiscated are speeding if the actual speed is more than 100% higher than the speed limit or in cases of drink-driving with a blood alcohol level of more than 2 promille.

As a rule, confiscation of a vehicle may take place even if the actual owner of the vehicle is not aware of nor party to the reckless driving, unless the owner *inter alia* had no opportunity to take steps to avoid the financial consequences of such confiscation. There have already been court rulings that involve speeding in leased cars where the leasing company was forced to accept that its cars were confiscated. The leasing company's only option to recover damages for the loss of a car is to claim from the lessee.

Procedural aspects

The Danish legal environment is not particularly litigious, and the number of cases pending before civil courts has been decreasing since 2010 following an increase during the 2008 financial crisis. The use of IT in the court system has supported more efficient case handling. The digital courtroom includes video meetings and testimonials, as well as presentation of evidence in electronic form, for example by email.

The average duration of a civil case before city courts is several years and has increased due to the Covid-19 pandemic. After the parties have made their exchange of pleadings, the first available date for the hearing may often be one year later. If the city court judgment is appealed, a similar period may be added before an Appeal Court hearing takes place. The assessment of indemnities for permanent injuries and for loss of future income will often require a guiding statement from a public institution, the Labour Market Insurance (Arbejdsmarkedets Erhvervssikring). Their casework time is approximately 1½ to 2 years.

In total, it is not unusual for a case to take up to ten years from accident occurrence before it is finally decided before the courts.



A 2013 survey by Domstolsstyrelsen – the public-sector body in Denmark which administers the courts – showed that the parties involved in court cases were very satisfied with the judges.

A judgment includes a decision on how costs are allocated. Normally, the winning party is awarded costs which the losing party must pay. The costs are awarded according to a standardised set of rules. In more complex cases, it is unlikely that the awarded costs will cover the total legal costs of the winning party. In such cases, the party is obliged to pay additional costs to their own lawyer.

Claims and compensation

Since 1984, the Danish compensation scheme for bodily injuries has been based on the Liability for Damages Act (Erstatningsansvarsloven).

The legislation sets out a schematic method for calculating compensation, (see below). The level of compensation might be deemed low compared to other European countries. This is partly due to the social security and welfare system which carries the vast majority of care costs incurred by an injured party. The permitted compensation according to the law, in the form of a lump sum payment, sets an upper limit for the indemnity. For example, a loss incurred by a severely injured high earner might not be fully compensated.

A paid and closed claim may be reopened should there be a material change in the consequences of an injury. A reopening could trigger increased compensation for disability or for loss of future earnings. Only the injured person/claimant may request a reopening of a claim. This is also the case when the health situation of the injured person improves after compensation has been awarded. The wrongdoer or their liability insurer may not request a reopening

The loss headers which are allowed according to the law are:

- Future recovery costs
- Loss of earnings
- Loss of earning capacity
- Pain and suffering
- Permanent injury
- Loss of dependency, for spouse, partner or for children

Compensation payments are capped for most of the loss headers. Future recovery costs are the exception in this regard. From a European perspective, such costs can be very substantial. However, as hospitalisation and care costs are paid by the Danish public social security and welfare system, the remaining expenses which can be claimed under this loss header are somewhat limited. The various amounts mentioned below are as of 1 January 2021 and are indexed annually to compensate for inflation and other developments in prices.

Claimants may recover the costs of lawyers and other experts who assist them in preparing their applications.

Third-party assistance, medical treatment and other

As already mentioned, the social welfare system pays nearly all these costs. However, depending on the actual circumstances, some costs such as recreation and transport to and from hospital may also be claimed under the “future recovery costs” loss header. That said, such costs are normally relatively minor.

This loss header could also include additional costs due to prolongation of /delay in education or training, when this (extension) is caused by the accident.

Should the costs be periodic or annual recurring items, the annual amount is multiplied by 10 to compensate for future years. In such cases, the amount is gradually reduced depending on the age of the injured person at the time of the accident.



Loss of earnings

Compensation for loss of earnings is paid until the injured person is able to start work again. The compensation which may be claimed is a net amount. Sick pay, benefits from an employer or the local authority, insurance benefits reimbursing actual damages and similar benefits paid to the injured person are deducted from the gross compensation amount.

Loss of future earning capacity compensates for the permanent reduction in a claimant's ability to work and earn money. The compensation is calculated on the basis of a claimant's previous annual gross salary, including payments to pension plans plus other salary components, and the percentage reduction in earning capacity. The sum is multiplied by 10 to cover future years and is paid out as a one-off lump sum. The maximum compensation for loss of future earning capacity is limited to DKK 9 859 500 (EUR 1.3 million).

To take account of the remaining lifespan of the injured person, the compensation amount is gradually reduced by fixed percentages for each year where the injured person is older than 29 on the date of the accident. The gradual reduction applies to injured persons who are between 29 and 69 years of age at the time of the accident. The reduction increases by age. Thus, an injured person who is 69 at the time of the accident may claim a maximum 30% of the calculated loss of future earning capacity from the responsible party/the motor insurance.

No distinction is made between men and women regarding compensation. Children have their compensation calculated based on a standard annual salary amounting to DKK 452 000.

Pain and suffering

Pain and suffering is expected compensation for the daily activities the injured cannot perform and physical discomfort during the period of sickness. As such, compensation does not cover economic loss. It may be claimed by the injured person only. Pain and suffering may be claimed for via a daily allowance of currently DKK 215 for each day the person is sick. The maximum amount recoverable under this loss header is DKK 82 000.

Pain and suffering payouts appear low compared to other European countries, and are not linked to the nature of the injury from which the claimant suffers. Pain and suffering may be claimed by the injured person only – and not by other family members.

Permanent injury

Compensation for permanent injury is a maximum DKK 939 500, in special circumstances DKK 1 126 000 at 100% disability. The percentage is set on the basis of the medical nature and scope of the injury and the inconvenience caused in the injured person's life. Compensation is gradually reduced depending on the age of the injured person at the time of the accident.

Both the injured person and the party having caused the injury can obtain a recommendation on the percentage level of disability and loss of earning capacity from the public institution Labour Market Insurance (Arbejdsmarkedets Erhvervssikring).

Loss of dependency

A person who is liable for damages in connection with another person's death pays compensation for reasonable funeral expenses and compensation to those who suffered loss of dependency through the death.

Compensation for loss of dependency for a spouse or partner may be claimed at 30% of the compensation that the deceased may be assumed to have received for total loss of earnings capacity.

Compensation for loss of dependency for surviving children is fixed at an amount corresponding to the total child maintenance that the deceased could have been ordered to pay under the Child Maintenance Act (lov om børnebidrag) if the deceased had been liable to pay maintenance following a divorce. If the deceased was the sole provider, compensation is increased by 100%.

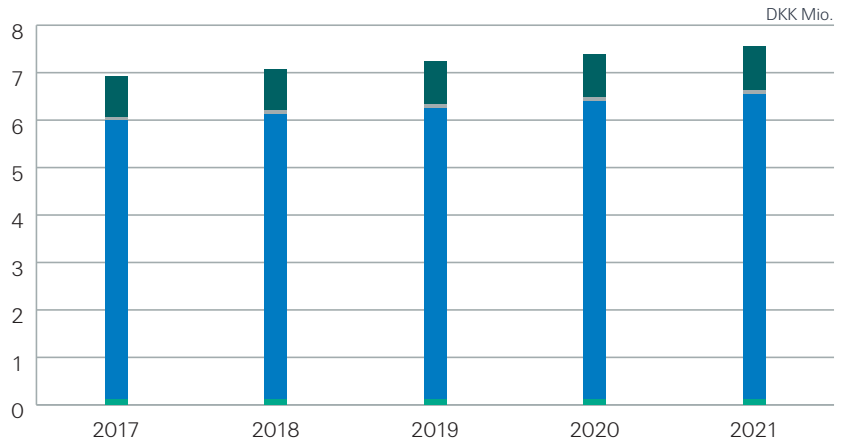


Tetraplegia claims scenario

Denmark – 2021

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 care

- Other
- Pain and Suffering
- Loss of Earnings
- Cost of Care

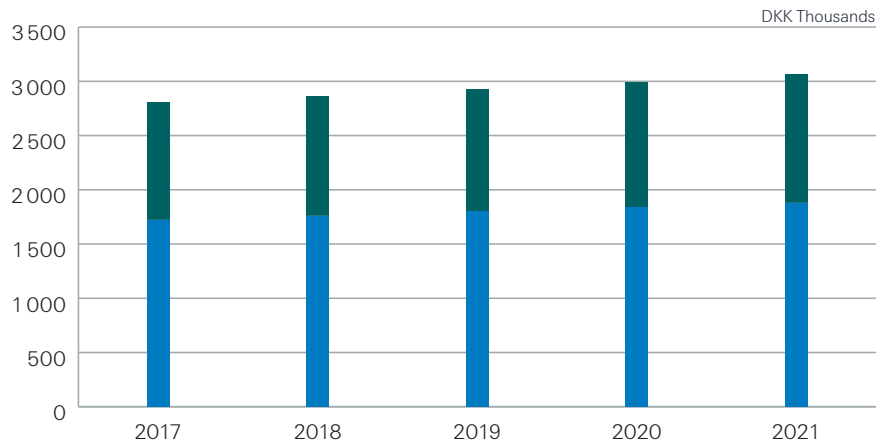


Fatality claims scenario

Denmark – 2021

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

- Other
- Pain and Suffering
- Loss of Earnings

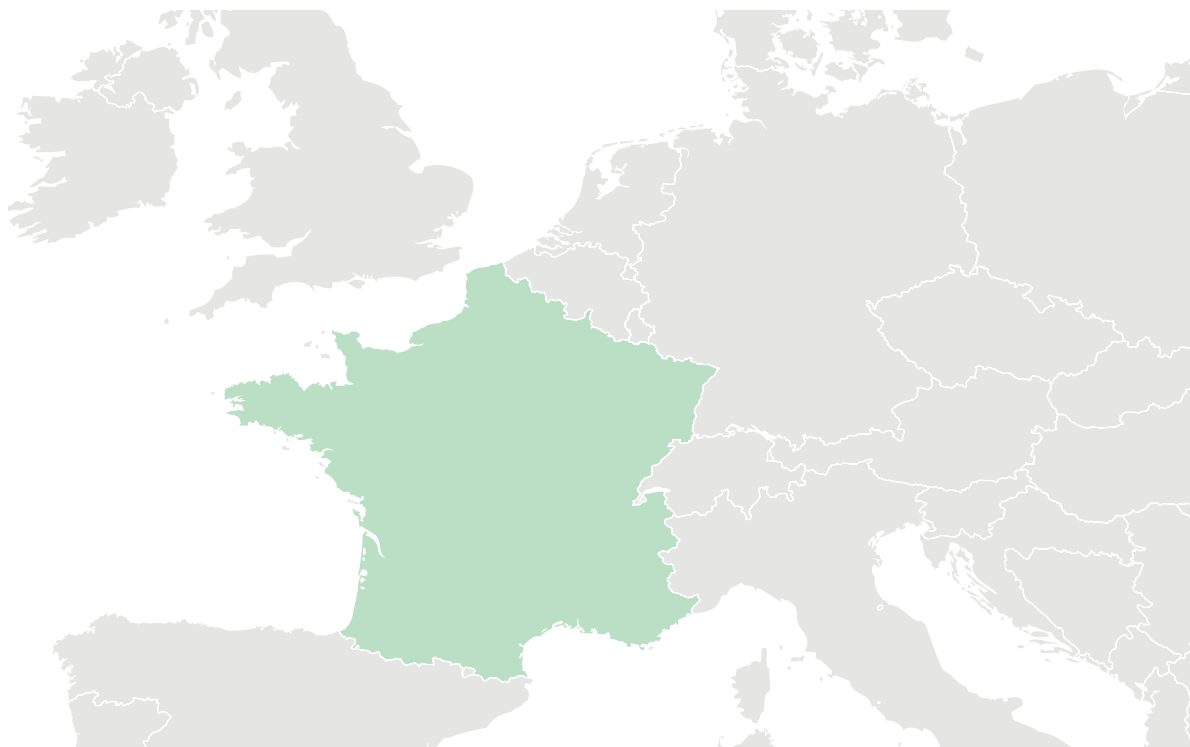


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Motor Bodily Injury Landscape France



The legal and claims environment in France

Compulsory in France since 1945, third-party liability cover 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; any vehicle that 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 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 but 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");
- Drivers: ordinary negligence may be asserted to reduce or deny compensation (draft law to reform this principle is under discussion).
- Social security can claim a refund of monies paid to victims by deducting these from indemnity awards.



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 courts.

- 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 disabilities 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 their 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 justification for the extent and quantum of indemnities allocated and whether payment is made as a capital 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 closely 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 below in the overview of compensation rules in France).

- Patrimonial, aimed at compensating the patrimony which has been reduced by inflicted costs and losses;
- Extra-patrimonial, strictly related to the injury and that cannot be seized by creditors (e.g. health authorities).

An overview of compensation rules in France

	Direct victim		Victim’s relatives	
	Temporary damage (before stabilisation)	Permanent damage (after stabilisation)	In case of death of the victim	In case of victim’s survival
Patrimonial damage	<ul style="list-style-type: none"> ■ Actual medical costs (DSA) ■ Various costs (FD) ■ Actual loss of income (PGPA) 	<ul style="list-style-type: none"> ■ Future medical costs (DSF) ■ House accommodation costs (FLA) ■ Vehicle accommodation costs (FVA) ■ Third-party assistance (ATP) ■ Future loss of income (PGPF) ■ Professional impact (IP) ■ School, university or training damage (PSU) 	<ul style="list-style-type: none"> ■ Funeral costs (FO) ■ Relatives’ loss of income (PR) ■ Relatives’ various costs 	<ul style="list-style-type: none"> ■ Relatives’ loss of income (PR) ■ Relatives’ miscellaneous cost (FD)
Extra patrimonial damage	<ul style="list-style-type: none"> ■ Temporary functional deficiency (DFT) ■ Pain and suffering (SE) ■ Temporary aesthetic damage (PET) 	<ul style="list-style-type: none"> ■ Permanent functional deficiency (DFP) ■ Leisure activities damage (PA) ■ Permanent aesthetic damage (PEP) ■ Sexual damage (PS) ■ Founding damage (PE) ■ Exceptional permanent damage (PPE) 	<ul style="list-style-type: none"> ■ Loss of consortium (PAC) ■ Affection damage (PAF) 	<ul style="list-style-type: none"> ■ Affection damage (PAF) ■ Exceptional extrapatrimonial damage (PEX)
Evolutional damage	Damage linked to evolutional pathologies			

Capitalised long-term damages are calculated with reference to scales, distinguishing between payments by annuity or capital sum: The mortality table and discount rate foreseen by the “Code des Assurances” are used for annuities. The “Gazette du Palais 2020” scale with two discount rates to choose from: 0 or 0.30% in case of capital sums is mainly used by appeal courts.

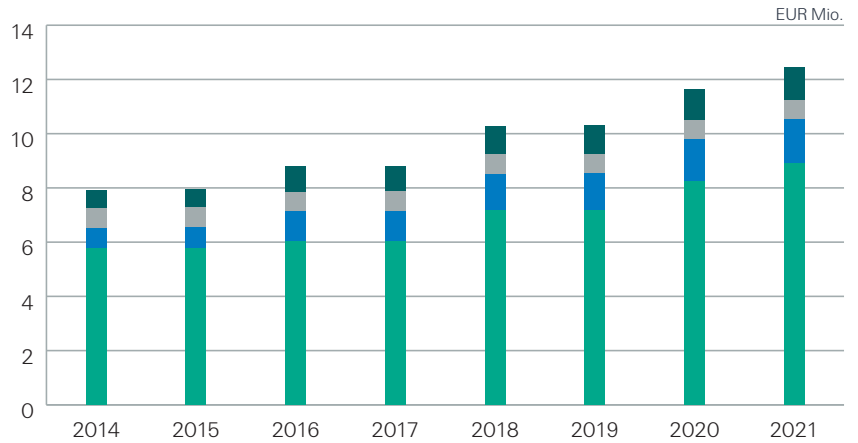


Tetraplegia claims scenario

France – 2021

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2 minor children, average income in dependent
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- Other
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- Cost of Care

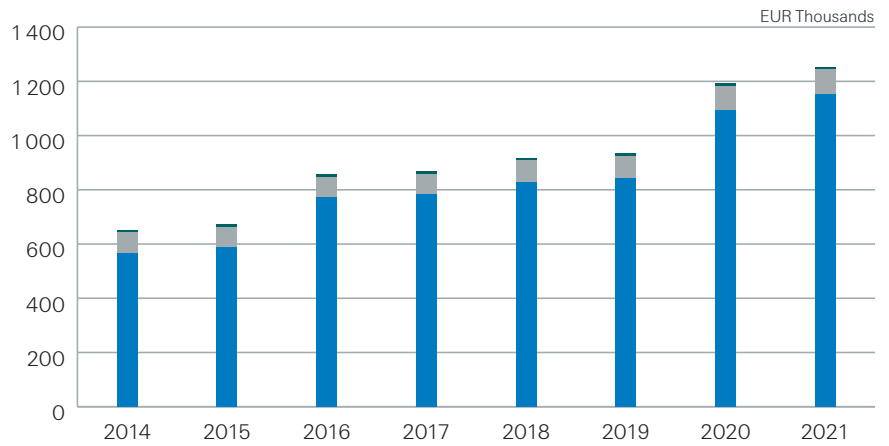


Fatality claims scenario

France – 2021

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

- Other
- Pain and Suffering
- Loss of Earnings



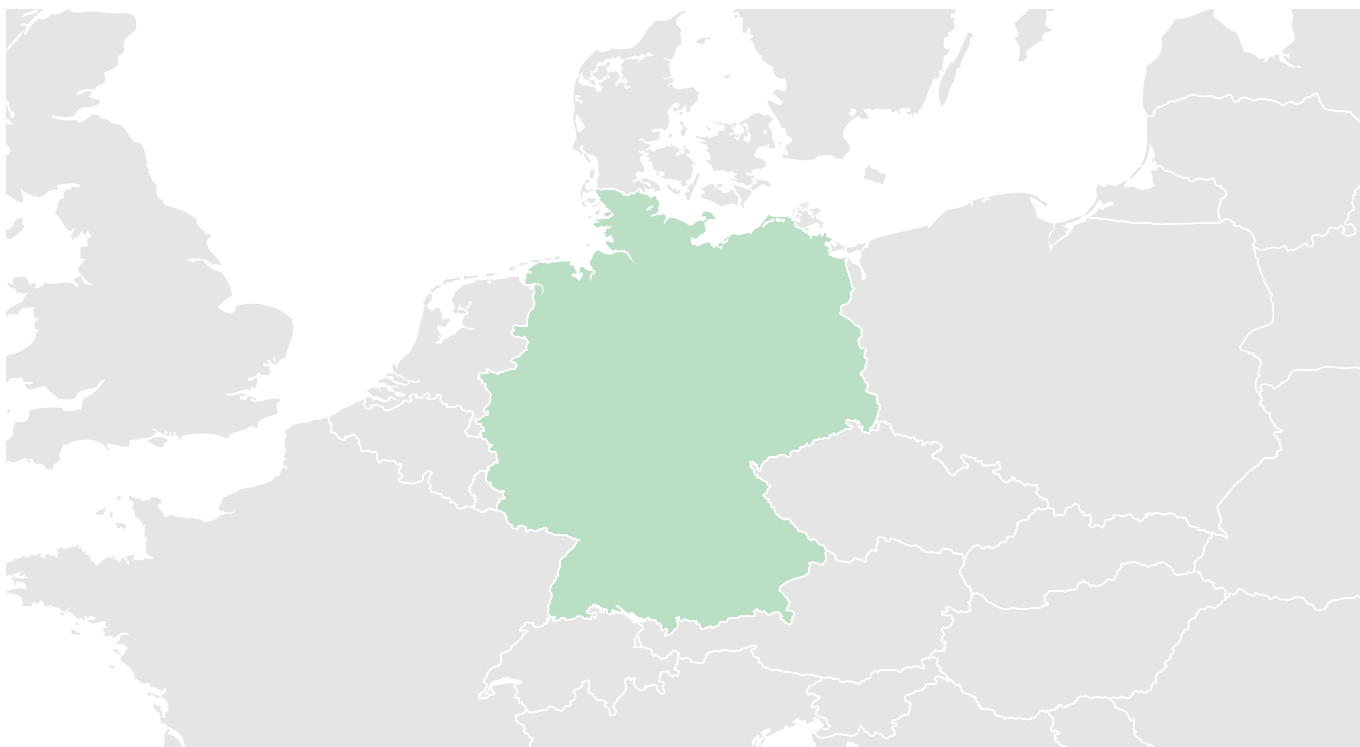
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Motor Bodily Injury Landscape Germany



Recent legislative changes

The legal and claims environment in Germany

From 15 June 2019, e-scooters became legal on Germany's roads and bike paths provided they are limited to speeds of 20 km/h. Users have to be at least 14 years of age and are not required to wear a helmet or hold a driving licence. E-scooters are not insured under personal liability insurance. Some insurance companies are already offering liability insurance. Much like insurance for mopeds, prices will be around EUR 40 per year. An insurance badge and small square number plate must be visibly attached to the e-scooter.

Federal Supreme Court decision regarding care cost

A further trend is continuously increasing care costs. The Federal Supreme Court has decided there is no cap on awardable compensation for the "increased needs" of accident victims by ruling there is no strict upper limit for nursing care costs for severely injured persons with brain injury and that a flat-rate limitation of double the nursing home costs is not justifiable (VI ZR 518/16; 28.08.2019).

According to the German Civil Code (Section 843 (1) Alternative 2 BGB), the costs for engaging a nurse as well as care efforts of close relatives that exceed expected levels of personal care fall under "increased needs".



Introduction of an entitlement to survivor's benefits

In July 2017, the German legislator introduced a new regulation that puts into place an entitlement for surviving dependents (Section 844 (3) of the German Civil Code). The new survivor's benefits claim, which provides compensation for pain and suffering, is limited to those with a very close relationship to the person killed. The claim is only valid in the case of the death of a close relative, but not in the case of a severe injury.

The amount of compensation is not regulated by law and circulated recommendations are disputed within the market. It remains to be seen how the court practice develops but the first court decisions confirm that amounts no higher than EUR 10 000 were awarded during 2018. These amounts should be seen in light of overall claim awards.

Truck and trailer liability

On 17 July 2020, a change in the law by the German government came into force, according to which the owner of a towing vehicle is again primarily liable for accidents involving vehicles with trailers. In future, the insurer of the towing vehicle will pay for the damage, provided that the trailer does not increase the risk.

This new regulation corrects a ruling of the Federal Court of Justice of 27 October 2010, according to which, in the event of an accident involving a vehicle towing a trailer, the claims expenditure in the motor liability insurance was to be divided between the towing vehicle and the trailer in the ratio 50:50.

Sections 19 and 19a have now been added to the road traffic act, which summarise and now also regulates liability in road traffic accidents involving trailers and carriages.

When driving with a trailer, the towing vehicle is once again exclusively liable. Its motor vehicle liability insurer is solely liable for third-party damage. The trailer is only liable if it has increased the risk. This is the case, for example, if the trailer causes damage due to a technical defect.

The new regulation of family privilege pursuant to § 116 (6) SGB X

Family privilege refers to the special legal provisions according to which recourse against intra-family injuring parties is excluded unless intent is involved.

This also meant in the previous version that the social insurance carriers could not claim their expenses as compensation from the insurance company of the person who caused the damage.

The amendments apply to all claims occurring after 31 December 2020.

Two major changes:

- **Extended scope of application**
The scope of application of family privilege has been considerably extended. In the future, it will be sufficient for the damaging party and the injured party to live in the same household.
- **Motor liability claims excluded from family privilege**
The amendment of Section 116 (6) has also resulted in the "amendment of the family privilege". This amendment now prevents that injured parties receive benefits from both social security and liability insurance from the same damaging event.

According to sentence 1 of the amendment made, the claim will in principle be transferred in the future, but cannot be claimed by the social insurance carrier (against the person causing the damage).

Sentence 3 of the amendment states that, in deviation from sentences 1 and 2, a claim for compensation can be claimed up to the amount of the available sum insured if the damage occurred during the operation of a vehicle for which insurance coverage exists under § 1 PflVersG.

This means that the claim for compensation can be claimed now by the social insurers against the liability insurer of the vehicle involved for claims arising from January 1, 2021. The old law still applies for damage incurred up to December 31, 2020.



Speeding accidents: 4 StR 482/19 – judgment of 18 June 2020 (Federal Court of Justice)

At the beginning of 2017, two “speeders” who had raced their vehicles in an inner-city area and killed a road user in the process, were convicted by the Berlin Regional Court for murder committed with complicity pursuant to Section 211 of the German Criminal Code. The Federal Court of Justice overturned this first decision in 2018 and referred the case to another chamber of the Berlin Regional Court for a new decision. In 2019, the Berlin Regional Court then again convicted the perpetrators of murder committed with complicity. This verdict was partially confirmed by the Federal Court of Justice in 2020. Only the driver who directly caused the accident was finally convicted of murder.

Claims and compensation

General

German tort law is based on the principle of restitution in kind. Only if restitution in kind is not possible or appropriate does an allowance have to be made in money whenever reasonable.

The level of indemnification for severely injured persons is relatively high in Germany compared to other western European countries.

In principle, pursuant to German law, claimants of severe bodily injury cases are entitled to receive periodical annuity payments. However, in exceptional cases, lump sum compensation payments are paid if they are of greater benefit to the injured person.

There is no legal right to receive a lump sum payment in Germany. Decisions are made on a case-by-case basis according to the German Civil Code (Section 843 (3) BGB).

Reserving/mortality table

Reserving practices for large losses in motor third-party liability (MTPL) differentiate between annuity reserves and loss reserves.

The German Commercial Code (“HGB”) requires insurers to transfer reserves for recurring annuity payments, either confirmed by court order, enforceable settlement or admission, to a security fund (“Rentendeckungsstock”). According to sec. 341g VHGB the maximum technical discount rate shall be applied to such reserves, i.e. **0.9% up until December 2021, and 0.25% from 1 January 2022 (status February 2022).**

Establishing loss reserves, on the other hand, is more difficult as there is no legal requirement in respect of the applicable discount rate. Insurers can choose which reserving parameters to use. In fact, levels of discount rates applied by primary insurers vary from 0% up to 3%. These differences matter as the volume of loss reserves is much greater than that of annuities transferred to security funds. Future inflation risk is currently taken into account by most German insurers with a rate of around 1%.

There is no legal provision prescribing the use of a specific mortality table. To determine the statistical life expectancy of an injured person, the mortality table from the German Association of Actuaries (DAV 2006 HUR) or the mortality table from the Federal Statistical Office (last version: Sterbetafel 2015/2017) are most commonly used.

Loss of earnings

(i) Employed injured/claimant

In general, loss of earnings is calculated up to the German legal retirement age of 67 years. In the event of an incident where the employee becomes incapable of working, the German employer pays the injured employee’s salary in full for up to six weeks. In that case, the claimant does not suffer any loss of earnings. The employer may subrogate against the tortfeasor or their insurer. If the time period of six weeks is exhausted, the injured/claimant receives continued sickness benefit from their health insurer for up to 18 months. The continued sickness benefit only covers 70% of the net income, thus the injured can claim the difference of 30% as loss of earnings from the tortfeasor/liability insurer. Also the health insurance company itself can take recourse against the tortfeasor/liability insurer.

In general, for a disability lasting longer than 18 months, the injured can claim their loss of earnings in full from the tortfeasor/liability insurer.



(ii) Self employed injured/claimant

The calculation of loss of earnings for self-employed claimants is based on the loss of profits originating from their business. The claimant has to prove the loss of profits based on their business' operating results of the past years. There is no fixed rule as to which period of time is relevant to determine the future loss of earnings; it depends on the circumstances of each case.

Moreover, and if the injured compensates/mitigates the losses by hiring other personnel, they can claim the applicable loss mitigation costs from the tortfeasor/ liability insurer if they can prove the causal nexus between the accident and the additional expenses incurred.

Pain and suffering

Claimants are entitled to compensation for pain and suffering if they experience physical injury or mental suffering as the result of an injury. To determine the current and future health status of a claimant, an expert medical opinion is needed as evidence. The applicable compensation amount is evaluated on a case-by-case basis. Special tables are generally used to determine the reasonable amounts for compensation for pain and suffering (for example, Hacks/Wellner/Häcker). Levels of compensation depend inter alia on the following factors: severity of the injury, duration of the pain, disability to work, permanent damage, remaining disfigurements/disabilities and dependency on third-party assistance.

Recent compensation awards for severe bodily injury cases in Germany range from EUR 400 000 up to EUR 600 000 (source: Slizyk, Beck'sche Schmerzengeldtabelle 2021, München 2021):

Higher regional court Oldenburg 2014:

35 year old man with very severe cerebral injury in a vegetative state (EUR 500 000)

Higher regional court Cologne 2014:

2 year old child with very severe cerebral injury after accident (EUR 603 978)

Higher regional court Naumburg 2006:

20 year old student with very severe cerebral injury with additional complications (EUR 592 000)

The compensation for pain and suffering is usually paid as a lump sum payment but it can also be rendered by a court judgement as a lump sum in combination with an annuity.

Third-party assistance and medical treatment

Any reasonable and appropriate medical treatment and/or medication is paid upfront by the claimant's health insurer, be it the compulsory public health insurer (89% of the population) or a private health insurer (11%). In cases of liability, the applicable health insurer may seek recourse for full compensation against the tortfeasor/liability insurer.

In cases of a work and/or commuting accident the compulsory accident insurance is obliged to cover aforementioned costs to a comparable extent.

If the incident leaves the claimant in need of care, the long-term care insurance is obliged to cover the reasonable, necessary and needed costs, for example for personal nursing. The long-term care insurer as well as the compulsory accident insurer may seek recourse against the tortfeasor/liability insurer.

Maintenance claim

In cases of a fatal accident in which the deceased person had a legal maintenance obligation, e.g., vis-a-vis their spouse and/or children, the dependents can claim this loss from the tortfeasor/liability insurer. The calculation is based on the maintenance costs of the dependents at the time of death.

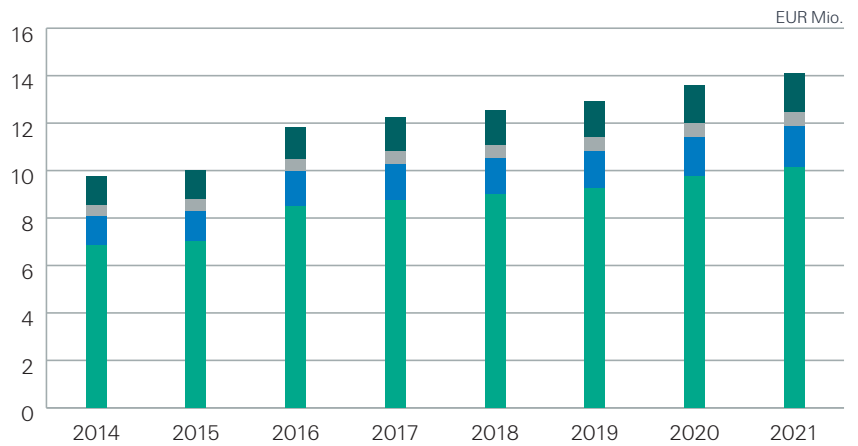


Tetraplegia claims scenario

Germany – 2021

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,
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- Other
- Pain and Suffering
- Loss of Earnings
- Cost of Care

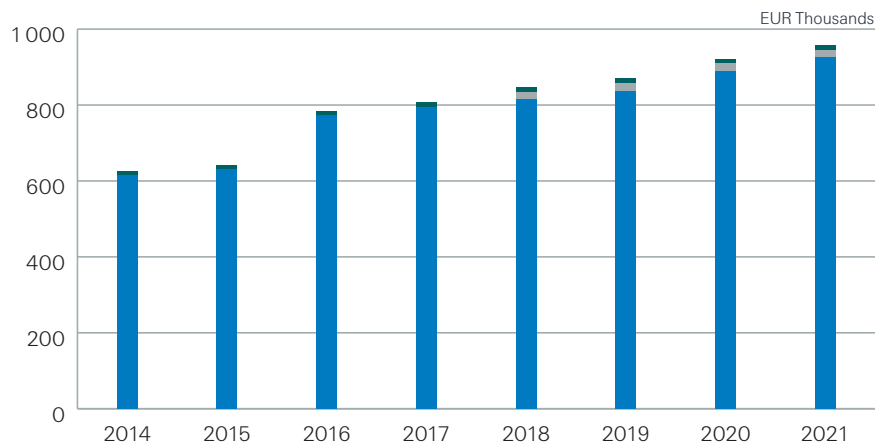


Fatality claims scenario

Germany – 2021

30-year old male, married, single earner,
2 minor children, average income in
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- Other
- Pain and Suffering
- Loss of Earnings



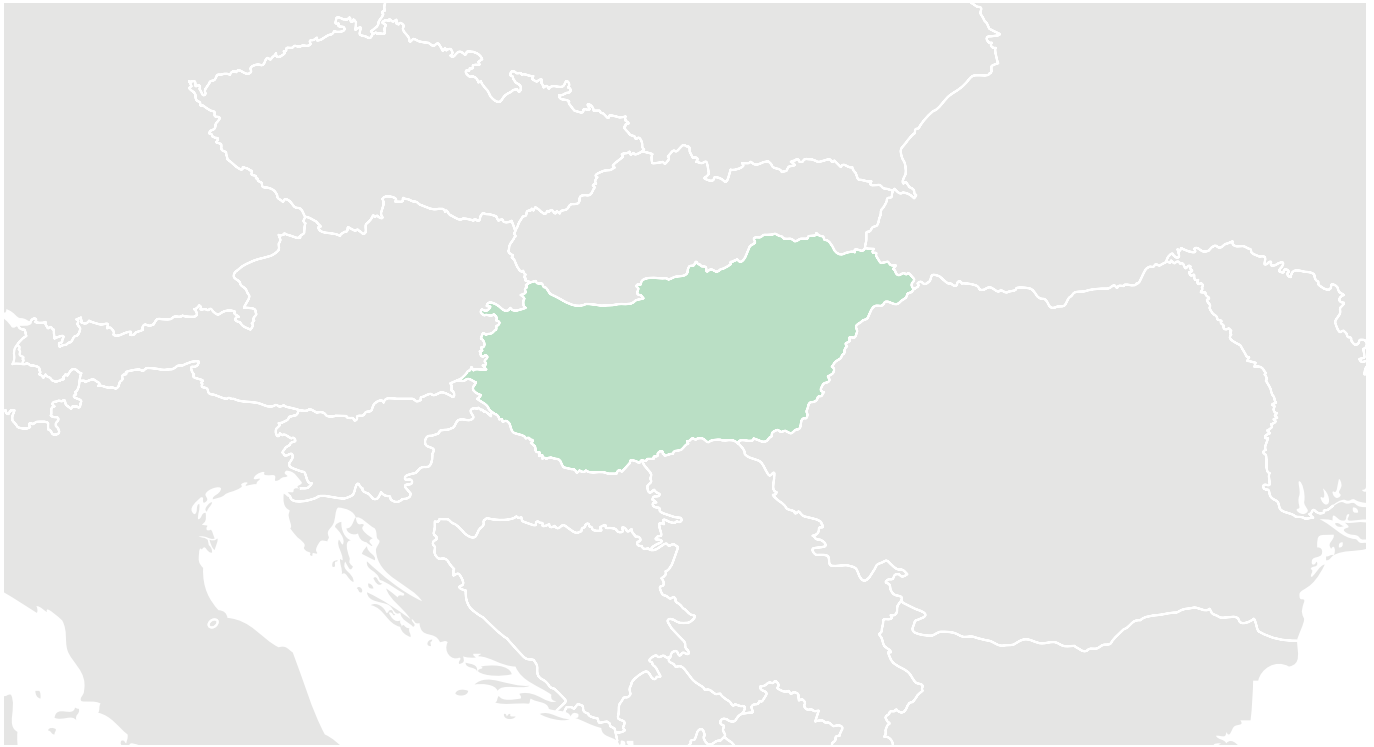
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Motor Bodily Injury Landscape Hungary



Recent legislative changes

The legal and claims environment in Hungary

- In general, there are no substantive changes in the practice of handling bodily injury claims since Swiss Re's last study at the end of 2019.
- In January 2017, the limits were extended. In the case of damage to property, the insurance company shall cover up to EUR 1 220 000 (approx. HUF 380 million) per claim, whatever the number of victims, and in the case of personal injury up to EUR 6 070 000 (approx. HUF 1 890 million) per claim, whatever the number of victims, including any and all related claims arising out of or in connection with the accident, the costs of enforcement of the claim (including legal expenses) and interest for the period until the settlement payment is effected.
- In March 2014, a new Civil Code came into effect. The Code includes a system for calculating personal injury awards. Insurers remain confident that claims calculated under the system will be very close to those calculated under the previous system. There is some uncertainty, however, about the development of future loss experience. The Civil Code only applies to causes of action that occurred after 15 March 2014. This means that previously incurred personal injury claims are settled under the old Code and there should be no need for insurers to increase their loss reserves.

Procedural aspects

- Awareness of legal rights and entitlements remains low. A surplus of lawyers may be avoided in the long term as the government has introduced measures to limit the number of law students.
- Lawyers are typically involved in personal injury claims, but the terms of their remuneration are not clearly defined. As a general rule, lawyers retain 10% of the amount awarded to the claimants but in practice they receive 20–30%. They also typically charge insurers 1–2%. Plaintiffs have a strong incentive to settle out of court due to upfront court fees and long delays. Supreme Court decisions can take up to 10 years.



Claims and compensation

- The level of indemnification is relatively stable and claims awareness is not increasing significantly, but insurers are faced with quite a high rate of claims inflation. Third-party bodily injury claims are being pushed up by exceptional rates of wage inflation, which are also having a severe effect on third-party vehicle repair costs. Further inflationary pressures come from the higher parts costs of high-tech motor cars and the depreciation of the HUF against the EUR, which increases import prices (AXCO).
- The market experienced losses with private-hire coaches. The worst case occurred in January 2017, when Hungarian pupils were returning home from skiing in France. The bus crashed on a motorway in Italy and killed 16 students and injured another 26.
- In general, claimants in personal injury cases prefer lump sum compensations to annuity payments. Regarding losses where the insurance company offers to redeem annuities in a single payment, the insurance company must at the same time provide information about the present value of the principal amount of the redemption value of the annuity, and the amount of redemption thus offered may not be lower than such value.
- Annuities are in most cases not indexed/adjusted annually in order to mitigate the effect of inflation and there is no legal obligation to do so. Changes to annuities are only made as a result of court decisions or requests from the pension authority.
- The discount factor applied for calculating future loss element is zero percent but this might change in the near future.
- The risk of reopening a claim, having settled with a final lump sum payment, is remote.

Loss of earnings

- Loss of earnings (until retirement age): Pre-accident net income is reduced by the disability pension paid by the social security carrier. The net average salary is around HUF 298 100 per month (EUR 857).
- Loss of earnings (after retirement age): Having reached retirement age (62.5 years), the claimant is entitled to claim a full pension. The amount of compensation depends on age, average wage and service term. If the claimant did not meet the required pension contribution period, their pension is determined on the basis of the minimum pension rule.

Third-party assistance and medical treatment

- Refunding hospital treatment costs is generally covered by the state social security; however, the claimant can use private medical services if the waiting period for certain medical treatments is too long and may negatively affect their health. The private medical service could be indemnified if the need for the treatment/examination is verified by the medical expert.
- Care costs are also covered by the public health system. Therefore, insurers only reimburse home-related expenses. If necessary, nurses attend the claimant at home to carry out any required nursing tasks. Nurses can also train relatives to carry out many tasks. The social security carrier reimburses the majority of rehabilitation treatments, related travel expenses and, in some cases, medication.
- Insurers are required to reimburse the state Health Insurance Fund and Pension Insurance Fund for emergency treatment and pension costs from traffic accidents. Lump sum settlements are payable by insurers on a pro rata basis, subject to their MTPL market share.

Pain and suffering

- The average bodily injury claim award in Hungary is HUF 10 million – 12 million.
- In cases of fatality, insurers pay claims by relatives who lived with the deceased victim or were close relatives. Persons with a close emotional tie to the deceased are also eligible for compensation.

Other

- House modification to the needs of the accident victim is compensated, as is the purchase of a wheelchair or adjustment of the motor vehicle.

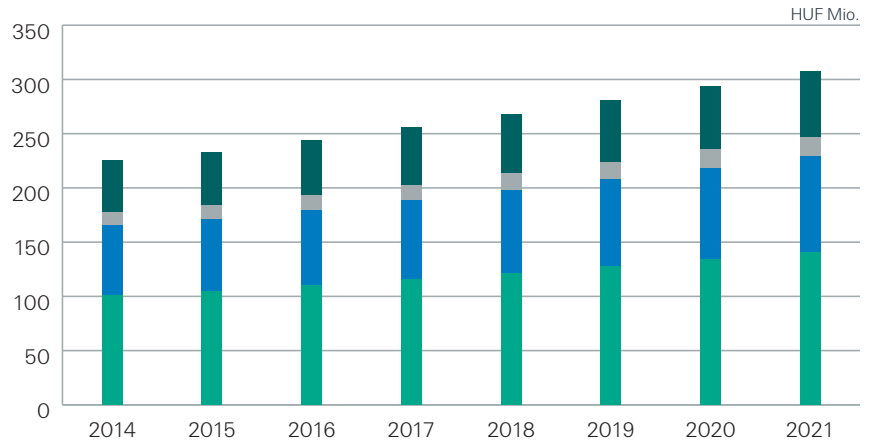


Tetraplegia claims scenario

Hungary – 2021

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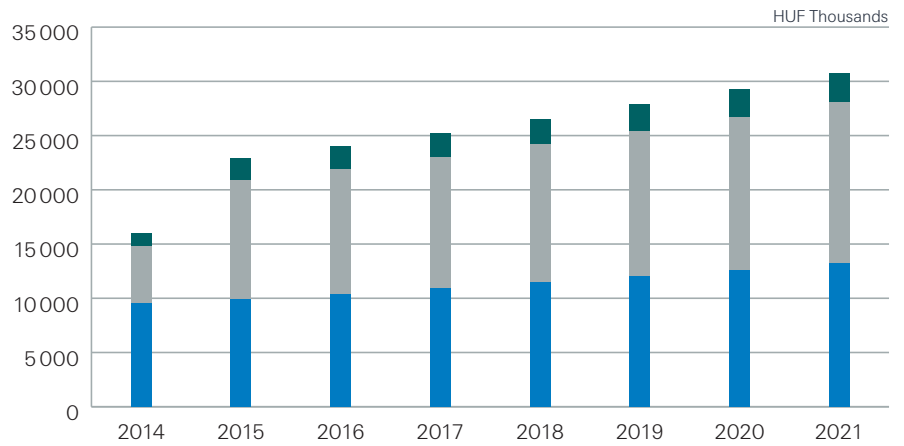


Fatality claims scenario

Hungary – 2021

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For more information, please contact our claims expert and country specialist for Hungary

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Motor Bodily Injury Landscape

Italy



2020/2021 highlights

The legal and claims environment in Italy

The spread of the pandemic and the more or less severe lockdowns that followed during 2020 have had a particularly strong impact on MTPL cover: premiums decreased by almost 6% but the cost of claims also decreased, by almost 20%, due to the drop in vehicle circulation. Despite the drastic drop in investment profits, this implied an improvement in the result of the technical account that was around EUR 1.5 billion.

The cost of claims, defined as the sum of the amounts paid and reserved for claims that occurred in 2020, amounted to EUR 8 541 million. This reflects a decrease of almost 20% compared to what was recorded in 2019. While on the one hand road traffic decreased significantly as a result of the restrictions with a frequency reduction of around 30%, on the other hand there was an increase in the average cost of claims (+ 14%) probably due to higher driving speeds, particularly in urban centres, which involved damage (especially physical damage) of greater severity. The increase in the average cost of claims is the result of an increase in the average amount of claims settled (+ 6.8%) and of the average amount of reserved claims (+ 15.2%).

Due to the decrease of about 20% in the overall cost of claims and a decrease of almost 6% of the earned premiums, the loss ratio improved by around 12 percentage points from 80.4% in 2019 to 68.2% in 2020 (Source: Ania 2020/2021 Insurance Report).



Impact of potential post pandemic driving behaviour:

It is estimated that the number of claims in 2021 will increase by a minimum of +16% ("low" scenario) to a maximum of +24% ("high" scenario) taking into account the following:

- the trend of the increase in claims recorded in the course of 2021 is implicitly taking into account the fact that the first two months of 2021 (characterised by stringent containment measures) is compared with the first two months of 2020 when the pandemic had not yet spread to Italy.
- there are elements of mobility, such as the percentage of people who will remain at home or who will not travel to go to work, that will permanently affect level of third-party.
- a partial counterbalance in 2021 is expected to result from an increase in travel to food shops and pharmacies which, albeit with a limited weight, would contribute to an increase in the number of claims.

Bodily injury claims

In the MTPL sector, the total cost of compensation (including property damage and bodily injuries) for accidents that occurred in 2020 was EUR 8.5 billion; 64% (EUR 5.5 billion) relates to bodily injuries (also including the property damage component of mixed claims), while the remaining 36% (about EUR 3.1 billion) relates to damage to vehicles (cost of spare parts and labour for repairs).

With specific reference to compensation for bodily injuries, it is important to underline that in 2020:

- minor permanent disability injuries, ranging between 1 and 9 percentage points, gave rise to compensation of EUR 1.4 billion (16.3% of the total cost of claims);
- serious injuries, i.e. with more than 9 percentage points of permanent disability and fatal accidents, generated a total outlay of approximately EUR 4.1 billion (47.7% of the total cost of claims).

The various restrictive measures and vehicle movement restrictions introduced in 2020 to counter the spread of the Covid-19 pandemic decreased the number of claims reported to insurance companies (the frequency of claims went from 5.41% in 2019 to 3.82% in 2020) and also changed the type and mix of claims. It is notable that in 2020 the percentage of claims involving at least one personal injury was 14.5%, a further decrease from 15.5% in 2019. However, this reduction was followed by a marked increase (+27%) in the average cost of damages which, in 2020, amounted to approximately EUR 21 700 (it was just over EUR 17 000 in 2019).

For vehicles authorised to travel, the lockdown and other restrictions applied throughout the second part of the year might have led to higher speeds due to the absence of traffic and therefore also more serious accidents. Analysing traffic police data on fines issued in 2020, there is a 21% decrease in infringements over the previous year, but the incidence of fines for excessive speed is slightly higher, going from 55.1% to 56.4% on motorways and from 15.1% to 15.7% on municipal, provincial and regional roads.

Severe injuries: permanent disability > 9% points and fatalities.

The value of the frequency for such type of claims was 0.034% in 2020, with a reduction of 23%, lower than that recorded by both general frequency of claims (-30%) and claims up to 9 percentage points of permanent disability (-35%).

As regards the average cost of claims over 9 percentage points of disability (which also include damages paid for fatal events) in 2020 the value was over EUR 262 000 (from EUR 220 000 in 2019), with an increase of about 19% (the average total cost of claims increased by 13%).

Milan tables for serious physical injuries: 2021 edition

On 10 March 2021, the Milan Observatory on Civil Justice published the new tables for the settlement of non-patrimonial damages. The Observatory updated the tables by considering the ISTAT index from January 2018 to January 2021 and consequently re-evaluated the economic damages by +1.38% compared to the 2018 edition.



In the 2021 reformulation, the tables have been updated – according to the Observatory – with a simple “Graphic retouching” to make explicit, for the user’s convenience, the monetary addenda of single components of non-patrimonial damages, thereby making the identification more immediate and reminding the reader about the need to assess consistency and subsistence separately. The new tables, changing their appearance but not their substance, would thus become – in the intention of the Observatory – a tool for more efficient and uniform identification of the different parameters that make up the overall non-patrimonial assessment. This is in line with the most recent Supreme Court orientation which states the need to compensate non-patrimonial damages after separate and adequate prior notice verification of the existence and consistency of the individual items that make up the biological and pain and suffering components.

National severe (> 10%) injury compensation tables: status of the implementation process

On 13 January 2021, the Ministry of Economic Development released the text of a Presidential Decree draft, containing the regulations for the Tables for Permanent Disabilities ranging between 10 and 100 percentage points of disability and related economic values for the compensation of such damages.

It is important to remember that approval of a “National Table” has been anticipated since 2005 – pursuant to Art. 138 of the Italian Insurance Code – in order to govern by law the compensation of non-patrimonial (biological and moral) damages suffered by the injured in a road accident or as a result of medical-malpractice cases (Article 7 of the Gelli Law 24/2017).

The introductory report to the Decree draft correctly outlines that the issuance of a national table could improve the entire framework, both from an insurance company and “costs of litigation” standpoint.

In fact, a National Table might considerably reduce the margins of compensation volatility and, as a consequence, uncertainty about compensation amounts .

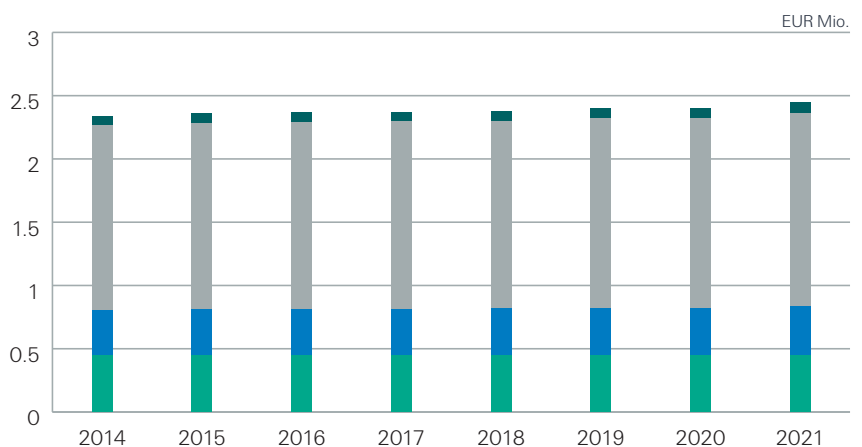
Even though the Ministry of Economic Development, supported by IVASS (the Italian Regulator) has now given a strong push to implement a National PD Table, it must be said that the Decree scheme has been immediately criticised – mainly as regards the contents of the disability table – by many authoritative representatives of forensic medicine. It is therefore reasonable to expect a first phase of public consultation to be followed by an in-depth study, which may lead to a revision of the current draft.

Tetraplegia claims scenario

Italy – 2021

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 care

- Other
- Pain and Suffering
- Loss of Earnings
- Cost of Care

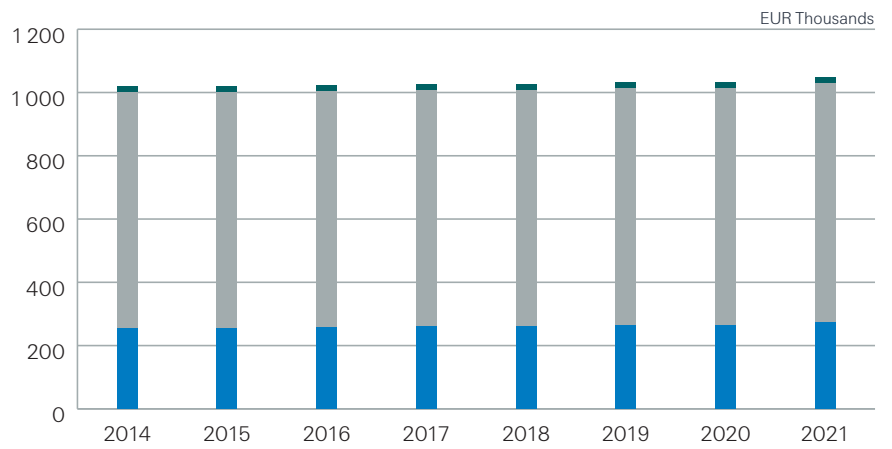


Fatality claims scenario

Italy – 2021

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

- Other
- Pain and Suffering
- Loss of Earnings



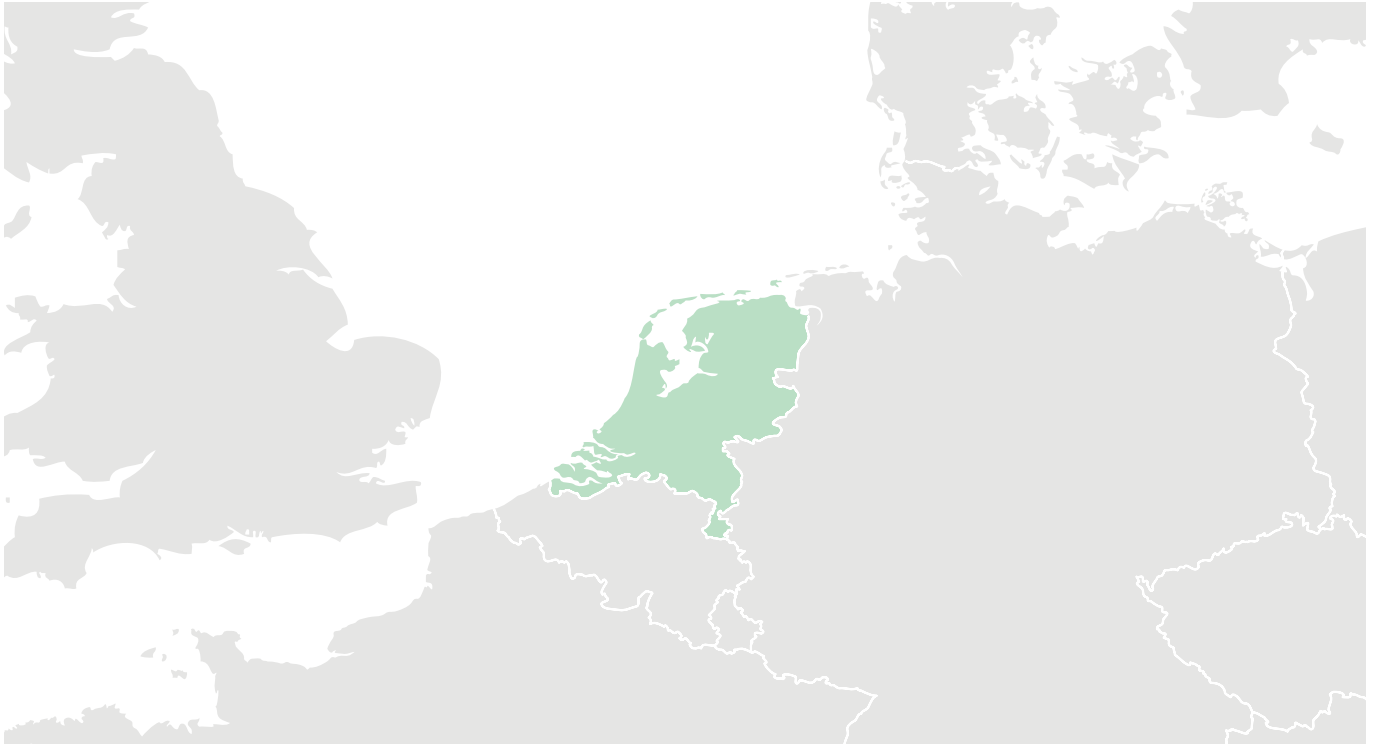
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Motor Bodily Injury Landscape

Netherlands



Recent legislative changes

The legal and claims environment in the Netherlands

- From 1 January 2020, the Dutch “Personenschade Instituut van Verzekeraars” (Insurer’s Institute for Personal Injury Claims) PIV foundation had been integrated into the “Verbond van Verzekeraars” (Dutch Association of Insurers); it continues as the “Platform Personenschade”, PPS (Platform Personal Injury). The integration means the bundling of all bodily injury related activities and responsibilities within a single discussion partner.
- Following a request of the Dutch Minister for Legal Protection, the “De Letselschade Raad” (a committee engaged in developing guidelines and standard procedures for personal injury claims), is about to establish an independent Long-Term Injury Chamber (“Kamer Langlopende Letselschadezaken”, Kamer LLZ). The LLZ should offer a low-threshold and rapid dispute resolution procedure for long-term personal injury cases. The first personal injury case in the LLZ pilot project was successfully completed in August 2021; parties indicated that the speed of the resolution is a great relief. More cases will follow.
- 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.
- As of 1 January 2019, the law “Wet Vergoeding Affectieschade” entered into force. It provides for compensation to close relatives of seriously injured or deceased victims of traffic and industrial accidents, medical error and violent crime (moral prejudice). The law allows for fixed compensation of between EUR 12 500 and EUR 20 000



depending on the cause and extent of any injury and the nature of the claimant's relationship to the victim. Until the law's enactment, only victims had the right to claim for moral damages and/or pain and suffering. In March 2021, the Dutch Association of Insurers published feedback from a survey regarding the impact of the new law in 2019 after consultation with Dutch insurers. Dutch bodily injury insurers paid around EUR 6m for "affectieschade" in 2019; there was seldom discussion or dispute between victims/relatives and insurers; smooth and quick settlements were characteristic.

- As announced in March 2019, the Dutch Association of Insurers plans to implement a standardisation system to improve the speed at which long-term personal injury claims – currently around 3% of all personal injury claims – are handled. The aim is to introduce fixed compensation and calculation models.
- "De Letselschade Raad", established a Code of Conduct for handling personal injury claims ("Gedragscode Behandeling Letselschade", GBL). The GBL defines ten rules to ensure proper claims handling and is binding for members of the Dutch Association of Insurers.
- Under Dutch law small mopeds, called *snorfietsen* (blue license plate), with a maximum speed of 25 km/h can use cycle paths, where helmets are not required. Overcrowding on cycle paths has led to a reassessment by Dutch municipalities. As of April 2019, the Municipality of Amsterdam banned *snorfietsen* from cycle paths within the ring road A10, requiring them to be used on public roads only (helmets required). Other major cities, such as Utrecht as of September 2021 are following Amsterdam's regulation and allow *snorfietsen* on a number of roads in the city (helmet required). Conventional mopeds, called *brommers*, must use public roads only unless cycle paths are marked with a sign allowing moped traffic. Drivers of *brommers* are required to wear helmets.
- Using a mobile phone while driving a motor vehicle can result in a fine of EUR 240 unless a hands-free phone is used.
- As of 1 July 2019, it is prohibited to hold a mobile phone or any other electronic device (e.g. tablet, navigation system) while riding a bicycle. Any violation is punished with a fine of EUR 95.
- In October 2018, the Dutch government banned *Stint* vehicles (electrically powered cargo carts) from public roads. The cause for the ban was a tragic collision between a train and a *Stint* carrying children in the southern Netherlands in October 2018. Four children were killed and two seriously injured. After extensive investigations, neither a technical defect nor malfunction was found to have caused the accident; the successor of the *Stint* cargo bike was therefore approved for public road use in 2020 after passing separate studies into its safety.
- Most e-scooters are not allowed on public roads. The Dutch Road Traffic Act does not specifically address them so they are generally classified as special mopeds and subject to strict technical and construction requirements (e.g. front and rear brakes) imposed by the Dutch vehicle authority *Rijksdienst voor het Wegverkeer* (RDW). Additionally, drivers must be at least 16 years old and have insurance.
- An exception to the general prohibition of e-scooters on public roads, specifically developed for the Dutch market, is the "elektrische step met ondersteuning", an e-scooter only activated by the driver stepping on to it.
- In 2017, a working group at "De Letselschade Raad" reviewed a Dutch law proposal on healthcare. The working group then published a guideline about healthcare claims ("Handreiking Zorgschade"), outlining 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. By transferring responsibility from national to municipality level the law aims 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. As of 1 January 2021, victims pay a monthly contribution of EUR 19.00 (compared to 2019 with EUR 17.50).
 - The law "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 Health Insurance Law ("Zorgverzekeringswet", Zvw).
 - The law "Wet langdurige zorg" (Long-term Care Act, Wlz) pays the care costs of people who need intensive care or full-time supervision; the victim pays a



contribution based on their income and assets. 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 institutional care. If victims are insured under the Wlz scheme they are also automatically insured under Zvw. Two types of personal contribution for long-term care exist: a high personal contribution for cases of care in an institution for longer than 4 months and a low personal contribution for cases of care at home or in an institution for less than 4 months. The Dutch government set the maximum high personal contribution at EUR 2 469.20 per month as of 1 January 2021 (vs EUR 2 419.40 in 2020). For low personal contributions in 2021 the minimum is EUR 171.40 per month (vs EUR 168.00 in 2020) and the maximum is EUR 899.80 per month (vs EUR 881.60 in 2020).

- 2013 saw the introduction of the “Vermogensinkomensbijtelling VIB voor AWBZ”. The law required that the income and assets of bodily injury victims are also taken into account when determining payouts and 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 and the Dutch government has taken measures to prevent the accumulation of healthcare costs. As of 1 January 2019, the capital income premium (“VIB”) for high personal contributions under Wlz is to be halved from 8% to 4% of the capital. For low personal contributions the government reduced the percentage from 12.5% to 10%. This means that victims, as well as elderly people in nursing homes, will pay less in own contributions.
- 2010 Special Court Procedure: (“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. Such action 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 Wlz provides the option of collective recourse, under which health care insurers make collective recovery from liability insurers. The current “Convenant Collectieve afkoop regresrecht Wlz” is in force as of 2020 until 2023. All Dutch Wlz health carriers (100%) and 97% of all Dutch liability insurers participated in the agreement.
- As of 1 January 2017, a new agreement (“Overeenkomst afkoop regresrecht Wemaatschappelijke ondersteuning (WMO) 2017”) was reached between the Association of Insurers and the Association of Dutch Municipalities (“Vereniging van Nederlandse Gemeenten”, VNG). The agreement covered 2017 and one of the most important differences as against the previous 2015/2016 agreement was that the victim’s own contribution would no longer be included in the collective compensation. Victims would therefore need to claim the costs of their own contributions separately from liability insurers. The Dutch Association of Insurers informed the Association of Dutch Municipalities in the fourth quarter 2018 that the majority of Dutch insurers do not wish to continue the WMO agreement on recovery rights after 2018. As of 1 January 2019, no WMO covenant is therefore in place. This means that municipalities no longer receive an amount (“afkoopsom”) for recovery and will have to recover their WMO costs directly from insurers in future. Moreover, in accordance with contractual obligations as per the recent WMO agreement, municipalities no longer have any collective recourse rights against insurers for years prior to 2018.
- “Convenant UWV inzake verhaalsrecht ZW, WAO, WAZ, Wajong en WIA”. This covenant defines the right of recourse of UWV in respect of the Sickness Benefits Act (ZW), Disability Insurance Act (WAO), Disability Insurance Self-employed Persons Act (WAZ), Disability Insurance Young Persons Act (Wajong) and Labour Capacity Act (WIA). The Association of Insurers and the “Uitvoeringsorgaan Werknemers Verzekeringen” UWV (Employee Insurance Agency) concluded covenants since 1996. The new UWV recovery covenant came into effect on 1 November 2020 and expires 31 December 2022.
- “Convenant buitengerechtigde kosten” (BGK) see under loss component: Miscellaneous compensation.



Noticeable developments and trends in the Netherlands:

- As of mid-March 2020 the speed limit on Dutch motorways has been lowered from 120/130 km/h . The new limit is 100 km/h between 06:00 and 19:00 while between 19:00 and 06:00 it can be 100, 120 or 130 km/h depending on the motorway. Experts expect benefits such as reduced CO2 emissions and fewer severe collisions with death and serious bodily injuries. Due to the Covid-19 restrictions in 2020 and 2021, the impact and effect to date is difficult to determine.
- Since 2012 the Dutch National Police, the Dutch Association of Insurers and the traffic Information and Communication Technologies (ICT) agency Via have collaborated on the collection of traffic accident data under the Smart Traffic Accident Reporting initiative (STAR). STAR is designed to facilitate the setting of Dutch road safety policy based on reliable accident data.
- According to STAR, the number of e-bike accidents increased by 26% between 2017 (270) and 2018 (341). Since 2014 more than 102 e-bike riders have died. Out of around 23 million bicycles in the Netherlands around 2 million are e-bikes. In 2020 around 2/3 of all traffic victims were cyclists, pedestrian, or moped riders (Source: published by STAR). According to a Co-Initiator of STAR, Covid led to an increase of cyclist and pedestrian.
- The number of fatal traffic accidents has increased since 2013 but according to the Dutch National Institute for road safety research ("SWOV") road deaths decreased in 2020 by around 8% from 661 in 2019 to 610 in 2020. Moreover in 2020 around 1/3 of the road death cases are related to cyclists (around 229 cases). Comparing age groups, children (up to 14 years) make up 3% of all traffic death cases in 2020 whereas older road users make up 37%.
- Interestingly the first year of Covid showed relatively more traffic death cases during the lockdown although around 20% less traffic accidents occurred and the traffic intensity was substantially lower (Source: Statistics Netherlands CBS).
- The Statistics Netherlands (CBS) reflected that the number of plug-in electric vehicles (PEVs) increased in the Netherlands as of 1st January 2021 by 38% (being 76 000) to 273 000 (most of it being business owned but number of privately used PEVs rose as well).
- 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; in Dutch: Buitengerechtelijke kosten, BGK).
- Increase in medical care costs.
- Reduced discount rates/interest rates, 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.
- In 2020 around 13 000 insurance fraud cases had been registered by Dutch insurers, which reflects around EUR 88m of unjustified claims payments. Around 30% of the 13 000 fraud cases are from motor insurance claims (Source: Dutch Association of Insurers).
- 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).



Claims and compensation

- Still up to a third of all bodily injury claims relate to whiplash. A uniform practice among Dutch liability insurers, which the former Insurer's Institute on Personal Injury Claims (PIV) was aiming for, could not yet be realised.
- The latest developments, such as a decrease in discount rates 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 France, 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.
- Around 1/3 of all personal injury claims following road accidents are whiplash claim in the Netherlands (according to the Actuarial Post) This kind of bodily injury has been a frequently debated topic for several years.
- Bodily injury claims are generally paid as lump sums.
- **Discount rates "rekenrente":**
 - 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 for a long time but court decisions in the last years have reflected different rates such as:
 - September 2015 Gerechtshof's-Hertogenbosch awarded a rate of 2% on a whiplash case
 - March 2018 Rechtbank Midden Nederland determined a rate of 3% and reiterated in April 2018 that they see no reason to deviate from 3%
 - August 2018 Rechtbank Noord Nederland awarded a rate of 1% for the first five years, followed by 3% for a "longer period" without specifying what that should mean
 - March 2019 Rechtbank Midden Nederland determined a rate of 0% until 2022 and 2% thereafter.
 - July 2019 Rechtbank Zeeland-West-Brabant applied the concept guidance of "De Letselschade Raad" with a rate of minus 0.2% for the first five years, followed by 0.6% for the next 15 years and after that a rate of 1.7%; the Dutch Association of Insurers was surprised by this ruling as the guidance was finally not agreed and did not come into practice.
 - In Summer 2021, the National Consultative Committee on Civil and Cantonal proceedings came up with a recommendation on discount rates for the Dutch judges. This non-binding recommendation for judges on discount rates foresees the following rates:
 - 0–5 years: minus 1.5%
 - 6–20 years: minus 0.7%
 - > 20 years: 0%

These nationwide recommendations are a starting point with the aim to create a uniform guidance. It will be reviewed periodically.

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 (in 2022 the statutory retirement age will be 66 years and 7 months; in 2024 it will be 67 years; as from 2025 the pension age will be linked to the average life expectancy and may therefore be higher than 67).
- For the first two 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 the 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 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.



Third-party assistance and medical treatment

- Healthcare insurance (Zvw) covers basic medical care such as hospitalisation and pharmacy prescriptions with a full recovery right against the liability insurer.
- For long-term care, the “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 a combination. The PGB option 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 a victim in long-term care stays at a care home, for example, the healthcare institution pays these exceptional costs without recourse right. However, from the age of 18 a 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). Wlz only covers very 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 depending on family status and severity of injury. As of 1 January 2021, amounts range from EUR 74 to EUR 367 per week for help in the household (slight increase compared to 2020, range between EUR 69 and EUR 342). “De Letselschade Raad” also publishes a non-binding guideline, “Richtlijn Ziekenhuis- en Revalidatiedaggeldvergoeding”, for hospital per diem indemnification of EUR 31 per hour as of 1 January 2021 (EUR 30 between 2018 and 2020) and revalidation per diem compensation of EUR 16 per hour as of 1 January 2021 (EUR 15 between 2018 and 2020).

Pain and suffering

- There is a distinction between pain and suffering and “Affectieschade” (see above).
- The general basis for pain and suffering claims is Article 6:106 BW (Burgerlijk Wetboek).
- A pain and suffering lump sum payment is not based on income but on the degree of disability (based on jurisprudence) following concepts of fairness and reasonability.
- Currently, maximum payments are up to EUR 250 000 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 “Smartengeldboek”. This lists rulings with a short description and the awarded pain and suffering amounts and is used as a code of practice.
- In 1999 “De Letselschade Raad” established a non-binding guideline “Richtlijn Licht Letsel incl. smartengeld” for the most effective and victim friendly way of handling small bodily injury claims. The guideline includes a roadmap on how best to handle/settle small claims and sets up different categories with assigned recommended indemnity amounts for pain and suffering. As of 1 January 2019, the recommended amounts are:
 - EUR 875 for superficial, small injuries with a recovery period of around 2 months (e.g. scrapes, bruises);
 - EUR 575 – EUR 1 725 for injuries with a short medical and/or therapeutic treatment for expected recovery periods of two to four months (e.g. whiplash with a complete recovery); and
 - EUR 1 150 – EUR 2 125 for injuries with recovery periods of around four to six months (e.g. simple bone fractures).
- Generally, only the injured victim has the right to claim for pain and suffering. However, following judgments since 2000 (specifically the “Kindertaxi-arrest” ruling of February 2002 by the Amsterdam Court of Appeal, and confirmed by the Dutch Supreme Court, which awarded “shockschade” (compensation for traumatic shock) to the mother of a 5-year-old child seriously injured by a van), the legal environment has changed and compensation for “shockschade” can now also be awarded, provided specific requirements are met.

In order to receive compensation for traumatic shock, a third party must sustain an emotional shock or mental trauma from direct confrontation with an accident or its immediate consequences. Subsequent exposure to the victim is generally considered



insufficient. The Supreme Court in the Kindertaxi-arrest case established that “traffic and due care standards also serve to protect possible bystanders and not just the injured party” irrespective of whether a driver acted unlawfully against the third party apart from the victim.

Miscellaneous compensation

- Interest (“wettelijke rente”) and costs of litigation are generally covered in addition to the sum insured.
- Extrajudicial costs (“Buitengerechtigde kosten”, BGK) are compensated. BGK are constantly increasing and add up to 20–25% of the total loss amount in personal injury claims. The involvement of “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 claims. Dutch insurers have signed agreements (“Convenanten”) with legal cost insurers and external claims handling firms to cover BGK.
 - The “Convenant Buitengerechtigde kosten – Materieel” regulates fixed reimbursement of extrajudicial costs, which a legal cost insurer receives from a liability insurer, related to handling material damages of traffic accidents. From 1 January 2021 a lump sum is defined of EUR 35.40 for cases “without discussion” arising during handling of the claim (2020: EUR 34.40) and EUR 324.50 for cases “with discussion” (2020: EUR 315.35).
 - From 1 July 2021 to 1 July 2024 a new “Convenant Buitengerechtigde kosten – Letsel WA-RB” stipulates which reimbursement of extrajudicial costs a legal costs insurer receives from a liability insurer regarding bodily injury claims handling. This is determined by a graduated scale (amounts are set for one year; see legal aid cost table “kostentabel BGK 2021 rechtsbijstand”). A distinction is made between minor injuries and other injuries. The aim is to speed up and improve service to victims with minor injuries.
- Property damage (travel costs, clothes etc.) is compensated.
- Costs for modification of an 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 work 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 1 287 per year from 1 January 2021 (amounts slightly increased from 1 January 2021; ranged from EUR 125 to EUR 1197 between 2018 and 2020).

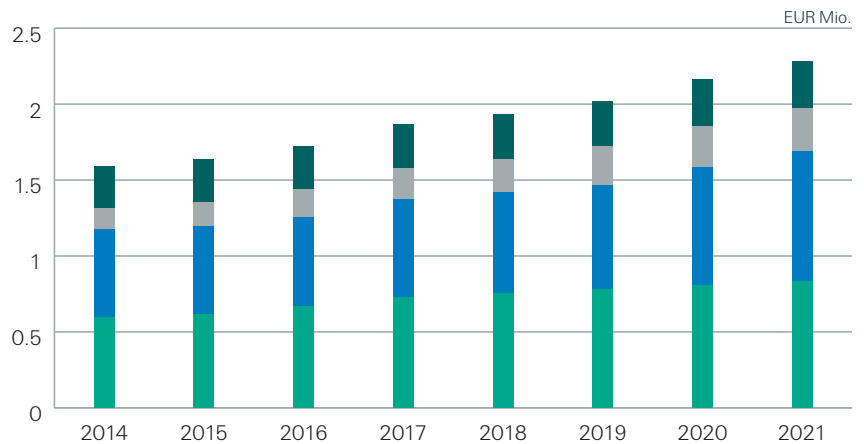


Tetraplegia claims scenario

The Netherlands – 2021

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 care

- Other
- Pain and Suffering
- Loss of Earnings
- Cost of Care



* 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.

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

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Motor Bodily Injury Landscape Norway



The legal and claims environment in Norway

According to the Norwegian Traffic Act, “Bilansvarsloven” of 03.02.1961, the standard insurance cover for bodily injury is unlimited. For property damage, the standard cover was increased to NOK 100 million (up from NOK 10 million) on 1 January 2021.

Strict liability in the Traffic Act is limited to NOK 100 million. In cases of property damages exceeding NOK 100 million, such damages may only be claimed from the car owner/the driver based on negligence.

Legislative changes

In March 2021, the Norwegian Stortinget (parliament) passed a new law introducing a change in the way the capitalisation factor for calculating indemnity for future losses is decided. Going forward the capitalisation factor will be fixed by administrative order of the Ministry of Justice instead of court rulings as was the case previously.

The first draft administrative order has been published. It proposes a reduction in the capitalisation factor from the current 4% to 2.5%, except for claimants under guardianship where the draft order proposes a future capitalisation factor of 1.5%.

The draft order is still under consideration, and no date of commencement has been set. It is anticipated that the lower capitalisation factor will lead to a major increase in loss costs, especially in the more severe bodily injury cases.

Procedural aspects

It normally takes around 6 months from submission of the summons to a city court until the hearing takes place. If the court needs to appoint medical experts, the case could be delayed by an additional 3–6 months because the medical experts often have a fairly long processing time. The judgement is delivered 2–3 weeks after the hearing. If the district court’s judgment is appealed to the Court of Appeal, the oral appeal hearing in court will normally be conducted between 6 and 12 months after the appeal. The judgment of the Appeal Court may be expected 4 weeks after the hearing.



Claims and compensation

The Norwegian law on torts, “Skadeserstatningsloven”, No 26 of 13.06.1969, sets out potential heads of loss for bodily injury claims. The Act is interpreted through court rulings.

The overarching principle is that awards of compensation should be adjusted to the individual victim and cover actual loss, including future economic consequences of the injuries.

Recoverable heads of loss under the Act are:

- Incurred and future loss of earnings
- Incurred and future expenses
- Permanent injury (“menerstatning”)
- Loss of ability to work at home
- Loss of dependency

The total compensation is paid out as a lump sum. In Norway assets are subject to asset tax and yields on capital are subject to income tax; as a consequence, the actual financial support from an indemnity award is reduced. Claimants are therefore entitled to claim separate compensation for these tax burdens, called “skatteulempe”. This is calculated on future losses, i.e. loss of future earnings and future expenses. It is an individual assessment; however, in 2014 the Supreme Court decided that the tax impact should be compensated by awarding an additional 20% to any assessment for future losses.

Loss of earnings

This head of loss includes both incurred lost earnings as well as future loss of earnings.

During the first year of sick leave, a person with an average income will receive 100% sickness benefits from the employer and NAV, the Norwegian Social Health and Welfare authority. If the sick leave continues beyond one year, the sickness benefit is reduced to approximately 60%. The NAV is generally not allowed to seek recovery against the tortfeasor (unless there has been wilful misconduct).

Loss of future earnings is calculated by reference to projected annual net earnings. The annual net loss is added for every year until retirement age (normally 67 years of age) and then discounted. The current discount rate is 4% as decided in a ruling in 2014 by the Norwegian Supreme Court. The factor had been 5 since 1993. It is now proposed that the discount rate should be reduced to 2.5% as mentioned above under Legislative changes. This will result in a substantial increase in the total compensation for future losses.

Expenses

Many different kinds of costs may be compensated under this head of loss. They range from daily care and support in the home; home rebuilding or modifications that allow the claimant to stay and live at home, or transportation for medical treatment, for example for physiotherapy. The indemnity should aim at providing claimants with the possibility of living as close to the way of life they enjoyed before their accident.

The compensation under this loss header is normally quite moderate. NAV and local government will normally cover all medical treatment, aid and care that is medically necessary, and the injured person may not claim compensation for such costs.

Permanent injury/medical impairment

When an accident causes a permanent medical injury of 15% or more, the claimant is entitled to compensation for this, called “Menerstatning”.

The calculation of this compensation is based on the age of the injured person, the life expectancy post-accident, the national insurance basic amount (G) “Grunnbeløpet” (NOK 106 399 per 1 May 2021) and the discount rate.

Value of work at home

Norwegian law states that the value of housework is equal to paid employment as an employee. This means a claimant is entitled to compensation for housework they did in the past and can no longer carry out post-accident. Examples of housework could include maintenance work, cleaning, mowing the lawn and shopping. An award should enable the claimant to engage others to carry out these tasks. However, such



compensation is normally quite moderate. If a claimant did not carry out these tasks pre-accident they are not entitled to such compensation.

Loss of dependency

In order to claim compensation for loss of dependency, a claimant/claimants must have been dependent on the deceased’s contribution to the household. The typical claimants are a spouse and minor children, but in some rare cases a parent or another close relative has been awarded a limited compensation amount.

Claimants are obliged to limit their loss by taking actions to change their lifestyle and become self-supporting. This means that the compensation is only calculated for a limited number of years and not until the deceased’s expected retirement age. Any compensation to minors is normally calculated up until they are 19 years old.

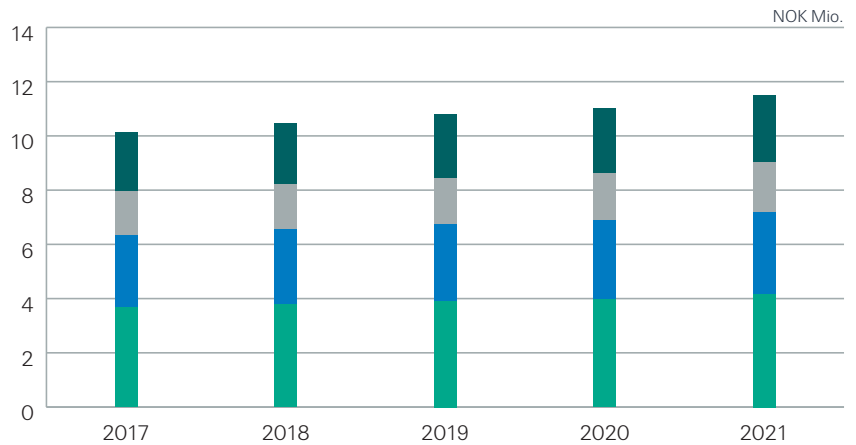
The bereaved may claim compensation both for the lost net financial contribution and the lost net work contribution in the household. In addition the bereaved may claim compensation for funeral expenses.

Tetraplegia claims scenario

Norway – 2021

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 care

- Other
- Pain and Suffering
- Loss of Earnings
- Cost of Care

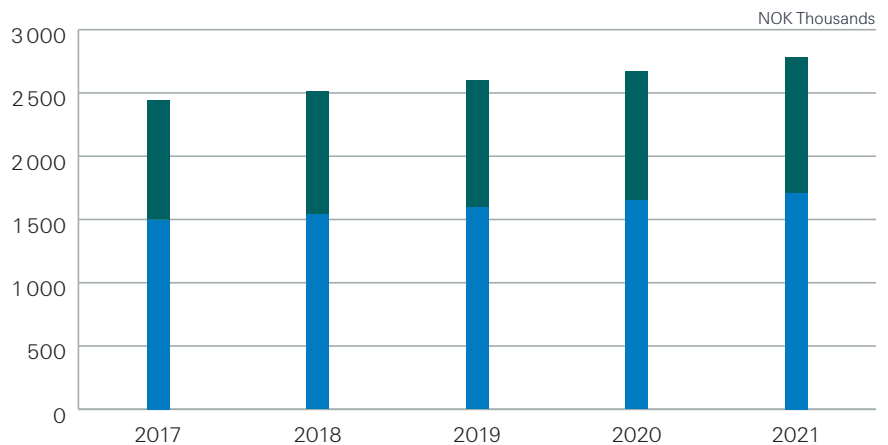


Fatality claims scenario

Norway – 2021

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

- Other
- Pain and Suffering
- Loss of Earnings



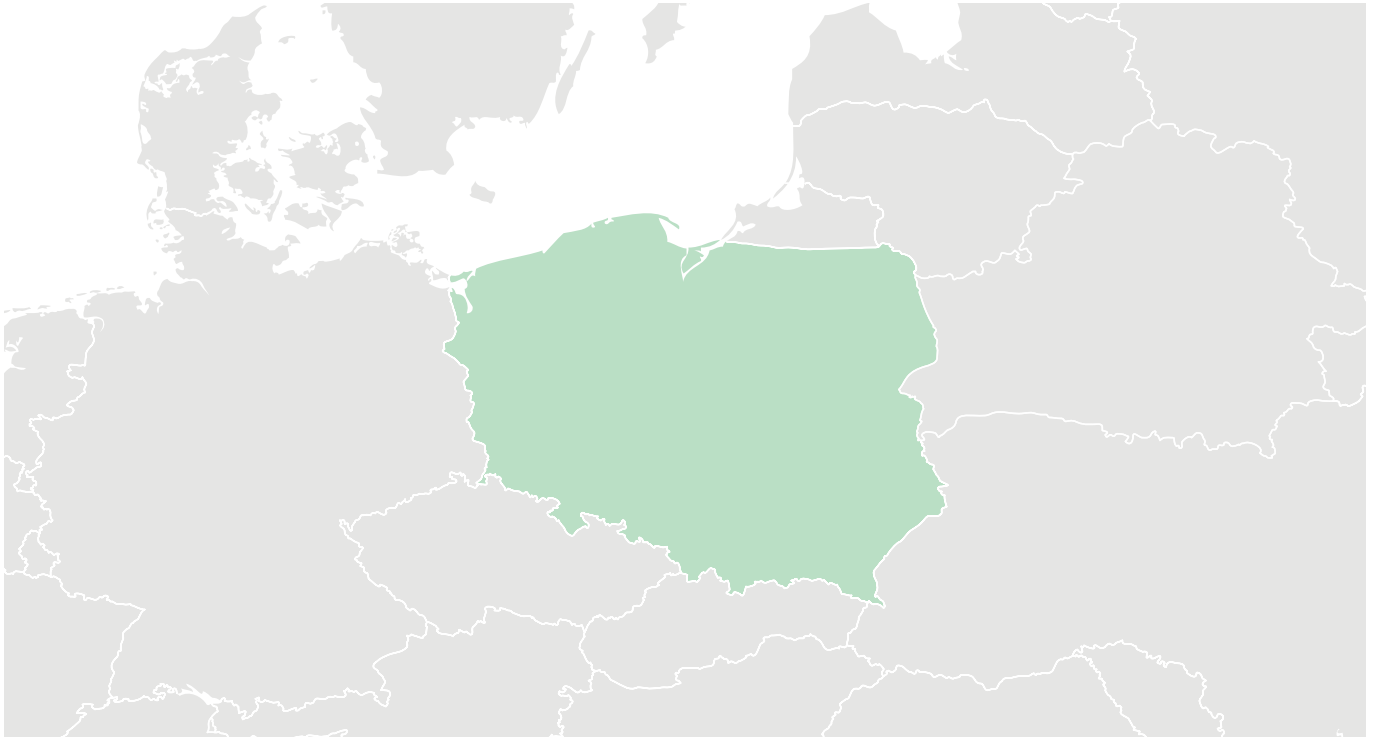
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Motor Bodily Injury Landscape

Poland



Recent legislative changes

The legal and claims environment in Poland

- 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 increased to EUR 5.21 million for bodily injury and EUR 1.05 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.
- Motor premiums in Poland have increased over recent years following concerted action by the insurance industry to correct the inadequacy of premium rates as identified by the Polish Financial Supervision Authority (KNF). The average premium in Poland is now around EUR 130.

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.



Claims and compensation

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 also 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. We have observed a trend since 2019 towards negative discount rates. The discount factor can vary from minus 0.5–0.5%, depending on the assumptions of the insurer.
- A court decision website was launched by the PIU (Polish Chamber of Insurance) in 2016 to facilitate searching of legally binding court judgments. This gives insurers the possibility to compare claim awards and provides support for determining the quantum on claims compensation.
- 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 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).
- In March 2018, the Supreme Court ruled that pain and suffering for close relatives of a victim of severe bodily injuries (e.g. vegetative state) is generally possible.

In 2019, a new act came into force to pay compensation above the guarantee limits for previous years. In the event of exhausting the guarantee sum, the act provides for claims for personal damages to be covered by the Insurance Guarantee Fund. The insurance industry will have to pay an additional fee to finance this new regulation. The law applies to losses arising from policies concluded before 1 January 2006. If the court decision was issued before the entry into force of the act, the insurance company is still obligated to pay the annuity itself.

Loss of earnings

- Loss of earnings is calculated up to retirement age, and is based on the average salary excluding the taxable part of the income.
- The courts recognise the impact of inflation on wages, pensions and healthcare costs.
- 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 3 010 = EUR 670 per month), or constitutes a percentage of the average wage (PLN 5 169 = EUR 1 097 per month).
- In cases of disability, the social security department calculates the amount of the monthly pension granted to the injured person based on different factors (e.g. number of years worked 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.

Third-party 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.



Pain and suffering

- In cases of bodily injury, damages awarded for pain and suffering can range from PLN 200 000 (EUR 48 000) to PLN 700 000 (EUR 148 000).
- In general, court awards for pain and suffering appear to be becoming more aligned – a trend that is of benefit to both claimants and insurers.
- In June 2021, a regulation was introduced that grants the right to compensation for the immediate family members who are in a vegetative state as a result of a traffic accident or medical error. It applies retroactively (20 year statute of limitation)
- 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 cases of fatal injury, damages for pain and suffering for close relatives can amount to PLN 250 000 (EUR 60 000) per individual. Only close relatives are eligible for compensation.

Other

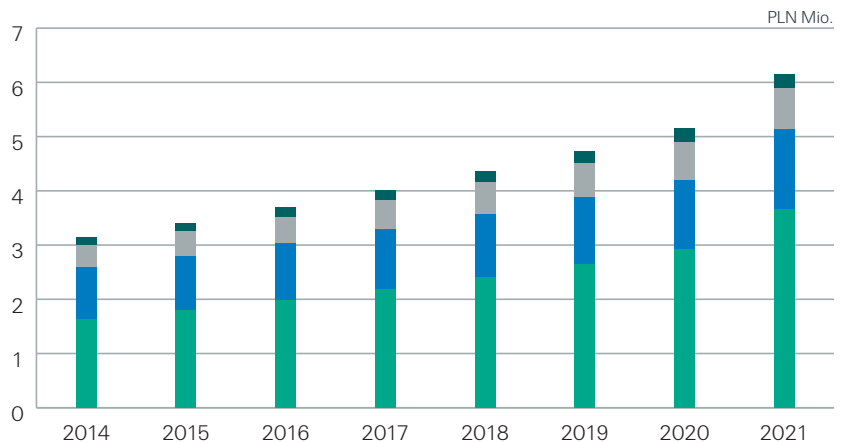
- The injured person receives compensation for the modification of their living space and/or motor vehicle to their needs, or for the purchase of a wheelchair.

Tetraplegia claims scenario

Poland – 2021

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 care

- Other
- Pain and Suffering
- Loss of Earnings
- Cost of Care

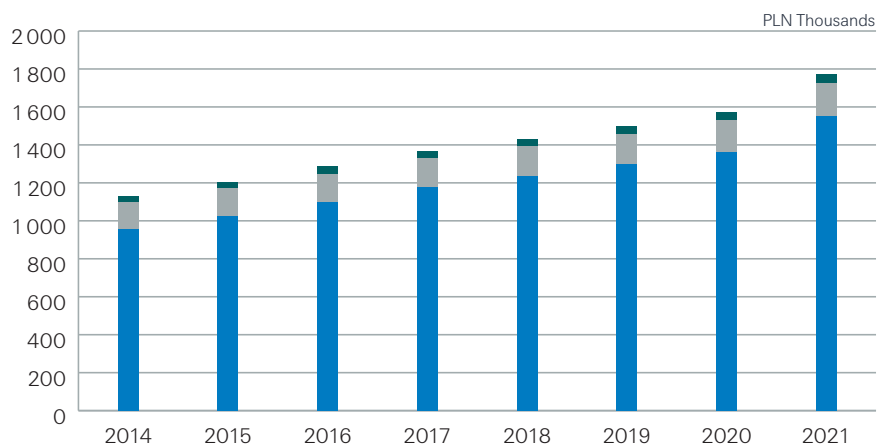


Fatality claims scenario

Poland – 2021

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

- Other
- Pain and Suffering
- Loss of Earnings

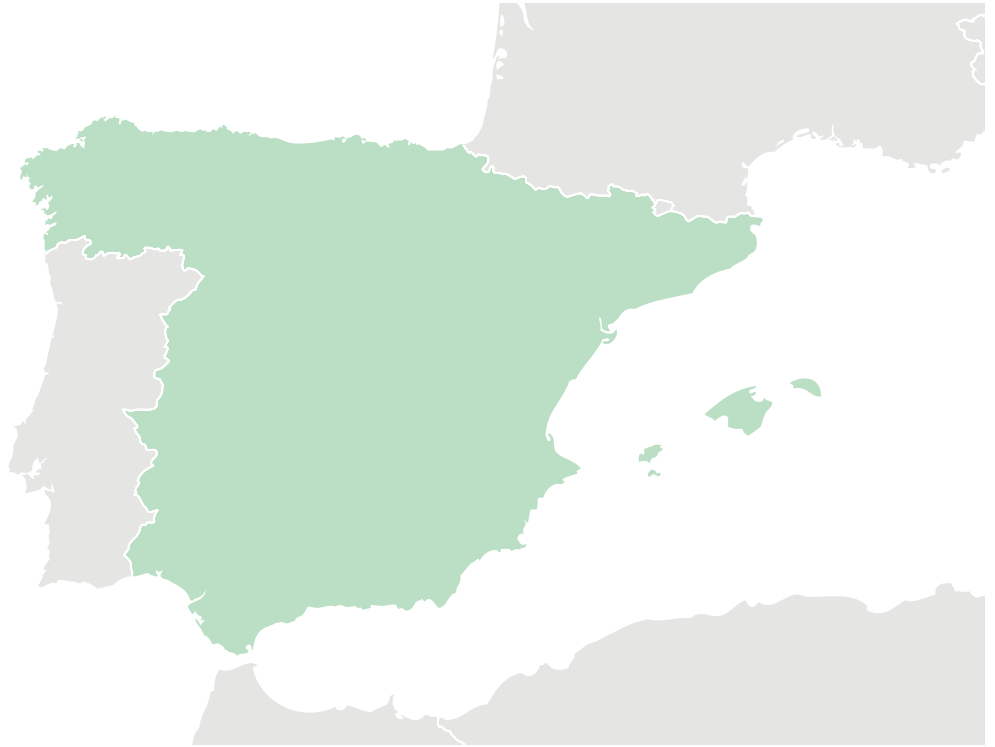


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Motor Bodily Injury Landscape Spain



The legal and claims environment in Spain

- The 8/2004 Royal Legislative Decree sets minimum third-party limits for motor insurance at EUR 70 million per bodily injury claim regardless of the number of victims, and EUR 15 million for property damage claims.
- Within the scope of motor liability insurance, Spain's Insurance Compensation Consortium (Consortio), a public corporate entity attached to the Ministry of Economy, assumes the mandatory motor cover not accepted by insurance entities, as well as the cover for vehicles belonging to the State, the autonomous regions, local corporations and public bodies. In addition, Consortio provides cover in the event of losses caused by unknown vehicles, or those that are uninsured or have been stolen; or in cases where the insurance entity has been declared bankrupt, in administration, insolvent, in liquidation with public administration intervention, or when the company has been taken over by Consortio itself.
- The national calculation basis for bodily injury claims (Baremo) was established in 1995 and validated by the Constitutional Court in 2000.
- Act 35/2015 of 22 September 2015, with effect from 1 January 2016, reformed the Baremo or system of compensation for fatality or injuries caused to persons in traffic accidents. The Baremo is the compulsory system for all victims of road traffic accidents and applies to pecuniary and non-pecuniary losses. Out-of-court settlements are incentivised by penalties for late payment of claims of up to 20%.

Recent legislative changes

The structure of the new Baremo and basic definitions

Act 35/2015 is made up of two chapters and three series of tables. Chapter I covers the general rules applicable to the system. Chapter II is divided into three sections: compensation for fatality; compensation for permanent injuries and compensation for temporary injuries. The structure of the compensation tables is set out below.



System of compensation for fatality or injuries in motor accidents (Act 35/2015)

Chapter I: General rules and principles
Section 1: General provisions
Section 2: Definitions
Chapter II: Rules to assess bodily injury:
Section 1: Compensation for fatalities
Section 2: Compensation for permanent injuries
Section 3: Compensation for temporary injuries
Series 1 tables:
Table 1A: Compensation for fatalities/Basic personal damage (moral damage)
Table 1B: Compensation for fatalities/Specific personal damage (moral damage)
Table 1C: Compensation for fatalities/Patrimonial damage (material damage)
Table 1C1: Loss of earnings spouse (net income/age of spouse/years of marriage 15 to 85 years)
Table 1C1d: Loss of earnings spouse with disability (net income/age of spouse)
Table 1C2: Loss of earnings sons and daughters (net income/age of son – daughter)
Table 1C2d: Loss of earnings sons and daughters with disability (net income/age of son – daughter)
Table 1C3: Loss of earnings parents (net income/age of parents)
Table 1C4: Loss of earnings siblings (net income/age of sibling)
Table 1C4d: Loss of earnings siblings with disability (net income/age of sibling)
Table 1C5: Loss of earnings grandparents (net income/age of grandparent)
Table 1C6: Loss of earnings grandchild (net income/age of grandchild)
Table 1C6d: Loss of earnings grandchild with disability (net income/age of grandchild)
Table 1C7: Loss of earnings close relative (net income/age of close relative)
Table 1C7d: Loss of earnings close relative with disability (net income/age of close relative)
Series 2 tables:
Table 2A1: Medical Baremo
Table 2A2: Economic Baremo
Table 2B: Indemnity for permanent injuries: Specific personal damage (moral damage)
Table 2C: Indemnity for permanent injuries: Patrimonial damage (material damage)
Table 2C1: Future medical care
Table 2C2: Number of hours for third-party assistance
Table 2C3: Compensation for third-party assistance
Table 2C4 & 2C7: Loss of earnings for absolute permanent disability
Table 2C5 & 2C8: Loss of earnings for total permanent disability
Table 2C6: Loss of earnings for partial permanent disability
Series 3 tables:
Table 3 : Indemnities for temporary permanent injuries



The structure of the new Baremo and basic definitions contd.

The new Baremo defines the different types of disability as follows:

- Severe disability/medical invalidity: the permanently disabled requires assistance to carry out the most basic activities.
- Absolute permanent disability/economic disability: unable to perform any type of work.
- Total permanent disability/economic disability: unable to carry out current profession, but still capable of working in another capacity.
- Partial permanent disability/economic disability: suffers a reduction in performance of no less than 33% for usual profession.

Some important considerations for the new Baremo:

- In cases of fatality, the surviving spouse, parents and/or grandparents, children, siblings and close relatives are entitled to compensation.
- The medical Baremo (Table 2A1) uses a points system to classify and assess permanent and temporary injuries (e.g. an amputated finger is rated at 7 to 21 points).
- Specific rules for assessing whiplash have been defined to reduce instances of fraud.
- In terms of moral damage the new Baremo distinguishes between basic personal damage and specific personal damage defined as the moral damage considering the personal, family, economic or social circumstances of the victim or injured party.
- Material damages include general losses, future healthcare expenses, third-party assistance, modification of living space and/or motor vehicle, and loss of earnings.

Lump sum dominates vs. annuities

From a legal point of view, annuities (also a mix of a lump sum and annuities) are allowed by law when agreed by all parties or imposed by the court. However, annuities are certainly an exception since the Baremo was established in 1995. The new Baremo includes conversion factors to transform lump sums into annuities and vice versa.

Retroactivity

According to the transitional provision of Act 35/2015, the new system applies to traffic accidents that occurred after the law came into force on 1 January 2016. No significant retroactivity issues have been identified with the exception of a marginal number of cases where heads of damage previously accepted under the old Baremo (i.e. loss of earnings) have been quantified by courts according to the new Baremo. The insurance industry made great efforts throughout 2015 to settle complex claims in order to avoid retroactivity related adverse court decisions.

Regular updates of the system

Baremo tables are updated on a yearly basis according to the official pension index established annually in the Spanish Budget Act (0.9% for 2021). However, loss of earnings and cost of third-party assistance are updated according to relevant actuarial standards. The future healthcare expenses table is reviewed in accordance with the relevant agreements with the public healthcare services. It is worth mentioning that the minimum annual income has increased in 2019 (new SMI: EUR 900/month) by 20.3% compared to 2018. This has resulted in higher indemnities for severely injured persons, particularly for their loss of earnings if they are minors and overall for third-party assistance costs. Last adjustment of the SMI took place in September 2021 with an increase to EUR 965/month. The law requires a regular review of the Baremo and its use in practice. The first comprehensive review resulted in the issuance of a report in mid-2020 with 50 recommendations for minor changes.

Discount rate

One of the more important recommendations is the reduction of the current discount rate of 3.5% by 1% to 2.5%. The suggested change should come into effect in 2022.

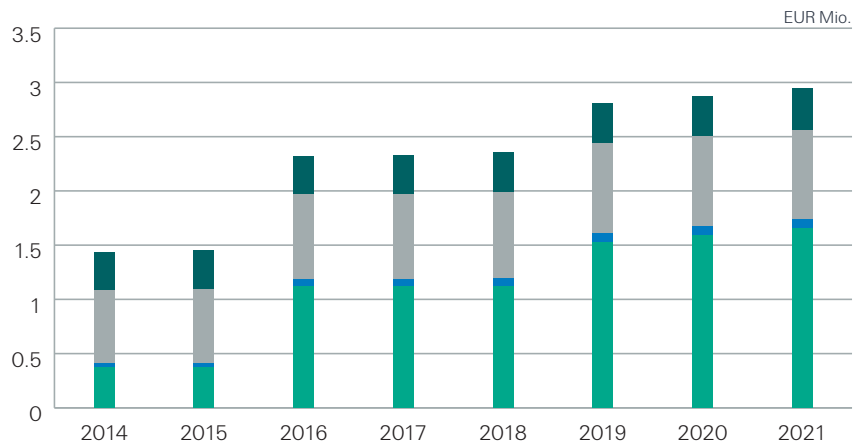


Tetraplegia claims scenario

Spain – 2021

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 care

- Other
- Pain and Suffering
- Loss of Earnings
- Cost of Care

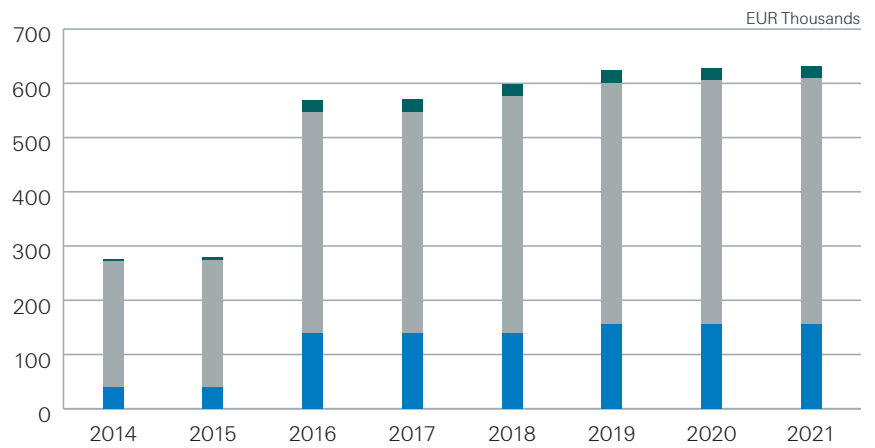


Fatality claims scenario

Spain – 2021

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

- Other
- Pain and Suffering
- Loss of Earnings

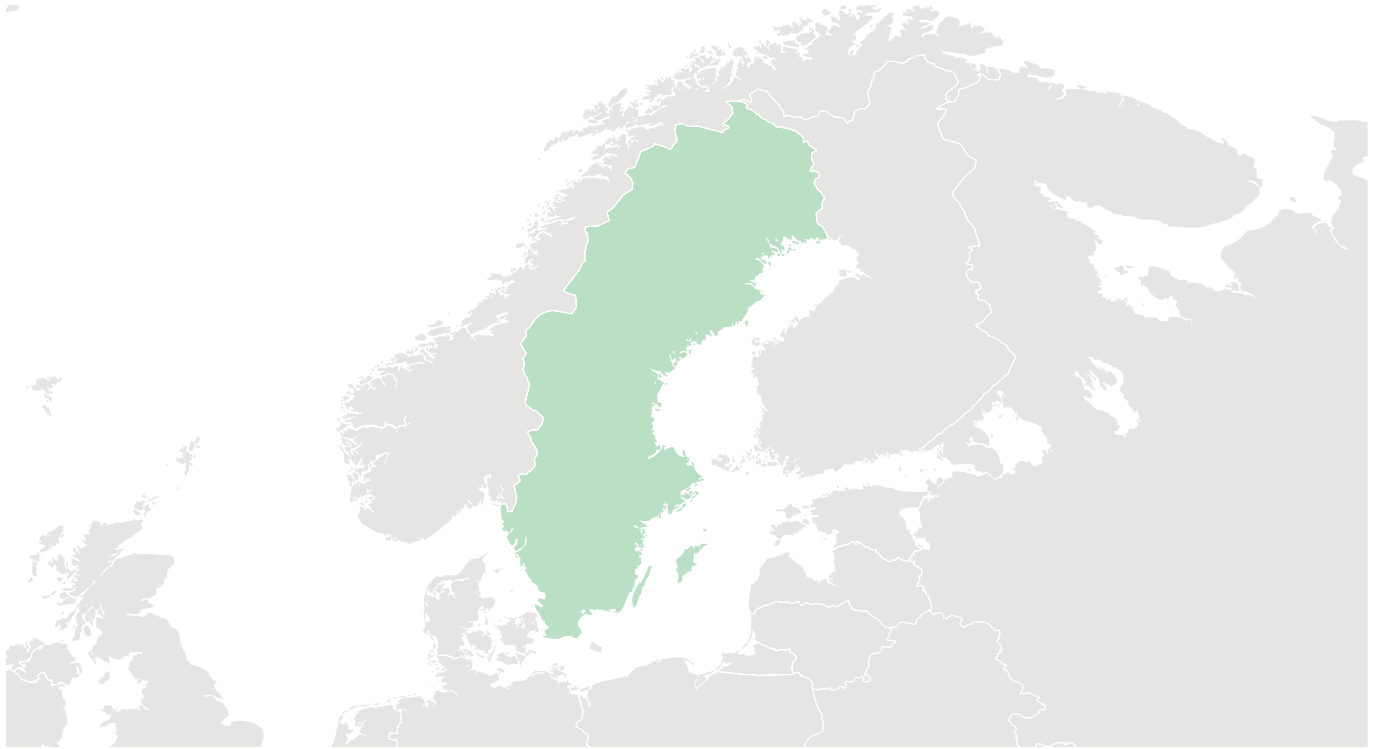


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Motor Bodily Injury Landscape Sweden



The legal and claims environment in Sweden

The Swedish Traffic Damages Act stipulates compulsory MTPL insurance with a sum insured of SEK 300 000 000, a single sum per vehicle covering bodily injuries and property damage combined.

In one instance, this sum has been shown to be insufficient, namely following Sweden's first major forest fire in Västmanland during the summer of 2014. In February 2019, the Swedish Supreme Court ruled that the forest fire was indeed caused by a vehicle in traffic within the definition of the MTPL Act, while it was operating (preparing the ground) in the forestry area.

The vast majority of large Swedish motor claims involve bodily injury claims. These severe injuries are settled through annuities, which give the claims a rather long run-off.

It is possible to convert the future annuity payments in whole or part to lump sum compensation. The capitalisation table applied for such conversions is based on an annual interest rate of 3% since 1 Jan 2021, down from 4%. The rate of interest is calculated by Insurance Sweden, Svensk Försäkring, once a year in accordance with an agreed model. The interest rate to be applied in the capitalisation is changed when the newly calculated model interest differs more than 0.5% from the present model interest for two years in a row.



Legislative changes, regulatory and judicial developments

The last three years – since Swiss Re’s previous publication of the Bodily Injury Landscape Europe – have been quite uneventful when it comes to new legislation regarding Swedish bodily injury indemnities and Swedish Motor insurance.

There have however been some noteworthy court judgments.

In the Ö 5362-19 case in November 2020, the Supreme Court ruled about the application of statutes of limitation in demands for reopening a determination of payments under an annuity.

The plaintiff, a floor fitter who was injured in a traffic accident in 1988, had not received compensation for loss of income from the MTPL insurance when the insurance matter was originally settled in 1997. He was deemed to be fully compensated for the injuries through the annuity payments from his sickness benefit fund.

In 2015, the plaintiff found out that wage developments in his previous profession were better than anticipated at the time when the amount of the annuity was determined; the indemnity was therefore below the income he would have received if he had not been injured. He then requested a reopening of his claim against the MTPL insurance. The motor insurance company disputed the request on the ground that his claim for compensation was time-barred.

The Supreme Court held that a claim for compensation for loss of income is time-barred in its entirety ten years from the date of the right of review, i.e. when the material changes in question occurred, but that a person may be entitled to a review on multiple occasions due to new material changes in the circumstances on which the compensation was based: for example, due to continued wage growth.

This means the statutory time bar does not apply once for the whole demand, but successively (10 years after each occasion the too low annuity indemnity occurred).

In case no T 1189-20 on 22 December 2020, the Court of Appeal of Skåne and Blekinge determined that an injury caused in an accident while a person was sharpening the blades of an automotive tractor (a forage crop harvester) should be considered caused by a vehicle in traffic.

The accident occurred when the plaintiff had stopped the vehicle to sharpen the blades, something that had to be done on an ongoing basis. The sharpening procedure was carried out via an automatic sharpening system and required that the vehicle’s motor was on and that the vehicle was stationary. The plaintiff slipped while looking in the inspection cover, resulting in his hand entering the cover and being amputated.

The Court of Appeal stated that the plaintiff was injured while carrying out a preparatory action in order to be able to drive the vehicle immediately after the sharpening in accordance with its normal mode of use, and that the injury thus should be considered caused by a vehicle in traffic.

Procedural aspects

Litigiousness in Sweden is relatively low. All bodily injury claims where the level of disability is 10% or higher must be reviewed by the Traffic Board, Trafikskadenämnden. This applies also in cases where the parties may have agreed on the indemnity already.

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 related bodily injury claims compared to other European countries. The very extensive data and information published on the website of the Traffic Board facilitates the predictability of indemnity for bodily injuries after a traffic accident.



Claims and compensation

The social security system in Sweden is highly developed. This means large components of the compensation for bodily injuries are carried by the public services. The social security system does not only compensate the victim for medical expenses but also pays for care 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.

In 2010, a 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 the compensation levels for such claims and set a market standard. The whole industry applies this guideline and the accompanying tables.

In December 2013, the first judgment based 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 be taken into account as well. 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. The guideline indicates the median wage for a full-time employee should be applied when calculating the indemnity for loss of income. This means for example when calculation the loss of income component for a 14 year old child the annual salary applied in the calculation will be around SEK 0.39 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 until the physical situation is stable, 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 subsequent long-term indemnification for permanent disability 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.

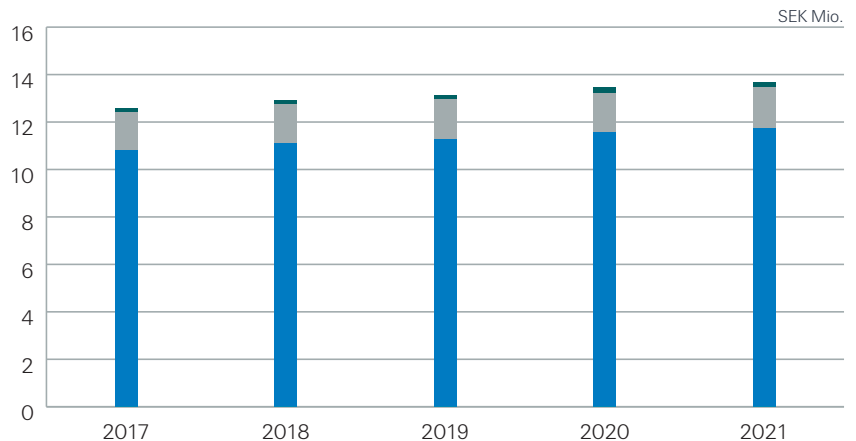
In fatality cases, the spouse and children of the deceased are entitled to compensation, with deductions for social benefits; the same conditions apply to individuals living in a civil partnership.

Tetraplegia claims scenario

Sweden – 2021

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 care

- Other
- Pain and Suffering
- Loss of Earnings
- Cost of Care

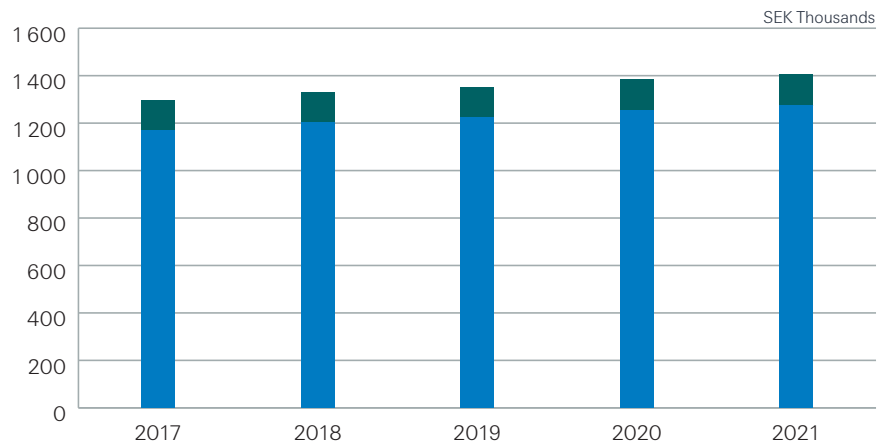


Fatality claims scenario

Sweden – 2021

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

- Other
- Pain and Suffering
- Loss of Earnings

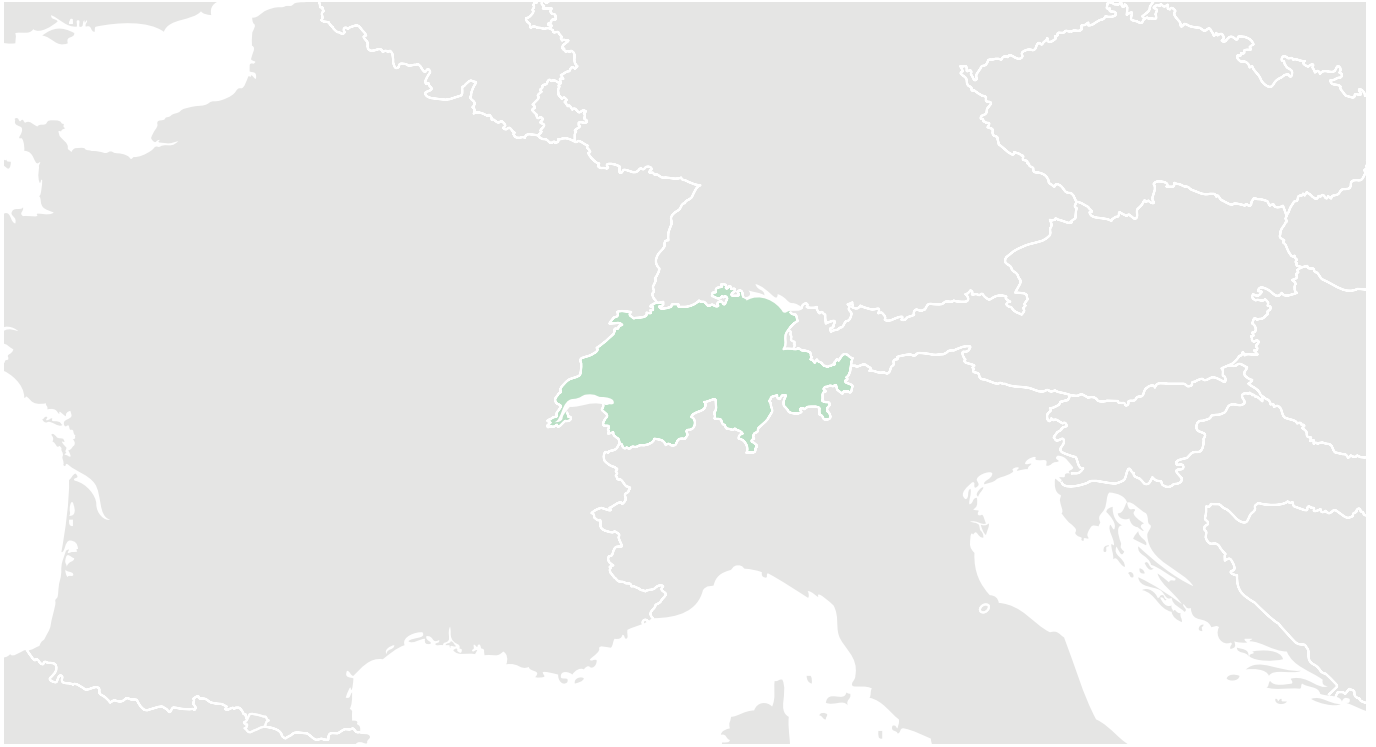


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Motor Bodily Injury Landscape Switzerland



Recent legislative changes

The legal and claims environment in Switzerland

- Minimum liability insurance cover for a car is CHF 5 million per accident (regardless of the number of victims) for bodily injury and property damage combined. Limits for buses (depending on the number of seats) and trucks are higher (Art. 3 Verkehrsversicherungs-Verordnung). It is, however, the local norm that liability insurance cover of CHF 100 million is taken out for all vehicles.
- Compared to the last decade, the legal community in Switzerland has become only marginally more aggressive. Even though the number of law firms is constantly increasing, there has been no significant change in the way bodily injury claims are handled.
- For many years now, compensation entitlement for close relatives in respect of pain and suffering has existed for both bodily and fatal injury cases.
- In motor liability insurance, the third-party victim has a direct right of action against the insurer.
- The motor liability insurance premium is approximately CHF 300 per year for a medium-sized car like a VW Golf.
- In a fairly recent decision (Decision 4A_602/2017, published on 23 May 2018) the Swiss Federal Supreme Court ruled that with immediate effect, an insurer subrogates to the insured person's claims against any person who is liable for damage arising from strict liability, causal liability or non-contractual liability (Art. 72 VVG; Swiss Federal Insurance Law). The insurer may assert such claims in its own name. Previously, this was only possible if the person liable under strict liability or causal liability or under a contract had caused the damage through gross negligence or with intent. It may be assumed that with this decision the Federal Supreme Court also opened the recourse of the property insurer against a third party liable under a contractual obligation.



- Not especially related to bodily injury losses but in a more general context, it has to be noted that as of 1 January 2022, the Federal Insurance law (VVG = “Versicherungsvertragsgesetz”) will be amended, which may have a certain impact on insurance disputes. Relevant amendments include:
 - limitation of conditions precedent – the breach of an obligation by the insured will have no consequence if the insured can establish that no negative impact has arisen from the breach;
 - extension of the prescription period for insurance claims from two to five years;
 - limitation of the insurer’s right to rely on exclusions in relation to a damaged third party in cases of mandatory third-party liability insurance;
 - direct claims of the damaged party against the third-party liability insurer – such a direct claims right exists only in a very few insurance lines at present, the most important being motor insurance;
 - full subrogation right of the insurer to the claims of the insured.

Procedural aspects

- Significant court case overload; on average it takes 3–4 years to obtain a first instance judgment for a more complex claim. In contrast, the average trial time at the Swiss Supreme court is relatively fast with 4–5 months and has been stable at that level for around 50 years.
- Litigiousness in insurance matters is relatively low in Switzerland, however it is rising in other areas of law.
- Lawyers’ fees are based on a tariff system. For out-of-court cases, the tariff is based on a recommendation from the Swiss Attorneys’ Association. For court trials, statutory tariffs apply.
- Contingency fees are only allowed in very restrictive circumstances.

Claims and compensation

General

- The level of indemnification in Switzerland is one of the highest in Europe. Claims awareness is high but stable. Most often, claims are settled out of court. The French-speaking part of Switzerland is more litigious than the German-speaking region. While many specialist law firms exist, there are very few accident management companies active.
- In personal injury cases, more than 99% of claimants prefer lump sum compensation payments to periodical annuity payments, sometimes with a caveat for medical costs. However, in cases of severe bodily injury, the victim can choose a settlement based on annuity payment schemes which – again – is only very rarely used. Since 1946, a discount rate of 3.5% has been applied for capitalisation purposes. This rate has come under considerable pressure given the overall very low interest rate environment in Switzerland. The discount rate of 3.5% was only recently confirmed by the Federal Supreme Court (judgements 4A_389/2020 and 4A_415/2020 of 18 May 2021). Overall, it is fair to say that the “discount rate” topic will likely disappear from the legal agenda for at least the next 2–4 years.
- A reopening of a claim following a settlement is almost impossible in Switzerland. Settlements usually include future uncertainties and any deterioration in the medical condition. Reopening a closed file would only happen if there was a very significant difference between the plaintiff’s medical condition at the time of the settlement and his or her condition when requesting the file be reopened.
- For the current edition of the Bodily injury flyer Switzerland, the Tables of the 7th Edition (published in 2019) from “Leonardo” (formerly “Stauffer/Schätzle”) were used for capitalisation purposes and the updated figures of “SAKE 2020” (“Schweizerische Arbeitskräfteerhebung”; “Swiss Labor Force Survey”) for the calculation of household damages.

Loss of earnings

- Loss of earnings is calculated up to retirement age (65 for men, 64 for women) for claimants working in dependent employment. This period is longer for self-employed persons. The basis for calculation is the net income at the day of the settlement plus a 1% wage increase per year until the age of 50. A higher income can also be taken into account provided the claimant can prove loss of future career prospects. Loss in pension annuity is also compensated.
- Depending on the degree of disability, the two Swiss social security carriers (disability insurance and mandatory accident insurance) partially reimburse loss of earnings; in severe cases up to 90% of the lost income with a cap at an insured salary of



CHF 148 200 (as from 1 January 2016; up from CHF 126 000 in 2014).

Social security insurers also pay for medical treatment costs, third-party assistance, medical auxiliaries as well as pain and suffering. For all payments made, social security carriers have a right of subrogation (recourse) against the liability insurer.

- The insurer is responsible for compensating the so-called "direct loss". This encompasses the difference between the compensations paid by the social security insurer(s) (including annuities) and the wages earned before the accident. Moreover various other heads of damage, such as damages related to housekeeping, additional pain and suffering, pain and suffering to close relatives of the claimant, modification costs for cars and for apartments/houses, lawyers' fees, interest and other costs are to be compensated by the liability insurer under the "direct loss" header.

Third-party assistance and medical treatment

- Costs of medical treatment/medication are paid directly by the victim's accident insurance, also in liability claim scenarios. If the victim has a private health plan, this usually also entitles him to claim private treatment in third-party claims.
- In cases of liability, the accident insurer will exercise their recourse against the liability insurer.

Pain and suffering

- Compared to many other European countries, awards for pain and suffering to the victim are relatively low in Switzerland. To some extent, this is offset by the fact that the circle of people close to the victim who are entitled to claim for pain and suffering in their own right is very wide. Almost anyone can submit a claim provided they can show that they have a close relationship with the victim.
- Amounts awarded by the courts for pain and suffering have not increased significantly during recent years. In cases of very severe bodily injury, the award for the victim may reach CHF 250 000 or slightly more (for tetraplegia or a very severe brain trauma case). As a general rule, the spouse/partner and the children living in the same household may receive an award of 50% (spouse) and 25% (children) of the sum allocated to the victim.
- In cases of fatal injury, damages for pain and suffering are in the region of CHF 50 000 for the loss of a spouse/partner and CHF 30 000 for the loss of a child living in the same household. This is per individual affected by the fatality. The more distant the relationship, the lower the amount, which may even go down to zero.

Other

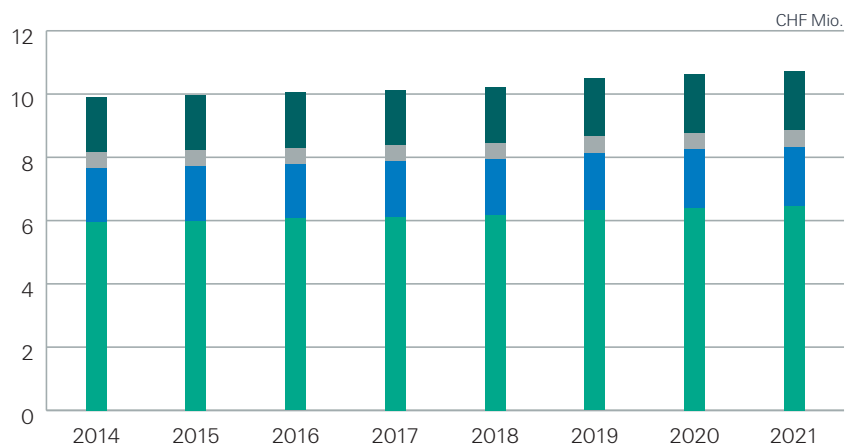
Modification of an apartment to the needs of the injured person is compensated as well as the purchase of a wheelchair or adjustment of a motor vehicle. There is in fact a wide range of heads of damages for which claims can be made. For para- or tetraplegic persons, this may include costs for the increased need for drinks, low-fat meat, dry cleaning and higher energy consumption costs at home for using a stair lift.

Tetraplegia claims scenario

Switzerland – 2021

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 care

- Other
- Pain and Suffering
- Loss of Earnings
- Cost of Care

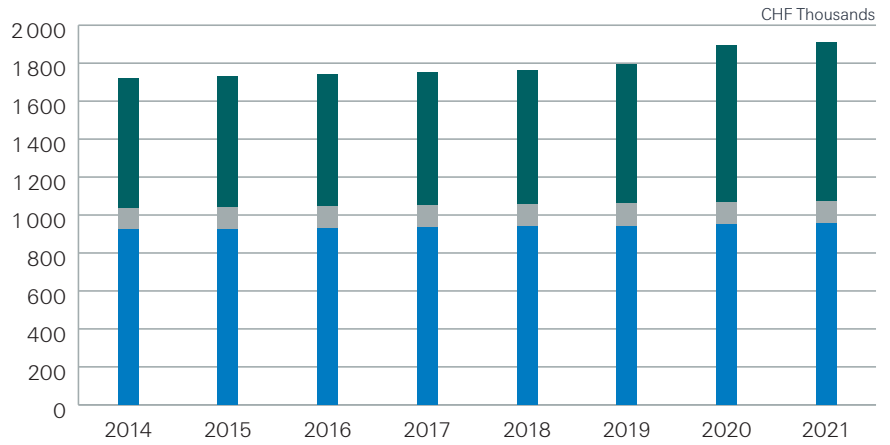


Fatality claims scenario

Switzerland – 2021

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

- Other
- Pain and Suffering
- Loss of Earnings



**For more information, please
contact our claims experts and
country specialists for Switzerland**

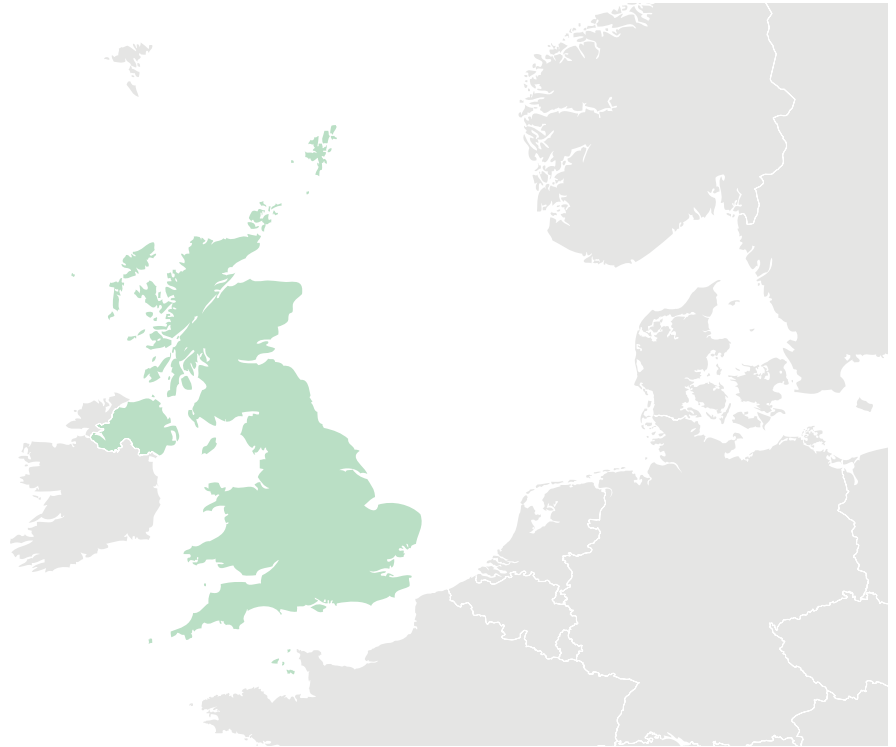
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Motor Bodily Injury Landscape United Kingdom



The legal and claims environment in the United Kingdom

Not atypically, much has happened in the UK motor market since our last publication and we cover here what we believe are the more newsworthy subjects.

Case law

Swift v Carpenter (2020)

The decision in this case is significant since it changes the way in which future accommodation claims are calculated. Such claims are nearly always a feature where a claimant has a need for wheelchair accessible accommodation due to a spinal cord injury.

By way of example, under the previous method the calculation for a male with a 49 year life expectancy, needing additional capital of GBP 500 000 to purchase a suitable property to reflect his injuries, would have been as follows:

GBP 500 000 x the prevailing discount rate x the appropriate multiplier. When the discount rate is negative (it is currently minus 0.25%), the award is zero. Many insurers would, prior to "Swift", nevertheless adopt a commercial attitude and award the claimant something.

In order to overcome the obvious problem associated with a negative discount rate, a new approach was set out in "Swift". Succinctly, the court decided that a 5% discount rate, only, should be applied to the additional capital required. The result, again using a male with a 49 year life expectancy, requiring additional capital of GBP 500 000, is GBP 454 218.

Technically speaking, therefore, the defendants have gone, in this example, from paying nothing to paying GBP 454 218.



Mencap v Tomlinson-Blake (2021).

Mrs Tomlinson-Blake brought a claim in an Employment Tribunal (which was heard in August 2016) alleging that:

When she was required to sleep-in, she was engaged in “time work” for the full duration of the shift for the purposes of Regulation 30 of the National Minimum Wage (NMW) Regulations 2015.

She therefore argued that the national minimum wage should be paid for the full shift.

Mencap argued that Mrs Tomlinson-Blake was only entitled to the national minimum wage when she was awake and actually carrying out work.

The position in relation to the issue of national minimum wage and sleep-in time at an employer’s premises has been the subject of numerous cases with decisions, until now, suggesting that sleep-in time was “time work” for national minimum wage purposes.

Indeed, that was the conclusion of both the Employment Tribunal and the Employment Appeal Tribunal (EAT) in the Mencap case. However, Mencap successfully appealed to the Court of Appeal (CA) and the CA ruled in July 2018 that sleep-in workers are only entitled to receive the national minimum wage when they are awake to carry out any relevant duties and not for hours when they are asleep.

Mrs Tomlinson-Blake appealed against this decision to the Supreme Court.

In March of 2021, The Supreme Court unanimously dismissed the appeal, agreeing with the position taken by the CA, namely that sleep-in time should not be counted for the purposes of the national minimum wage. By way of summary, the reasons are as follows:

In the definition of “time work” under Regulation 32(2), the phrase “awake for the purposes of working” must be read as one whole section. Therefore, any time merely awake on an employer’s premises is not necessarily time awake for the purposes of work attracting the national minimum wage;

Simply being present at work does not necessarily mean someone is engaged in “time work” for the purposes of the NMW Regulations. If a worker is called upon to attend to someone’s needs during a sleep-in shift, that time will count as “time work”.

This is an important decision for defendants. Many catastrophically injured claimants have a need for a sleep-in carer. Following “Tomlinson-Blake”, if a worker is expected to sleep for most or all of their shift, with just the chance of being occasionally woken to carry out an unexpected task, they are working a genuine “sleep-in” shift and do not need to be paid the NMW for the full shift. They are only entitled to be paid for hours that they are actually called upon. This outcome should help place downward pressure on care costs.

Personal injury discount rates

The discount rate in England and Wales is minus 0.25%, minus 0.75% in Scotland and was 2.5% in Northern Ireland.

Northern Ireland’s rate, in the current climate, was an outlier and an interim rate of minus 1.75% took effect from the middle of 2021.

Since then, work towards deciding upon a more permanent rate has taken place and a new rate could be implemented as early as April 2022. From a compensator’s viewpoint, it is hoped the new rate will be significantly more favourable.

Qualified one-way costs shifting (QOCS) in Scotland

QOCS was introduced in Scotland on 30 June 2021.

The one-way costs shift brought about by QOCS gives protection to pursuers (claimants) against an adverse award of costs in the event their claim fails. There are several



exceptions to this which, if made out, can in effect reinstate the usual “loser pays” approach to costs. The exceptions are:

- Where the pursuer or their legal representative makes a fraudulent representation or otherwise acts fraudulently in connection with the claim or the proceedings.
- Where the pursuer or their legal representative behaves in a manner which is manifestly unreasonable in connection with the claim or the proceedings.
- Where the pursuer or their legal representative otherwise conducts the proceedings in a manner that the court considers amounts to an abuse of process.
- Where the pursuer fails to obtain an award of damages greater than the sum offered by way of a tender (a tender is broadly equivalent to a defendant’s Part 36 offer when made during litigation).
- Where there is unreasonable delay on the part of the pursuer in accepting a sum offered by way of a tender.
- Where the pursuer abandons the action.
- Where the pursuer’s case is summarily dismissed by the court because it has no real prospect of success.

The exceptions, as in England and Wales, are intended to act as markers to pursuers and their lawyers not to litigate cases without first considering the merits of their case and/or the level of integrity and behaviour they exhibit both before and during litigation.

Covid-19

The impact of COVID-19 government restrictions on Crash for Cash scams

In June 2021, the Insurance Fraud Bureau (IFB) published the UK’s top 30 Crash for Cash scam hotspots. The report is based on the IFB’s analysis of 2.7 million motor insurance claims made across the UK between October 2019 and December 2020.

Topping the list in 2021 was Birmingham, followed closely by Bradford, Walsall, Blackburn and Romford. There have however been notable shifts in the top hotspots during 2021.

The data released by the IFB in 2021 could be seen as an indicator as to the impact COVID-19 government restrictions have had on fraudsters.

In May 2020 the IFB reported that there had been a big drop in reports of Crash for Cash scams since government restrictions on travel were imposed. Both Manchester and Liverpool had placed highly on the list in previous years, however both cities were also subject to tighter local restrictions for a longer period in 2020 than other locations that have featured on the list. In 2021, Manchester and Greater Manchester have seen a fall in the number of hotspot postcodes on the list as compared to previous years, and Liverpool fell off the list altogether in 2021, again suggesting correlation between travel restrictions and a decrease in Crash for Cash scams.

The previous list, published by the IFB in 2017, also showed that the majority of postcodes were located in the Midlands or the North of the UK. While the latest data suggests this more or less remains the case, there has been an increase in the number of postcodes in London and its surrounding areas, with Romford and Ilford emerging as popular among fraudsters.

The impact of Covid-19 on psychiatric injuries

A study by South Bank and Kingston Universities found a pattern, in a proportion of the population, of generalised anxiety and depression, particularly in younger groups and the most at risk groups for catching COVID-19, such as those with diabetes, asthma and other chronic conditions. Researchers sought to classify this ongoing fear of contracting the virus as a cluster of symptoms called COVID-19 anxiety syndrome, which persists regardless of whether the person has been vaccinated or not. It is estimated that this could affect as much as 22% of the population and make it difficult for those people to fully re-integrate.

The pandemic has exposed a significant number of people to heightened anxiety, PTSD or depression, creating a larger cohort of psychologically vulnerable people in the general population. The claimants of the future may potentially be more vulnerable to adverse psychological consequences as a result of the impact of the pandemic on their



long-term mental health. Under the “eggshell-skull” rule, those claims for psychological injury resulting from an accident will sound, even if the underlying psychological vulnerability stemmed from the pandemic.

It seems COVID-19 will have a lasting impact on the mental health of a significant section of the UK population, leading to greater psychological vulnerability following an accident, longer recovery periods and greater disruption to daily living.

The impact of Covid-19 on life expectancy

On 23 September 2021, the Office for National Statistics (ONS) published updated life expectancy data, taking into account mortality figures for 2020/2021. This is therefore the first batch of ONS life expectancy data that reflects the impact of the COVID-19 pandemic.

The ONS comments that:

“Life expectancy has increased in the UK over the last 40 years, albeit at a slower pace in the last decade.”

“However, the coronavirus pandemic led to a greater number of deaths than normal in 2020. Consequently, in the latest estimates we see virtually no improvement in life expectancy for females compared to 2015 to 2017 at 82.9 years, while for males, life expectancy has fallen back to levels reported for 2012 to 2014, at 79 years. This is the first time we have seen a decline when comparing non-overlapping time periods since the series began in the early 1980s.”

“These estimates rely on the assumption that current levels of mortality, which are unusually high, will continue for the rest of someone’s life. Once the coronavirus pandemic has ended and its consequences for future mortality are known, it is possible that life expectancy will return to an improving trend in the future.”

These numbers do not reflect projected mortality figures (i.e. data that takes into account future anticipated trends in life expectancies), which are used to produce the Ogden Tables.

The high level impact of Covid-19 on claims handling

Claimants and their lawyers suffered cash flow problems during the lockdowns.

As a result Insurers were able to settle some relatively mature cases, as well as those cases that were less reliant on “in person” medical examinations, quicker and at reduced values.

Conversely, the pandemic did see a backlog of cases in the courts and “in person” medical examinations were delayed as was gathering evidence relating to newly notified losses (for example, police reports).

Crisis in care?

Some points of interest:

- By 2066 over a quarter of the UK’s population are projected to be over 65. By 2041, the over 85 age group will have doubled and tripled by 2066.
- The Institute for Public Policy Research has projected a 400 000 shortfall in the number of carers required by 2028, given the restrictions on freedom of movement introduced following Brexit.
- 8% of England’s total care workforce are of EU nationality with a further 9% of non-EU Nationality (source: Slater, Global Head of Major Injury & Casualty at DWF solicitors).
- The new points based immigration system has been described as an “absolute disaster for the care sector” by Christina McAnea (UNISON Ass Gen Sec).
- 90% of the current care workforce earn less than the GBP 25 600 immigration threshold.
- Carer wage inflation has grown in excess of 19% in recent years.
- Against a trend of exceptional increases in carer wages, and in an effort to achieve certainty, claimants may start to prefer settlement of their future care costs on a periodical payment basis (annuity), rather than a lump sum.



Early experiences of the Official Injury Claims Portal (OIC)/whiplash reforms

To support the new whiplash tariffs, (covered in our previous publication) the OIC Portal was launched on 31 May 2021. The intention is to limit the damages recoverable in respect of whiplash and psychiatric injury and to remove the entitlement to recover legal costs where the value of the injury does not exceed GBP 5 000. The latest available OIC Portal data (Q2) suggests 9% of claims made were made by litigants in person (9.5% in Q1).

Under the OIC, claimant lawyers are charging claimants 25% of their damages (because they are not entitled to claim their legal costs). So, if damages are agreed at GBP 3 600, the claimant's lawyer will recover 25%, or GBP 900, from the claimant under the Damage Based Agreement (DBA). That is more than they would have been entitled to under the fixed costs regime, had they pursued the claim through the MOJ Portal. It is therefore unlikely that the OIC will achieve its goal of disincentivising lawyers from representing claimants.

The MOJ, when drafting the whiplash tariffs, failed to appreciate that the maximum tariff point of GBP 4 345 plus any 20% uplift for "exceptional" whiplash injuries (which are allowed, albeit yet undefined, under the rules) will take the claim beyond the OIC threshold of GBP 5 000.

In Q2, 26% (the same as in Q1) of claims notified have included "exceptional" whiplash injuries.

If the claim moves from the OIC to the MOJ Portal, because the GBP 5 000 threshold is exceeded, the claimant lawyer not only gets their 25% of damages under the DBA but also the fixed costs as allowed under the MOJ Portal. So, there is every incentive for claimant lawyers to seek a claim value beyond GBP 5 000.

New claim notifications to the OIC were initially fewer than expected possibly because some claimant solicitors struggled to load new claims and medical reports into the OIC due to IT difficulties and/or because they were/are deferring filing claims.

It remains to be seen, in the long term, how effective the OIC will be in reducing claims spend.

Legal costs consultation

The Civil Justice Council has reviewed the hourly rates lawyers are entitled to charge in England and Wales and recommended increases on the previous rates, which were last reviewed in 2010.

Given the time since the last review, the increases, effective from October of 2021, look significant. For example, a Grade A solicitor working in central London will now be able to charge GBP 512 per hour – an increase of 25.2%

Needless to say, compensators opposed such increases, particularly as many lawyers, given the pandemic, are now working from home, very often outside of major cities. Compensators argued, without success, that the allowable hourly rates should reflect the location at which the legal costs are incurred, which in many cases is quite different from the pre-pandemic days.

The next review, in two years, could be pivotal, as new working practices would have been embedded following the pandemic. UK motor insurers are therefore capturing not only the hourly rates being charged by claimant lawyers but also where, geographically, the legal costs are incurred. Such an exercise will allow compensators to submit robust evidence at the time of the next review.



Claims inflation

At the time of writing and one year on from the start of the pandemic, UK motor insurers had broadly seen inflation running at 8% to 9% driven by:

First and third-party vehicle damage inflation of between 10% and 12% (due to increasing technology costs and increased cost of parts, as well as extended credit hire claims due to delays in obtaining parts and higher wage inflation).

An increase in general damages (damages for pain, suffering and loss of amenity) of between 6% and 7%. This is very much in line with the level of inflation reported in the UK’s Judicial College Guidelines of 7%.

State pension ages

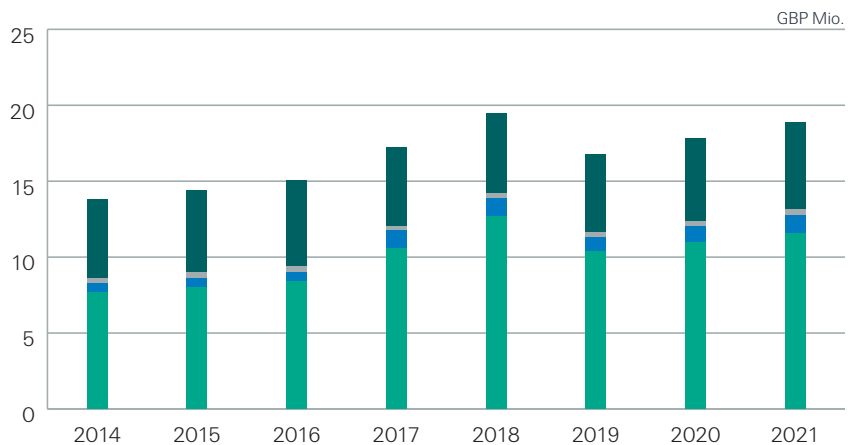
The state pension becomes payable to both men and women once they reach state pension age (SPA). The SPA is 66 years for those born between the 6th October 1954 and 5th April 1960. There are then monthly incremental increases in the SPA, culminating in a proposed retirement age of 68 years for those born between 6th March 1978 and the 5th April 1978. A later SPA may result in many having to work to an older age and that could inflate any claim for future loss of earnings.

Tetraplegia claims scenario

United Kingdom – 2021

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 care

- Other
- Pain and Suffering
- Loss of Earnings
- Cost of Care

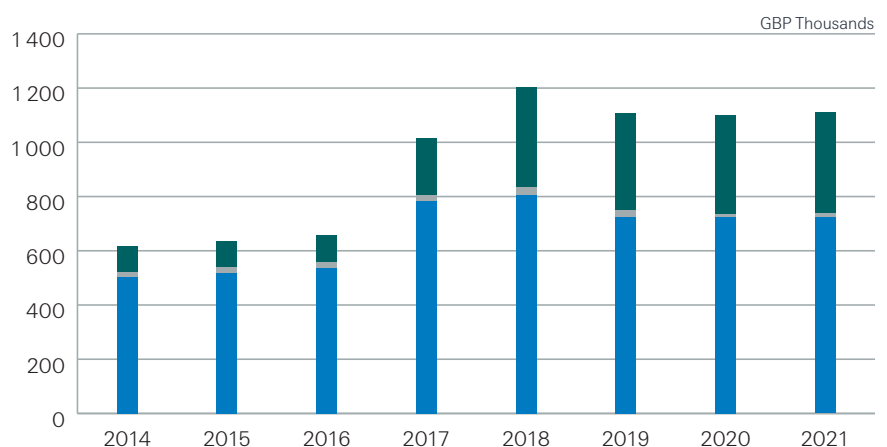


Fatality claims scenario

United Kingdom – 2021

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

- Other
- Pain and Suffering
- Loss of Earnings



For more information, please contact our claims expert and country specialist for the United Kingdom

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