

Motor Insurance Commission

Working Group - Reinsurance and bodily injury compensation in Europe as at 2022

June 2022

Reproduction of tables country by country

In this section, we present, via a short note, the general principles of reinsurance of Motor Liability in the following territories:

- France
- Belgium
- Italy
- Israel
- United Kingdom
- Germany
- Spain
- Greece

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Note FRANCE

Scope of reinsurance coverage

In France, Reinsurance treaties do not specifically cover motor liability. They generally include other various liability policies such as professional liability, private liability, hunting liability, education liability, pleasure boat liability, general liability, medical liability, etc. Occasionally, some contracts also cover non-liability material damage to vehicles, whether or not it results from a weather event. They may therefore include a dedicated capacity for climatic events.

According to Article L211-1 of the French Insurance Code, insurance cover provides that only motor liability insurance is mandatory, and other ancillary cover such as Damage is optional. Not all ancillary cover is necessarily assigned in reinsurance.

Purpose of the cover

The Reinsurer undertakes, by means of the follow the fortune clause, to adhere to the Cedant's commitments on each claim made. The Cedant, for its part, shall comply with the principle of full compensation for personal and financial loss, with respect to both direct and indirect victims.

Claims compensation : annuities vs. capital

The Reinsurer monitors the Cedant's situation with respect to the method for settling claims. In practice, the latter compensates for each loss item, in annuity and/or capital.

The allocation of an annuity (temporary or lifetime, amicable or court) or a capital sum shall depend on case law and the victims' wishes. However, in practice, they are very common for young victims and/or serious claims. They are indexed (Article L. 434-17 of the Social Security Code provides that the indexation of the motor liability annuity is based on the annual increase rate of annuities paid in respect of accidents at work) and, since 01/01/2013, insurers have to take care of their revaluation.

The payment of capital is often encouraged by insurers in settlements, even if it is not the norm for the most serious personal injuries. In fact, case law and most insurers prefer to allocate an annuity for financial loss items such as third party. Non-financial loss items are paid in capital, as are temporary financial loss items, as well as loss of future earnings up to a certain amount.

Reinsurance Treaty does not provide for a specific clause or scale for the payment of future losses in capital, unlike annuities.

Annuity clause: capitalised and uncapitalised annuities, revaluation treatment

The annuity clause is contractual and sets the method for calculating the final net loss.

There are two types of annuity clauses:

- Capitalised annuities

The Reinsurer participates in the compensation of the annuity by paying its share to the constituent capital (immediate debit) which, after adjusting the structure using the stability clause, is calculated

starting from arrears, on the annuity allocation date, using the mortality table and the capitalisation rate defined in the Special Terms and Conditions of the treaty.

- Uncapitalised annuities
 - Arrears are added to the final net loss as they are actually paid by the Cedant as partial settlements of the claim. The Reinsurer will only intervene when the final net loss has reached the priority (adjusted pursuant to the stability clause), and until the reinsurance coverage limit is reached. This method, usually adopted by the Market, is referred to as “Additional uncapitalisation of annuities”, as opposed to “Proportional uncapitalisation of annuities” that have virtually disappeared from treaties.
 - Uncapitalised reinsurance treaties may provide for the revaluation resulting from the regulatory indexing of annuities. The separate treatment of the revaluation of annuities under reinsurance is specific to the French market (integrated with the annuity elsewhere).

A combination of these two methods is occasionally found on the Market: this is the Delayed Capitalisation, which consists of capitalising all annuities opened after a certain number of years of uncapitalisation.

Adequacy between claims notification and the reinsurer’s commitment

For claims giving rise to a potential annuity, the Cedants assess the claims based on their own provisioning. For those giving rise to an annuity paid, the provisioning method is governed by the Regulation of the French Accounting Standards Authority (ANC) (Art. 143-2 of the ANC Regulation - former Art. 331-10 of the Board of Directors) and is particularly regulated.

However, since the provisioning of cases before the establishment of an annuity and the deposit made up by the Reinsurer representing its commitments being calculated according to the same method used by the Cedant, this implies that the capitalisation of the potential annuity does not systematically correspond to the terms of the treaty reinsurance; therefore, a provisioning gap may temporarily appear for the Reinsurer if it does not re-evaluate itself under the conditions of the treaty, the outstanding claims of which it is notified.

In addition, the amount is readjusted in the annual financial statements, thereby eliminating this difference. This is precisely the purpose of the Reinsurer’s commitment guarantee clause, stipulating that at the end of each financial year, the Cedant shall provide the Reinsurer with a list of outstanding claims indicating the amount for which cover must be provided. The Reinsurer undertakes to adjust its guarantee at any time during the year, so that it is the perfect reflection of the updated amount of the Cedant’s outstanding claims. To represent its commitments, the Reinsurer has the choice of setting up its guarantee in the form of pledges in securities accounts or pledge it as a cash pledge, this being governed by the provisions of the French Monetary and Financial Code (Article L211-20).

Pledges are thus based on the technical accounts provided by the Cedant, and the amount represented (in securities or cash) must be as close as possible to the Reinsurer’s commitment, without a shortfall or surplus, according to the provisions of the pledge agreement.

For some Cedants, the frequency of accounts may be biannual, reducing the mismatch between the Cedants’ provisioning and the Reinsurer’s commitment.

In the event of capitalisation, the expense assumed by the Reinsurer does not correspond to the claim actually paid to the victim, while in case of uncapitalisation, the suitability is total (modulo the indexing, according to the annuity clause of the treaty).

Capitalisation tables (mortality table, technical rate)

As stipulated above, in the event of payment of a capital loss item, and pursuant to the Cedant's Follow the fortune clause, the Reinsurer has no control over the capitalisation method used. The capitalisation method of items of lifetime loss not settled in annuities is either decided in discussions between victims and insurers or a court decision. There are scales (regularly updated), but they are not regulatory and are subject to market practice, mainly:

- the scale created by victims' lawyers in 2004: the *Gazette du Palais*
- the scale created by insurers in 2002: the BCRIV

Mortality tables are increasingly recent, and technical rates are increasingly close to 0%.

Coverage limits (excluding green cards)

Article A211-1-3 of the French Insurance Code provides that the mandatory minimum limit for compensation in material civil liability provided for in a motor insurance policy is €1,300,000. However, it is common for insurers to provide for much higher amounts (including deductibles and limits for material damage). In the case of bodily injury, the liability cover is unlimited; the compensation specific to the at-fault driver or only involved is contractual, and is limited in accordance with Law No. 85-677 of 05 July 1985, known as the Badinter Law.

In Reinsurance, coverage is usually limited to €100 m in material civil liability. For Motor Damage resulting from natural events, the treaty Reinsurance may provide optional coverage.

The Final Net Loss of Treaties provides for certain provisions commonly referred to as "Badinter Law Penalties" and "Kouchner Law Penalties", in certain cases of civil convictions pronounced against the Cedant. The reinsurer is obliged to settle¹ convictions for "insufficient offer" or "demonstrably insufficient offer as a result of no offer".

Heads of damage

The Dintilhac Nomenclature, which is non-regulatory, is used in practice to list the various categories of potentially compensable damages for direct and indirect victims. It includes 26 heads of loss divided into categories and sub-categories in order to expose financial and non-financial, temporary and permanent loss items. It applies on the one hand to the direct victim (twenty items), and to indirect victims (six items) such as the victim's family members or employers.

¹ Articles L. 211-13, L. 211-14, L. 211-17 and L. 211-18 of the French Insurance Code (Articles 16, 20 and 21 of the Badinter Law) for "Badinter Law" penalties, and Articles L. 1142-14 and L. 1142-15 of the French Public Health Code for "Kouchner Law" penalties (see also Articles L. 376-4 and L. 454-2 of the French Social Security Code for penalties imposed in the event of non-compliance with social security obligations)

The main items that weigh most heavily in the compensation of a claim (mostly paid as an annuity) are third-party assistance, loss of future earnings and future health expenses.

The costs and fees of lawyers and medical experts are covered by the opposing party, within the framework of Article 700 of the French Civil Procedure Code, on a flat-rate basis, which never covers the entire amount paid by the victim in the context of his or her defence.

Recourse by Social Security organisations

The Badinter law has established a limited list of third-party payers likely to exercise recourse against the liability's insurance. Examples include Social Security (Principal Health Insurance Fund), pension funds, supplemental mutual funds, as well as the employer.

Social benefits awarded to victims following an accident (reimbursement of healthcare expenses, hospital and pharmaceutical expenses, daily allowances, disability annuities) may also be accompanied by compensation by the insurer. In order to avoid double compensation, the law allowed third-party payers to exercise recourse for compensation benefits, against the responsible person's insurance in order to recover the allowances previously allocated. To simplify relations between the main third-party payers and insurers, an agreement has been legalised: the PAOS (Memorandum of Understanding Insurers-Social Organisations).

In the event of a settlement, the latter have a period of 4 months to make a detailed complaint. In the event of legal proceedings, this period shall be extended to 10 years, according to ordinary law.

Possibility of reopening claims

In the event of a medical or situational aggravation, any reopening is possible in insurance. However, the reinsurance treatment depends on the annuity clause:

- in the event of redemption of annuities: the worsening of the medical situation of the annuitant, occurring within 10 years of the date of allocation of the initial annuity, gives rise to the reopening of the claim. Furthermore, in the event of the death of the victim within 10 years of the date of allocation of the annuity, the file will be reopened and the amount payable by the Reinsurer will be adjusted taking into account the arrears actually paid;
- in case of monitoring of annuities: the Reinsurer follows the victim's situation, and therefore adjusts the financial flows in all cases according to the victim's condition.

Indexation clause

In order to maintain the deductible and the capacity of the Treaty at their value on the date it takes effect, their amount is stabilised according to an index-based calculation formula. The change in this index also affects the amount of the claim (payments and cumulative reserves). These three adjustments then determine the distribution of the claim expense between the Cedant and the Reinsurers.

Two stability clauses are mainly used:

- FIC 10% clause mostly,
- SIC 10% clause more rarely.

In most cases, the benchmark index is "INSEE 010562727".

Note BELGIUM

Scope of reinsurance coverage

Like other European markets, Belgian reinsurance treaties are not limited to covering motor third party liability in general. Household liability, objective liability (mandatory insurance for certain types of institutions open to the public) and other types of general third party liability are also available. In some cases, worker's compensation is also covered.

Motor own damage is covered by other treaties in most cases.

Purpose of the cover

The Reinsurer undertakes, by means of the follow the fortunes clause, to adhere to the Cedant's commitments on each claim. The Cedant, for its part, shall comply with the principle of full compensation for personal and financial loss, with respect to both direct and indirect victims.

Method for compensating claims: annuities vs. capital

In Belgium, the allocation of an annuity for permanent heads of damage remains rare. The payment of capital is preferred.

Reinsurance treaties do not contain a specific clause or multiplier table for the payment of future losses in capital, unlike annuities.

Annuity clause

All Belgian treaties have an annuity clause. The rate may vary as well as the table. However, we note that Schryvers¹ mortality tables are often used. In some cases, the treaties specify the date of the table to be used (they are updated annually). In other cases, the choice of the table is at the discretion of the Cedant. These tables are forward-looking and are gender-based.

¹ <https://www.tafelsschryvers.be/>

Adequacy between claims notifications and reinsurers commitment

As with Greece, there is a clause on the Belgian market for the sharing of interests between reinsurers and the Cedant: all claims (in-court and out of court) are concerned by legal interest amounting to 1.50% of the total claim² (this rate was 1.75% in 2021 and 2020, and 2% in 2019), known as “late payment interest” is payable from the date on which the legal action was brought and which runs until the date of the court decision. Amicably settled claims are in theory also concerned, but the clause is not always applied in practice.

Except in the case of annuities and any interest, the reinsurer shall monitor what the Cedant pays. As treaties have an annuity redemption clause, it is possible that there will be a difference between the provision of the annuity by the Cedant and the amount provisioned by the reinsurer.

Heads of damage and capitalisation tables (mortality table, technical rate)

In terms of calculating bodily injury claims, cedants generally follow the recommendations of the “**Indicative Table**”³ published by the Union Nationale des Magistrates de Première instance and by the Royal Union of Justices of Peace and Police. This is not a law but a compensation guide used to assess bodily injury by following a list of heads of damage. This list is also very close to that of the Dintilhac nomenclature and is not exhaustive. This table is therefore used as a reference for victims, lawyers, insurers and judges. It is updated regularly in order to adapt to the cost of living, inflation, socio-economic conditions, Belgian legislation, and the decisions of the courts and tribunals.

The “Indicative Table” also publishes a recommendation for a discount rate for the capitalisation of permanent heads of damage. Since 2016, this rate has been set at 1% (without taking into account inflation in particular), but it is only a recommendation and not an obligation to follow any table or discount rate for the compensation of permanent heads of damage.

Domestic coverage limits

Third party liability for bodily injury is covered without any limit of cover.

Third party property damage is covered at least €100 m (2007 value), indexed to inflation.

² Notice published in the Belgian Official Journal of 01/03/2022; law of 05/05/1865 on interest loans (M.B. 07/05/1865) as amended by sections 87 and 88 of the Programme Act of 27/12/2006 (M.B. 28/12/2006). https://www.ejustice.just.fgov.be/cgi/article_body.pl?language=fr&caller=summary&pub_date=2022-03-01&numac=2022030667%0D%0A#top

³ Published in the Journal des Juges de Police by the legal publisher The Charter, also available at: <https://www.rechtbanken-tribunaux.be/sites/default/files/indicatieve-tabel-2020-tableau-indicatif-2020.pdf>

Recourse by Social Security organisations

Third-party payers have a right of recourse against Cedants. There is a market framework agreement (Assuralia agreement) which governs the terms and conditions thereof.

Possibility of reopening claims

In insurance, res judicata attached to amicable settlements and judgements prevents the introduction of a new compensation procedure, and therefore opposes any revision of the compensation granted. There is thus a possibility of reopening in the event of a medical or situational aggravation of a victim, but only allowed if the settlement or judgement refers to it and authorises it through a medical proviso; otherwise, the closure of a claim is irreversible.

In reinsurance, annuity claims are most generally closed by a commutation occurring 5 years after its allocation (whether resulting from a final court decision or a settlement) without taking place less than 10 years from the date of the claim. The file will be reopened if the victim dies within five years (on the date of commutation), or if an amicable settlement based on a lump sum has been found, and the amount payable by the Reinsurer will be adjusted taking into account the arrears actually paid.

Indexation clause

In order to maintain the deductible and limit of the Treaty, their relative value on the date it takes effect, their amount is stabilised according to an index-based calculation formula. The change in this index also affects the amount of the claim (payments and cumulative reserves). These three adjustments then determine the distribution of the claim expense between the Cedant and the Reinsurers.

The most commonly used stability clause is the *Full Index Clause* (FIC) with a margin of 10%. There is more rarely a *Severe Inflation Clause* (SIC) with a margin of 10%.

The benchmark is the wage index.

Note ITALY

Scope of reinsurance coverage

In Italy, the majority of reinsurance treaties cover motor liability, which is very often accompanied by the recreational boating liability (*natanti liability*). Most of the time, small companies buy combined motor liability/general liability treaties, often with a specific underlying layer of general liability. Motor damage is covered separately.

In terms of insurance, motor liability is mandatory, while the motor damage component is optional.

Purpose of the cover

The Reinsurer undertakes, by means of the follow the fortune clause, to adhere to the Cedant's commitments on each claim made. The Cedant, for its part, follows the principle of full compensation for current losses, without taking into account any future losses (e.g. loss of earnings for a victim who has never worked). Only losses that can be calculated on the day of the compensation are compensated.

Method for compensating claims (annuities vs. capital) and annuity clause

Since there is no indemnification in the form of an annuity in Italy (except in exceptional cases of payments spread over time), the reinsurance treaties do not provide for any provision on this point.

Adequacy between claims notifications and reinsurers commitment

There is no capitalisation table. On the other hand, the Insurance Code ("Codice delle Assicurazioni") incorporates the calculation rules produced by the courts of Milan¹ (2021 tables) and Rome² (2019 tables). The Court of Milan's table makes it possible to set compensation for biological harm and the table of the Court of Rome makes it possible to calculate the moral harm of indirect victims in the event of death.

The existence of reference systems makes it possible to perfectly match loss advice sent by cedants and reinsurers commitments.

Coverage limits (excluding green cards)

In 2012, the regulatory minimum limit for a policy ("massimale") was €6 m (€5 m for bodily injury, €1 m for material damage). This limit is indexed to changes in the CPI

¹ https://tribunale-milano.giustizia.it/files/Tabelle%20milanesi_Danno%20non%20patrimoniale_ed.%202021.pdf

² https://www.tribunale.roma.it/allegatinews/A_24405.pdf

European directive (European directive transcribed in art. 128 paragraph 3 of 11/06/2012 of the Italian Private Insurance Code).

In 2021, this limit was €7.29 m (€6.07 m in personal liability, €1.22 m in material liability). These same limits are applied to *natanti liability*.

In Reinsurance, there are both limited and unlimited coverage per claim; the annual capacity of the treaty is limited.

Head of damage

The reinsurer settles the loss in the amount of its share under the treaty without distinguishing between the various loss items.

The losses of direct victims are assessed on the basis of **the Court of Milan's table** according to 3 main head of damages:

- Financial damage: loss of earnings and miscellaneous expenses
- Temporary physiological damage
- Permanent physiological damage

As a reminder, in the event of survival, there is no compensation for indirect victims.

When the direct victim is deceased, the moral damage of the indirect victims of the *de cujus* (parent, child, grandparent, brother, uncle, nephew, cousin) is assessed according to **the table of the court of Rome**. This large number of beneficiaries often leads to a particularly high assessment of the claim when the victim is deceased, much higher than the one that a surviving victim can receive.

The tables of the Courts of Milan and Rome operate on a system of points whose value is regularly reviewed, and take into account the information of the victim and the beneficiaries.

The judge has the freedom to opt for an increase in the reference compensation from 33% to 50%.

Recourse by Social Security organisations

Third-party payers have no right of recourse.

Possibility of reopening a settled claim

There is no possibility of reopening motor claims in Italian civil law.

Indexation clause

Priorities and limits of the Treaty are indexed in order to keep their relative value at the date of inception of the treaty. These amounts are indexed according to an index-based calculation formula. The change in this index also affects the amount of the claim (payments and cumulative reserves). These adjustments then determine the distribution of the loss between the cedents and the Reinsurers.

Two stability clauses are mainly used:

- FIC 10% clause mostly,

- FIC 0% and SIC 20% clause more rarely.

The referenced index of contractual wages by economic sector published by the ISTAT (Italian Statistics Institute).

Note ISRAEL

1. Introduction

In the panel of countries compared in this note, Israel stands out significantly.

On the one hand, the usual “motor liability” cover disappears to give way to a (mandatory) cover known as “MBI” (*Motor Bodily Injury*). As its name indicates, it is intended to cover all **bodily injury** occurring as a result of a claim.

On the other hand, there is no search for liability in the event of an accident: this is the **principle of faultless liability**. However, it should be noted that when vehicles of different categories are involved in a claim, a fixed portion of the compensation for “light” vehicles is paid by the insurer of “heavy” vehicles¹.

In fact, each insurance policy will cover the owner and driver of the vehicle for any damage - within the meaning of the C.R.A.V.² Law - caused to them, the passengers of the vehicle, pedestrians, third parties or any other means of non-motor locomotion.

MBI cover is **mandatory** in Israel, which is not the case for material liability or motor liability. In this respect, on the reinsurance side, only MBI cover is covered.

2. Claim rate

In terms of claims, compensation for bodily injury is governed by the aforementioned C.R.A.V. law (definition, calculation method, parameters, etc.) and their payments are made as a lump sum. The reinsurer, for its part, monitors the Cedant without any contractually binding scale.

Although in theory there is no limit to their valuations, in practice, the amounts can be restricted. For example, a limit of 3 times the median salary is applied when calculating the victims’ future occupational losses. Therefore, even if direct and indirect victims are compensable, there can be no mention of strict application of the principle of full compensation for bodily injury.

Some health costs, including hospitalisation, are covered by the N.I.I.³ and are therefore not supported by insurers, while legal costs - also governed by the C.R.A.V. law. - are indemnified by the insurer. They amount to 8% of the settlement compensation without filing a case before the court, 11% of the settlement amount with a file before the court, or 13% of the amount granted by a judge, in the event of a court decision⁴.

On the reserving side, some items are capitalised using the parameters of the C.R.A.V. law, such as the loss of future professional earnings. However, all items are in the end paid as a lump sum. Their N.P.V⁵ is calculated according to the capitalisation table in force. The latter is validated by the

¹ Example: one two-wheeler and one truck involved

² C.R.A.V.: Compensation for Road Accident Victims Law, 5735-1975

³ N.I.I.: National Insurance Institute

⁴ section 16(a) of the C.R.A.V. law.

⁵ N.P.V.: Net Present Value

Ministry of Economy and is built on gender-based mortality tables (provided by the local statistical agency) and a discount rate⁶ of 3%.

However, most of the compensation for loss items is based on lump sum amounts applied to the victim's disability rate.

It should be noted that the recourse toward third-parties is changing. Starting in January 2023, N.I.I. - which had until now exercised its right of recourse - will be financed by a 10% deduction of the gross premium for motor insurance. This rate will rise to 10.95% from 2025.

3. Reinsurance

On the reinsurance side, the reinsurer monitors the Cedant's fate. As seen in the previous section, it has no compensation to pay in the form of an annuity, which implies that the views of the claims notices transmitted by the Cedant and the reinsurer accounts are consistent. On the reinsurer commitment side, the capacities purchased on the market are sometimes unlimited, sometimes limited, given the lump sum amounts issued as cover. It should be noted that in practice there has been no reopening of claims on the market, whether in insurance or reinsurance.

Furthermore, it is interesting to note two specific characteristics of the Israeli market for proportional quota-share treaties.

First, because insurers have a part of the "*Motor Pool*" which aims to offer insurance to individuals who were unable to find them elsewhere, the result of this *pool* is often transferred to the treaty in addition to the MBI portfolio.

Secondly, a "*premium and reserve deposit*" clause is found in practice in these contracts. Imposed by the local regulator, it aims, as its name indicates, to lead reinsurers to make a deposit in an account of the Cedant. The amount of this deposit is a lump sum of 50% of the premium of the contract in the first year, then reduced to 50% of the amount of outstanding items (including I.B.N.R.⁸) thereafter.

In order to maintain the retention and limit of the treaty to, their relative values on the inception date, their amount is stabilised according to an index-based calculation formula. The change in this index also affects the amount of the claim (payments and cumulative reserves). These three adjustments then determine the distribution of the claim expense between the cedant and the reinsurers.

The entire market has a FIC 10% stability clause. The underlying index is the CPI.

⁶ In 2016, the Winograd Committee recommended, among other things, lowering this rate to 2%. Finally, in 2019, the Israeli Supreme Court maintained the rate of 3%.

⁷ up to their market share

⁸ I.B.N.R.: : Incurred But Not Reported

Note UNITED KINGDOM

The UK motor insurance market is similar to those of some continental European countries, third party liability is compulsory while motor own damage facultative.

As in some other European countries, bodily injury to third parties is covered on an unlimited basis. Material damage to third parties is covered up to £1,200,000 (insurance companies generally offer more). In reinsurance, material damage compensation is limited to £25 m per vehicle and £60 m per claim in most cases.

Despite a desire to respect the principle of full compensation for bodily injury, the English legal system is not as protective of victims as the French system. The fault of the responsible driver towards vulnerable users must be sought. The notion of *Contributory Negligence* (the victim's responsibility) is widely invoked and used in court decisions to reduce the amount of compensation (for example, not wearing a seatbelt or helmet, alcohol consumption, without indulgence for a minor victim). Moreover, it should be noted that, specifically in the United Kingdom, indirect victims are not compensated.

With regard to bodily injury, the head of damages follow the relevant guidelines of the *Judicial College*. The list is not exhaustive and tends to compensate for the impact on the life of the victim in all its aspects. The most important head of damages (*Future care costs*), and loss of income. Lawyers' costs and appraisals are calculated in proportion to the total cost of the claim and are entirely borne by the opposing party.

For severe bodily injury claims, life injury head of damages are paid either in form of an annuity or a lump sum. Annuities are indexed to the salaries of health workers (ASHE 6115). Unlike the French market, mortality tables are not used to calculate reserves, but are determined by a life expectancy given by a medical expert.

Capital payments are calculated based on an annuity and an capitalisation table (*Ogden tables*) published by the Ministry of Justice, updated every three years. The use of these *Ogden tables* is a matter of market practice. As in France, *Ogden tables* are created from mortality tables and a discount rate. These mortality tables are published by the ONS and the discount rate depends on the nation: -0.25% for England and Wales, -0.75% for Scotland and -1.50% for Northern Ireland. In view of the negative interest rates environment, victims favour capital payments over annuity payments.

Loss reserving is not regulated. The Cedants assess claims based on their own method, using the Ogden rate, so that a difference may temporarily appear in the Reinsurer's book if he does not re-assess the claim itself under the treaty conditions in the event of a capitalised. We can therefore see a release of reserves at the time of capitalisation, since in reinsurance treaties the capitalisation rate is currently higher than the Ogden rate.

The recourse of social organisations is up to £54,566. The reopening of claims for aggravation is not foreseen as such in the English legal system. As the claim's closure is definitive, medical assessments must include any potential aggravation or relapse at the time of closure.

The annuity clause is contractual and defines the method for which the final ultimate net loss is calculated.

There are three types of annuity clause, the main characteristics of which concern payment method (capitalised versus non capitalised) and the discount rate :

- ✓ Capitalised: often at a discount rate of 1.5%
- ✓ Uncapitalised: indexed annuities are followed by the reinsurer
- ✓ Delayed capitalisation clause: annuities are capitalized after a few years

The reinsurer follows the cedant's fortune, however, the expense assumed by the reinsurer does not correspond to the claim actually paid to the victim in the event of a capitalisation clause.

Indexation clause

Priorities and limits of the Treaty are indexed in order to keep their relative value at the date of inception of the treaty. These amounts are indexed according to an index-based calculation formula. The change in this index also affects the amount of the claim (payments and cumulative reserves). These adjustments then determine the distribution of the loss between the cedents and the Reinsurers.

Two indexation clauses are mainly used:

- FIC 0% clause mostly,
- SIC 20%, 25% or 30% clause more rarely.

In most cases, the benchmark index is the "Average Weekly Earnings - Series KA5H" index.

Note GERMANY

Scope of reinsurance coverage

In Germany, reinsurance treaties specifically cover motor liability. They may also include non-first-party material damage with a capacity dedicated to climatic events.

The law on mandatory insurance¹ stipulates that motor liability insurance coverage is mandatory, other related cover such as Motor Own Damage are optional.

Purpose of the cover

The Cedant complies with the principle of full compensation for the bodily injury of the victims, direct and indirect, specifying that, for the latter, only economic losses are compensable.

More specifically, German civil liability law is based on the principle of restitution in kind. This is only if it is impossible or inappropriate that a monetary allowance at the discretion of the judge can be paid.

The Reinsurer adheres, by means of the follow the fortune clause, to the Cedant's commitments on each claim made.

Claims compensation method

Under the German Civil Code, victims of serious bodily injuries can only receive payments in the form of an annuity², except in exceptional cases³.

The amount of the annuity is determined by literature and case law and not by law. The work "*Ersatzansprüche bei Personenschaden*" (Rights to reparation in case of bodily injury) published by *Küppersbusch/Höher* (currently in its 20th edition 2020) is authoritative in this regard, but its recommendations can be challenged in court.

Annuities are awarded by third-party payers and are indexed according to an index specific to the type of annuity (third-party index different from the index of future earnings losses). Future additional compensation due to the indexation is one of the third-party payers' claims against the insurer of the person responsible for the accident.

Annuity clause

No clause is dedicated to annuities in reinsurance treaties, because except for a few special cases ("*Rentenablösungsklausel*" (redemption clause)), all reinsurance treaties are followed, including their revaluation.

¹ §1 *Pflichtversicherungsgesetz*, (PflVG)

² §843 (1) *Bürgerliches Gesetzbuch* (BGB)

³ §843 (3) BGB

In practice, the Cedants follows the fate of the victims and compensate them loss item per loss item.

Adequacy between claims notifications and the reinsurers commitment

There is a perfect balance, since the valuation of claims is carried out according to the Cedant's provisioning method, which is not governed by an annuity clause.

Capitalisation tables (mortality table, technical rate)

The method for provisioning an annuity (potential and served) is not governed by a regulatory text, but is subject to market practice. The two most commonly used reference mortality tables are those of the German Association of Actuaries⁴ and the Federal Statistical Office⁵ (latest version 2018/2020). As the discount rate, insurers use the maximum permitted coverage rate for life insurance⁶ (0.25% from 1/1/2022), by incorporating an additional reserve for future inflation into the capital obtained, in close consultation with reinsurers whose treaties are followed with inflation.

Coverage limits (excluding green cards)

According to Appendix 4.2 of the Law on the Mandatory Insurance of Motor Vehicle Owners ("PfIVG"), the mandatory minimum limit for compensation for bodily injury insurance provided for in a motor insurance policy is €7.5 m per victim. For material liability, the legal minimum limit is €1.22 m per claim. Incidentally, the minimum limit per claim is €50,000 for pure financial losses.

In Reinsurance, cover is limited to €100 m per claim, all damages combined. For motor damage resulting from natural events, the treaty Reinsurance may provide optional coverage.

Head of damage

German law of reparation provides for compensation of the following heads of damage for bodily injury:

- professional or economic harm
- household damage
- medical, pharmaceutical and hospital expenses
- additional needs/expenses
- pretium doloris
- economic harm to loved ones
- funeral expenses

4 DAV 2006 HUR: https://aktuar.de/unsere-themen/lebensversicherung/sterbetafeln/2019-06-27_DAV-Richtlinie_Herleitung-DAV-Sterbetafel_2006-HUR.pdf

5 Sterbetafel 2018/2020: <https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Bevoelkerung/Sterbefaelle-Lebenserwartung/Publikationen/Downloads-Sterbefaelle/periodensterbetafel-erlaeuterung-5126203207004.pdf?blob=publicationFile>

6 sec. 341g VHGB

The legal fees and expenses are paid by the insurer responsible, without a sub-limitation of the sum in reinsurance treaties, but which are governed by a scale⁷.

Importantly, there is a sharing of responsibility that applies to all compensation allocated to victims, depending on their degree of responsibility for the accident, even for vulnerable victims such as cyclists, pedestrians and children over 10 years of age.

Recourse by Social Security organisations

There is subrogation of third-party payers in the victim's rights vis-à-vis the responsible third party. The three main schemes are:

- the health and dependency insurance scheme (*Kranken- und Pflegeversicherung*),
- the disability retirements scheme (*Berufsunfähigkeitsrenten*),
- and the worker's compensation scheme (*Berufsunfallrenten*)

Possibility of reopening claims

The res judicata effect of amicable settlements and judgements prevents the introduction of a new compensation procedure, and therefore opposes any revision of the compensation granted.

However, there is a possibility of reopening in the event of a medical or situational aggravation of a victim, but only if the settlement or judgement refers to it and allows it through a medical reserve.

In reinsurance, there is no specific mention, so the claim is readjusted in all cases.

Indexation clause

In order to maintain the priorities and limit of the Treaty, their relative value on the inception date effect, is stabilised according to an index-based calculation formula. The change in this index also affects the amount of the claim (payments and cumulative reserves). These three adjustments then determine the distribution of the claim expense between the Cedant and the Reinsurers.

Two stability clauses are mainly used:

- FIC 10% clause mostly,
- SIC 10% clause more rarely. The

benchmark is the wage index.

⁷ Gesetz über die Vergütung der Rechtsanwältinnen und Rechtsanwälte (Rechtsanwaltsvergütungsgesetz - RVG)

Note SPAIN

Scope of reinsurance coverage

In Spain, reinsurance treaties cover motor liability as well as the material liability component. From time to time, some treaties also cover non-third-party material damage, whether or not due to weather events, and may then include a capacity dedicated to climatic events.

The basic insurance policy only covers motor liability. This is called “Mandatory” insurance, and other related cover such as Damage are optional and are covered as part of the “Voluntary” liability coverage.

Purpose of the cover

The Reinsurer undertakes, by means of the follow the fortune clause, to adhere to the Cedant’s commitments on each claim made¹. The Cedant, for its part, shall comply with the principle of full compensation for personal and financial loss, with respect to both direct and indirect victims.

This principle has been strengthened since 01/01/2016 with the law² establishing the new mandatory “Baremo” in motor insurance. It should be noted that a new reform is underway and aims to change the technical interest rate from 3.50% to 2.50%, maintaining the mortality tables currently provided for by the law (PEB and PEIB 2014).

Method for compensating claims: annuities vs. capital

Since “Ley 35/2015” of 01/01/2016, the parties or the judge may agree, at the request of one of them, to replace all or part of the capital with the establishment of an annuity in favour of the injured person.

In any event, the judge may automatically order such a substitution, at least partially, in the case of compensation for damages suffered by minors or persons whose capacity is judicially modified and deemed necessary to protect their interests more effectively.

Annuity clause

Reinsurance treaties are signed with a follow-up clause, but may provide for the possibility of a contractual surrender per claim (whose switching terms are then negotiated on a case-by-case basis with the Leader Reinsurer, or even in rare cases, specified in the Treaty).

The Reinsurer monitors the Cedant’s situation with respect to claims paid in the form of capital.

¹ Some treaties include an interest sharing clause that provides the expense of any late payment interest between reinsurers and assigning companies.

² La Ley 35/2015, de 22 de septiembre, de reforma del sistema para la valoración de los daños y perjuicios causados a las personas en accidentes de circulación: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-10197

In the case of claims settled in the form of annuities, the method used is the method defined by “*Ley 35/2015*”, which calculates the final net loss using a mortality table and a discount rate stipulated as being the one in force on the date the annuity is awarded.

For indexed annuities, the revaluation index is the average of the annual CPI (Consumer Price Index) of the 36 months preceding the maturity date of the first annuity.

Balance between claims notices and the reinsurer’s commitment

In terms of provisions for claims or even annuities, insurers are not bound by any law, obligation, or standard approach that would require them to finance them or to provide a specific provision. This, combined with the absence of an annuity clause in treaties, implies a balance between the claims notices and the reinsurers’ annual accounts.

Capitalisation tables (mortality table, technical rate)

The capitalisation table is set by “*Ley 35/2015*” and is re-evaluated each year. That of 2022 was revalued by 2.50% compared to 2021 (itself revalued by 0.90%, compared to 2020) according to the pension revaluation index³.

The annual annuity equivalent to the capital indemnity is calculated by dividing it by an actuarial coefficient that takes into account:

- (a) the duration of the life annuity
- (b) the risk of death of the injured person, which is determined by the actuarial mortality tables used by law; and
- (c) the discount rate, which takes into account inflation

Coverage limits (excluding green cards)

“*Ley 35/2015*” provides that the mandatory minimum compensation ceiling provided for in a motor insurance policy is €70 m/claim for bodily injury and €15 m/claim for material damage.

In reinsurance, compensation is unlimited for bodily injury and limited to €100 m for material damage.

Head of damage

The “*Baremo*” of the year of consolidation (not the year of the accident) is used to assess the damage caused to people injured in a traffic accident.

³ Law 11/2020 of 30 December on general government budgets

The new “*Baremo*” contains a series of mandatory tables⁴ for judges, in order to determine the amount of all compensable damages. These tables, as well as the methodology, are an integral part of “*Ley 35/2015*”.

It has integrated the systematisation of the compensation for loss of earnings, and it also provides for compensation for temporary damages, both physiological and financial. The law also determines the obligation to cover medical, hospital and pharmaceutical expenses until healing or consolidation of the after effects, as well as funeral costs in the event of death.

One of the contributions of the new “*Baremo*” is the creation of a new category of compensable victims (both for their moral harm and for their financial harm), “*allegados*” or indirect victims, family members of the victims, economically dependent on the insured party (who have lived with the victim over the past 5 years), with no family relationship or having a special relationship other than being a relative. At the same time, there is a reinforcement of the supporting documents to be provided in order to claim the right to compensation.

The reinsurer settles the loss in the amount of its share under the treaty in a globalised way, without distinguishing between the various loss items.

Recourse by Social Security organisations

Spanish third-party payers’ recourse against insurers is limited to medical and hospital expenses. Thus, economic benefits due to loss of earnings are not included in the recourse.

To speed up the administrative process of appeals, agreements are signed between insurers and autonomous communities (“*Comunidades Autonomas*”) for example (in the case of the public sector), and with private sector entities.

Possibility of reopening claims

There is no reopening provided for in the Treaty in the event of a one-off redemption, except in the event that the victim dies within five years from the date of the judgement or settlement, or before ten years from the date of the accident, thus implying a reopening of the case and a repayment of the share of the Reinsurer’s capital by the Cedant.

There is a possibility of reopening in the event of a medical or situational aggravation of a victim, but only allowed if the expert doctor refers to it in their report and intervenes before the initial definitive compensation.

If these two strict conditions are not met, it will not be possible to initiate an aggravation procedure.

Indexation clause

In order to maintain the deductible and the capacity of the Treaty at their value on the date it takes effect, their amount is stabilised according to an index-based calculation formula. The change in this index also influences

⁴ See the link provided in footnote no. 1 with more than four hundred pages of tables, some of which can be summarised here: https://d2eb79appvasri.cloudfront.net/pdf/Tablas_2021.pdf

the amount of the claim (payments and cumulative reserves). These three adjustments then determine the distribution of the claim expense between the Cedant and the Reinsurers.

The stability clause mainly used is the FIC 10%, with the FIC 15% clause from time to time.

The benchmark index is the consumer price index published in the Bimonthly Statistics Bulletin, issued by the Madrid National Statistics Institute.

Note GREECE

Scope of reinsurance coverage

As observed across several European markets, in Greece, motor reinsurance treaties are not always limited to covering purely motor liability. In these treaties the inclusion of other lines such as general liability, employers' liability and in some instances motor own damage can be found.

Another particularity of the Greek motor reinsurance market is the existence of Policy Fees and other ancillary products sold in conjunction with motor original policies. These extra fees and adds-on covers are never ceded to XOL treaties, however can be found ceded to reinsurers under certain QS agreements.

Purpose of the cover

Since the compensation of bodily injuries in Greece is not strictly prescript by law, the principle of integral reparation of victims with bodily injuries, as it is known from Western European countries, is not rigorously applied.

Nevertheless Greek cedants, in their own capacity, seek to compensate the victim's loss with each amount being negotiated individually on a case by case basis. Reinsurers, on their side, often follow the settlements of their cedants.

Claims compensation & Annuity clause

There are almost no claims paid or awarded in the form of annuities in Greece, therefore most reinsurance treaties do not contain any provision on this point. One of the rare annuity clauses found in the market, establishes that the discount rate, the mortality table, and the index to be applied to an annuity, must be agreed with the leading reinsurer. On treaty wordings can be also found the option to capitalise annuities using the cedant's own discount rate.

Adequacy between claims notifications and reinsurers commitment

In general due to the absence of annuity clauses on the market, there is an adequate match between the claims figures sent by cedants and the reinsurers' commitments.

Reinsurers settle each loss in the amount of their share under the treaty by the mean of a global amount, without making a distinction between the various claims components. The only distinction is at the level of the interest payment on awards in order to apply the interest sharing clause found in reinsurance treaties (*see below*).

Regarding claims reserving, since there are no specific rules for reserving set out by law, cedants evaluate their claims following their own methodology and payments are done on a lump sum basis with reinsurers following the cedant in this respect.

Coverage limits (excluding green cards)

In Greece, the statutory limit for third party bodily injuries is EUR 1 220 000 (2017) per person and for third party property damage EUR 1 220 000 (2017) per event. Greek insurers however, often offer larger limits.

For instance, it can be found in the market limits of EUR 50M per vehicle for buses of certain companies in the tourist transportation business.

These limits have largely evolved since 2010. Nevertheless, seems worth highlighting that, on a historical basis, the Greek market has seen only few claims occurred in Greece (excluding Green Card claims) that are larger than EUR 1M per victim.

On the reinsurance side, treaties can be on a limited or an unlimited basis.

Green Card losses are the responsibility of Greek cedants and their reinsurers up to the amount of EUR 750 000. Once exceeded this amount, claims are paid by the Greek Motor Insurance Bureau (MIB, Law No. 489/76), entity that buys XOL reinsurance treaty for the entire market.

There is no Bad Risk Pool in the market. In theory, insurers cannot refuse coverage, even if it would be an undesirable risk for them. In practice, if the insurer is not interested in writing a certain policy, it would quote an elevated insurance premium to discourage the proposer from buying insurance with them.

Heads of damage

On the claims side, in Greece there is no common law or Baremo to serve as a rule or guidance for the compensation of bodily injuries and judges are free to decide on awards. They do that on a case by case basis and do not need to follow any « binding precedent » principle.

Nevertheless, compared to other Western European countries in terms of compensations, it has been observed that Greek awards remain at a substantially lower level. Judges often consider for the awards the victim's income, his/her education, disability for work and also seek to compensate other indirect victims, notably members of the injured's family. Pain and suffering can also amount to a large portion of a claim because there is no limitation for compensation under this head of claim hence awards for bodily injuries can vary from case to case.

At the same time, late payment interests on awards for cases heard in courts are high when compared to commercial interest rates, with the difference sometimes amounting to more than 10 percentage points. The solution the Greek market found to this « extra charge » was to include a « Share of Interest Clause » on reinsurance wordings designed to share proportionally to the amount of the original claim, the costs of these interests between the cedant and the reinsurers. The interest start counting since the date of court action has been started.

Recourse by Social Security organisations

Third-party organisations (social security, pension funds, etc.) can exercise their right of recourse against insurers. Although subrogations are possible in theory, they remain fairly rare in practice. Specially health cost are not recouped, since public health is free in Greece (there may be recourses by private health companies, if a victim decides to receive care from a private structure).

Possibility of reopening claims

It must be mentioned that no reopening of claims has been observed in the market for aggravation or amelioration of cases, none in insurance or reinsurance.

¹ https://e-justice.europa.eu/404/FR/interest_rates?GREECE&member=1

Indexation clause

Reinsurance excess of loss (XOL) treaties allow for the attachment point and the limit to be indexed in order to preserve part of their value as inflation develops over the years. The index starts running since the date of commencement of the reinsurance treaty and the index more widely used across the market is the Consumer Price Index (CPI) as published by the Hellenic Statistical Authority (ELSTAT) or by the International Monetary Fund (IMF), always with an inflation franchise of 10% (FIC 10%).