



Motor Vehicle Liability Insurance in the EU

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Automobile Insurance problems and policies: a transnational comparison
The approaches taken in North America, the EU, South Africa and Chile

Outline

- EU legal framework on compensation of traffic accidents
- European Motor Vehicle Civil Liability Insurance Directives
- Three main topics
 - Visiting motorists
 - Visiting victims
 - Minimum insurance conditions
- Specific issues
 - Definition of vehicle
 - Liability in respect of the use of a vehicle

1. EU Legal Framework

Compensation traffic accidents



Territorial scope

- European Economic Area
 - 27 Member States of the European Union
 - Island, Norway, Liechtenstein



No harmonised substantive rules

- On tort law and compensation of damages
 - Conflict of Laws rules
 - EU Regulation N° 864/2007/EC Rome II 11 July 2007
 - Lex loci damni : law of the country where the direct damage occurred
 - Convention of the Hague 4 May 1971
 - Lex loci delicti : law of the country where the act occurs
- On insurance contract law
 - Conflict of Laws rules
 - EU Regulation N° 593/2008/EC 17 June 2008
 - Art. 178 Directive 2009/138/EC Solvency II
 - Article 7.1 – 7.3: large and mass risks
 - Article 7.4 : compulsory insurance

2. EU Motor Vehicle Civil Liability Insurance Directives (MVLI Directives – MID)



EU Motor Insurance Directives

- Since 1972
 - 5 Directives
 - Codified Directive 2009/103/EC 16 September 2009
 - Amending Directive (EU) 2021/2118 24 November 2021
 - Implementation and application: December 2023
- Objectives
 - Free movement of motor vehicles normally based on the territory of the EEA and persons
 - Protections of victims of traffic accidents and guaranteeing them comparable treatment
 - Protection of European citizens, policyholder or victim

Material scope

- Third party insurance based on civil liability
- Member States free to set up “no-fault compensation system”
 - E.g.
 - France
 - Belgium
 - Sweden



3. Three main topics



Visiting motorists

= domestic accidents caused by foreign vehicle

- motor vehicle normally based – registered in another State
- embedded in the “Green Card system”
 - Since 1949
 - 47 member countries
 - compensation by National Insurers’ Bureaux
 - since 1972 EEA + some countries: license plate

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Visiting victims

= victim of an accident

- occurred in EEA Member State other than his/her Member State of residence or green card country
- caused by vehicle insured and normally based in another EEA Member State
- substantive rules on claims handling
 - quick and efficient handling and settlement
 - in their own language
 - by entities established in Member State of residence injured party

Motor Vehicle Liability Insurance

- Compulsory insurance
- Civil liability “in respect of the use of a motor vehicle”
- Accidents on the whole territory of the EEA
- Covering personal injuries and damage to property
- On payment of one single premium
- Guarantee fund
 - Uninsured or unidentified vehicle
 - Insolvent insurer (2023)

Minimum MVL Insurance Conditions I

- Minimum amounts of cover (2023)
 - personal injuries: 1 300 000 EUR per person or 6 450 000 EUR per accident, whatever the number of injured parties
 - damage to property: 1 300 000 EUR per accident, whatever the number of injured parties
 - no distinction as to the means of transportation
 - no excess or deductible borne by the victim
- Cross border accidents
 - Compensation according to the MVLI law of Member State of the accident
 - BUT according to Member State where the vehicle is normally based when that cover is higher

Bureau Code	Country	Minimum amounts of insurance coverage (EEA Countries)							
		PERSONAL INJURIES				MATERIAL DAMAGE			
		per person / victim		per accident / claim		per person / victim		per accident / claim	
		EUR	national currency	EUR	national currency	EUR	national currency	EUR	national currency
A	Austria *	€ 6,300,000				€ 1,300,000			
B	Belgium	n/a		Unlimited		n/a		€ 120,067,655.54	
BG	Bulgaria	n/a		€ 5,112,919		n/a		€ 1,022,584	
CY	Cyprus	n/a		€ 36,350,000		n/a		€ 1,220,000	
CZ	Czech Republic	€ 1,386,139	CZK 35,000,000					€ 1,386,139	CZK 35,000,000
D	Germany	n/a		€ 7,500,000		n/a		€ 1,220,000	
DK	Denmark	n/a		€ 16,860,924	DKK 126,000,000	n/a		€ 3,345,421	DKK 25,000,000
E	Spain	n/a		€ 70,000,000		n/a		€ 15,000,000	
EST	Estonia	n/a		€ 5,600,000		n/a		€ 1,200,000	
F	France	Unlimited				€ 1,220,000			
FIN	Finland **	Unlimited				n/a			
FL	Liechtenstein *			€ 6,070,000				€ 1,220,000	
GB	United Kingdom	Unlimited							
GR	Greece	€ 1,220,000							€ 1,220,000
H	Hungary			€ 6,070,000				€ 1,220,000	
HR	Croatia			€ 6,280,182	HRK 46,739,000			€ 1,262,244	HRK 9,394,000
I	Italy	n/a		€ 6,070,000		n/a		€ 1,120,000	
IRL	Ireland	Unlimited						€ 1,220,000	
IS	Iceland	n/a		€ 25,702,723	ISK 3,493,000,000	n/a		€ 3,245,033	ISK 441,000,000
L	Luxembourg	n/a		Unlimited		n/a		Unlimited	
LT	Lithuania	n/a		€ 5,210,000		n/a		€ 1,050,000	
LV	Latvia			€ 5,210,000				€ 1,050,000	
M	Malta			€ 6,070,000				€ 1,220,000	
N	Norway			Unlimited				€ 1,235,000	
NL	Netherlands *	n/a		€ 6,070,000		n/a		€ 1,220,000	
P	Portugal *	n/a		€ 6,070,000		n/a		€ 1,220,000	
PL	Poland			€ 5,210,000				€ 1,050,000	
RO	Romania			€ 6,070,000				€ 1,220,000	
S	Sweden	SEK 300,000,000 / € 28,196,018 per accident							
SK	Slovak Republic			€ 5,240,000				€ 1,050,000	
SLO	Slovenia			€ 5,240,000				€ 1,050,000	

as of 30/01/2020

Source: https://www.cobx.org/sites/default/files/cob_file_folder/MinimumAmountOfCoverage-2020-01-31-UPDATED.pdf

Minimum MVL Insurance Conditions II

- Direct right of action of the victim against insurer (Art. 18)
 - Member State must ensure that any party injured enjoys a direct right of action against the MVL
(CJEU C-340/16, KABEG v MMA IARD SA)
 - Without being obliged to sue the responsible party
(CJEU C-558/15, Azevedo, Ferreira da Silva, Alves)
 - Art. 3 and 13 Directive 2009/103 “*precludes a MVL insurer from relying on statutory provisions or contractual clauses in order to refuse to compensate victims for an accident caused by the insured vehicle*”
(CJEU C-287/16, Fidelidade-Companhia de Seguros)

4. Specific issues

4.1. Definition of vehicle



Since 1972 - Directive 2009/103 Art. 1

- *“vehicle”*: *“any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled”*
 - encompasses all types of motor-powered vehicles
 - Uncertainty “not exclusively propelled”?
 - National exemption of insurance obligation for certain vehicles (Art. 5, 2)
 - on condition of compensation paid by guarantee fund

Amended Directive 2009/103 Art. 1,1

“ ‘vehicle’ means:

(a) any motor vehicle propelled **exclusively** by mechanical power on land but not running on rails with:

(i) a maximum **design speed** of **more than** 25 km/h; or

(ii) a maximum **net weight** of **more than** 25 kg and a maximum **design speed** of **more than** 14 km/h;

(b) any trailer to be used with a vehicle referred to in point (a), whether coupled or uncoupled.

Without prejudice to points (a) and (b), wheelchair vehicles exclusively intended for use by persons with physical disabilities are not considered to be vehicles referred to in this Directive.”

Excluded Amended Directive 2009/103

“(a) those motor vehicles **not exclusively** propelled by a mechanical power on land but not running on rails;

(b) those motor vehicles propelled **exclusively** by a mechanical power on land but not running on rails with:

(i) a maximum design speed of **not more** than 25 km/h; or

(ii) a maximum net weight of **more than** 25 kg and a maximum design speed of **not more** than 14 km/h;

(iii) a maximum net weight of **not more** than 25 kg and a maximum design speed of **not more** than 14 km/h;?

(c) **wheelchair vehicles** exclusively intended for use by persons with physical disabilities, irrespective of their weight or speed.”

Impact on excluded vehicles

- Assessment of design speed and net weight of motor vehicle
- Considered as “ordinary bicycles” – “non-powered vehicles”
 - General liability insurance under national law
 - not compulsory
 - no specific rules or minimum amounts
 - no guarantee fund
 - liability of the insured instead of liability in respect of the use of the vehicle
- Protection of the injured party and liable party?
- Disparate landscape of national laws
- Green card system

4. Specific issues

4.2. Scope of insurance obligation



Use of a vehicle

- Art. 3, first para Directive 2009/103:EC

*“Each Member State shall, subject to Article 5, take appropriate measures to ensure that civil liability in respect of **the use of a vehicle** normally based in its territory is covered by insurance”*

- Insurance obligation and scope of the insurance cover
 - Mixed vehicles?
 - Road, any types of terrains, including private property?

Use of a vehicle II

- Case law of the Court of Justice of the EU
 - 4 September, C-162/13, Damijan Vnuk
 - different interpretations in the different language versions
 - “sybilineal” decision
 - 28 November 2017, C-514/16, Rodrigues de Andrade
 - 20 December 2017, C-334/16, José Luis Núñez Torreiro
 - 4 September 2018, C-80/17 Fundo de Garantia Automóvel
 - 15 November 2018, C-648/17, AAS BTA Baltic
 - 20 June 2019, C-100/18 Línea Directa Aseguradora
 - 29 April 2021, C-383/19, Powiat Ostrowski
 - Order 29 October 2021, C-688/20, Ubezpieczeniowy Fundusz Gwarancyjny

Amended Directive 2009/103 Art. 1,1a

“use of a vehicle”:

*“ ‘use of a vehicle’ means any use of a vehicle that is consistent with the vehicle’s function **as a means of transport at the time of the accident**, irrespective of the vehicle’s characteristics and **irrespective of the terrain** on which the motor vehicle is used and of whether it is **stationary or in motion**”*

National exemptions of vehicles

- Expanded limited list of situation where Member States can exempt from the insurance obligation, provided victims are compensated by guarantee fund (Art. 5,3-5,7 Directive 2009/103)
 - Vehicles temporarily or permanently withdrawn and prohibited from use
 - Vehicles used exclusively in specific areas with restricted access
 - Vehicles not admitted for use on public roads in accordance with national

Final Observation

