



## A Comparison of Compensation for Personal Injury Claims in Europe

### Why a comparative study?

There is hardly an issue in the insurance business with more hidden potential to confuse the reader than the comparison between different legal and damage compensation systems for personal injury claims. This is especially true if one concentrates only on the compensation awarded or its individual items. To address this situation, the claims specialists at Gen Re present a comparison that takes these risks into account, thus improving comparability of claim estimates and clarifying differences in the compensation systems.

In the context of this comparative study, the five most important European insurance markets – Germany, Italy, France, Spain and the United Kingdom – were examined more closely. The total premium volume for liability insurance in these markets ranges from approximately EUR 31 billion in Spain to more than EUR 94 billion in Germany.<sup>1</sup>

A particular difficulty in comparing these markets is that specific claim compensation systems are compared with lump sum adjustment approaches; for example, claims are settled under German tort law as precisely as possible according to the economic damage actually incurred. In Spain, however, the economic loss compensation is measured overall as a lump sum using compensation tables, whereby the compensation amount is only a rough approximation of the individual claim. This study attempts to explain these differences and the ways in which they are relevant. This approach is sensible for two reasons. On the one hand, the amount of claims compensation awarded in the individual markets should be presented as accurately as possible. On the other hand, the study shall help to better understand developments and trends based on knowledge of the different systems.

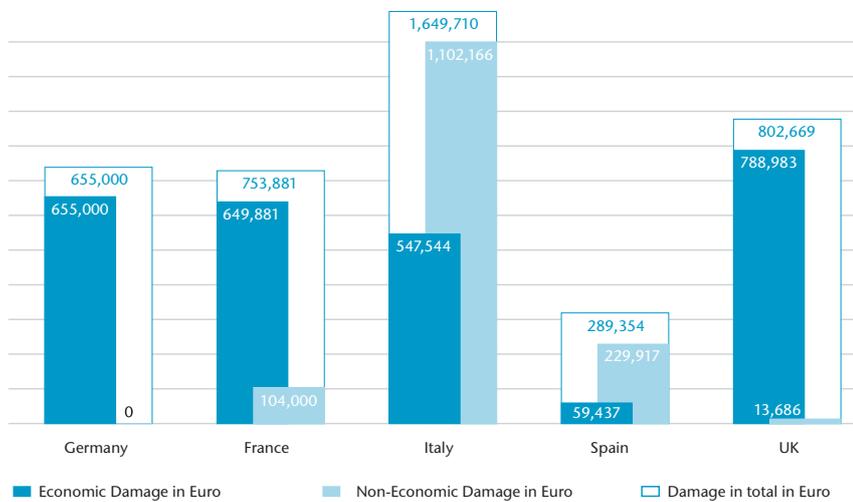
### Compensation for fatal injuries

In the past fifteen years, the number of claims with fatalities, at least in the motor vehicle sector, has continually and significantly decreased in most European markets. The ambitious target of reducing traffic fatalities within the EU by 50% between 2001

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Graph 1 – 41-year-old male, employee with annual net income of EUR 40,000; survivors: spouse, two children (6 and 9 years of age), 1 parent, 1 brother



In the graph depicting the first case constellation, an enormous difference between two compensation systems can be seen immediately: on the one side, Italy and Spain, where compensation for non-economic damage is the predominant claim item (differentiated between economic and non-economic damages). This category plays only a secondary role in the other countries (UK and France) or is lacking entirely (Germany). On the other hand, consideration must be given to the fact that survivors in Spain also receive a state annuity without inception of any recovery claim against the tortfeasor or the liability insurer. Moreover, these amounts have no bearing on the calculation of economic damage claims.

and 2011 has only been reached by a few countries. However, it was a strong motivation to implement important measures that, together with improved vehicle safety and faster, more efficient emergency care, made saving thousands of lives possible. Despite these efforts, traffic fatalities (some 14,500 in 2012) still constitute the most common cause of death among youth and young adults in the five countries studied here (in which the average of fatalities nevertheless declined by 49.52% between 2001 and 2011).<sup>2</sup>

When analyzing the manner by which such claims are adjusted in the five most important insurance markets in Europe, it should be borne in mind that the same kind of claims compensation calculation is also applied for fatalities in other lines of business, such as medical malpractice and employer’s liability. Even in these segments, regrettably, there are numerous fatalities; (in Italy more than 790 work-related accident fatalities were reported in 2012). The comparison of different systems of compensation for fatality claims is based on two case studies: the case that induced the highest compensation under all legal regimes (death of a 41-year-old; see Graph 1) and one of the statistically most frequent cases (death of a 17-year-old; see Graph 2).

The methods for calculating economic damages are similar in all systems – with the exception of Spain, where a statutory table, the so-called Baremo containing the individual claim compensation items,<sup>3</sup> has been in use for some years. The differences in the calculation are due to peculiarities of the respective national laws, such as the use of mortality tables (very up to date in Germany and France, somewhat outdated in Italy) as well as the application of different criteria derived from case law, e.g. the calculation of maintenance needs for dependent survivors.

In Germany a portion of the total income which would be necessary in any case for the family’s daily needs (so-called fixed costs) is deducted prior to calculating the survivors’ maintenance. This amount is then added to the claim items due to the spouse and children. Compared to a proportional allocation of total income or a lump sum approach in Spain (see Endnote 3), this leads to a needs-oriented and more realistic calculation of the maintenance claim.

The main difference between the compensation systems is found in the area of non-economic damages. Such a difference is particularly apparent in Italy, where the measurement for pain and suffering is based on tables, prepared by the regional courts, especially the Milan Regional

Court.<sup>4</sup> This approach has developed into its own and, in a manner, very distinct from the rest of Europe, especially with regard to the value of the prescribed payments.

Compensation tables to determine non-economic damages for a fatal injury are also applied in France. There the court of appeal (Cour d'Appel) sets the range of compensation awards for survivors.<sup>5</sup> Neither the French nor the Italian compensation tables are binding on the courts. In practice, however, the courts take them into account when rendering judgments or settlements.

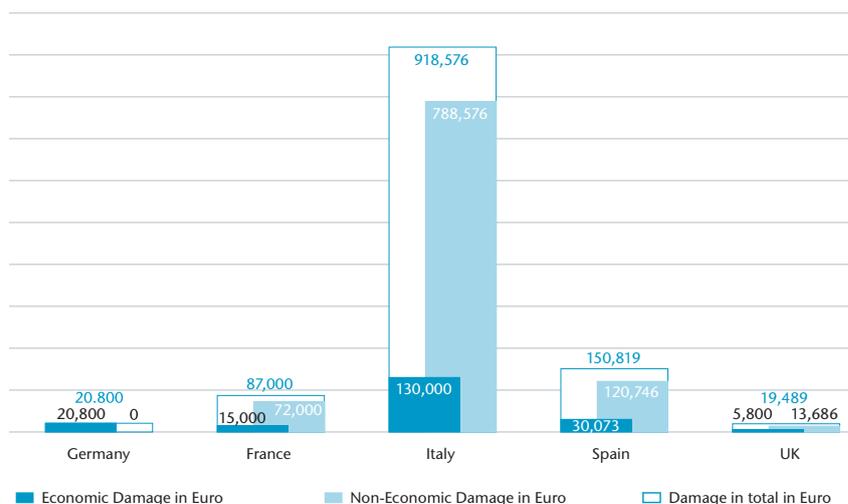
The differences described above appear even more clearly in the graph presenting the second case. Here the economic damage is insignificant since there is no maintenance duty for the injured minor. It only includes funeral expenses and any deferred benefits or lost contributions to work in the household expected from young adults (the latter item given special consideration in Germany). The difference in the Italian compensation system in comparison to the other European countries is defined here particularly well, highlighting the lower total compensation in Germany and the United Kingdom even more.

### The “special case” of the United Kingdom

In the UK, non-economic damages always total EUR 13,686 (GBP 11,800). This lump sum is fixed currently as the so-called bereavement damage. It is due as a one-off payment and divided among the beneficiaries explicitly named in the law:<sup>6</sup> in case of the death of a child under 18, only the parents; if the victim is married, only the spouse. The law deems no other relatives, not even surviving children upon death of a parent, to be “beneficiaries”.

This regulation has triggered some debate, especially in comparison with the rules applicable in other European countries. Some consumer associations as well as bar associations have already demanded abolition of bereavement damages,

Graph 2 – 17-year-old male, pupil/ apprentice; survivors: parents and 14-year-old sister

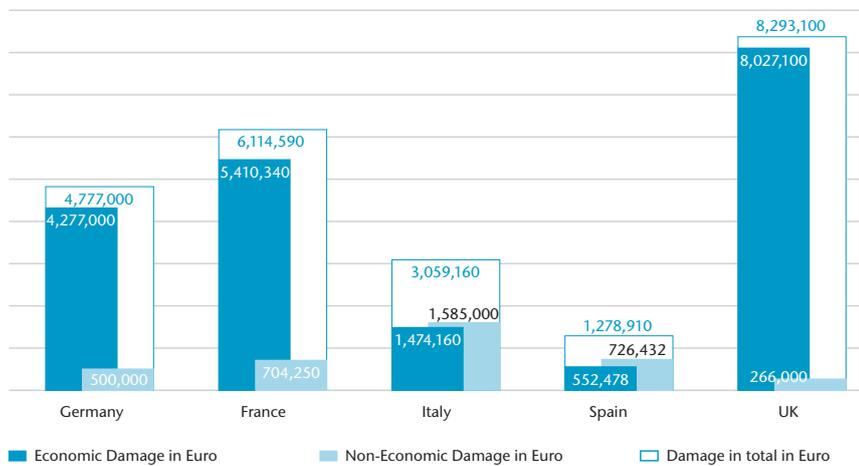


arguing that the low compensation sums are themselves an insult. As a result of this debate a commission was appointed to investigate the problem. Its main proposals to the government were the extension of the class of legally defined beneficiaries (to include children and siblings as well as parents in case of death of someone above 18) and a more flexible lump sum payment; the highest amount proposed is less than GBP 30,000. The British Government has thus far shown little interest in these recommendations, fearing these changes would lead to an increase in litigation. These could complicate today’s fixed and easily applicable criteria, or render them vague through varied and problematic interpretations.

### The “special case” of Germany

Whereas non-economic damages for loss of life of a relative are at least compensated by a lump sum in the United Kingdom, no compensation is contemplated for this case under German law. In Germany a non-economic damage claim by a close relative can only be asserted in exceptional cases, such as when the death occurred under circumstances deemed especially aggravating for the survivors (e.g. immediate presence of one or more relatives, potentially giving rise to a claim for so-called “shock damages”) or in cases where the individual reaction to the loss exceeds the “normal”

Graph 3 – 41-year-old male, employee with annual net income of EUR 40,000; survivors: spouse, two children (6 and 9 years of age), tetraplegia (complete paralysis of all four limbs)



degree of pain suffered in such cases, inducing post-traumatic stress syndrome.

Beyond the special cases mentioned, non-economic claims are not subject to compensation, even when the loss of parents or children is concerned.

This situation has also incited criticism in Germany. Only recently a government commission was appointed. However, it will not continue its work beyond the first hearings in the current legislative period.

### Compensation for serious injuries

The trend of declining accident fatalities within Europe is by no means clear and uniform if we turn our attention to serious bodily injury. The only point beyond dispute seems to be the fact that the same reasons that lead to a sharp decline in fatalities also explain why claims for serious long-term damage have not decreased in the same amount. Improved medical treatment methods and increased road traffic and motor vehicle safety generally lead to a decline in serious accidents, especially fatal ones, but at the same time lead to an increase in the number of accident victims who survive with claims for serious bodily injuries and long-term impairments requiring both intensive acute care and even varied and complex treatment later. These aspects are of special importance for the handling, assessment and adjustment of these complex bodily injury claims.

Graph 3 shows clearly that in contrast to claims due to fatalities, the compensation for serious bodily injury in Italy and Spain is lower than in the other countries. The reason for this significant difference is the assessment of economic damage. Non-economic claims, on the other hand, continue to enjoy a preferred status in Italy. Here compensation payments are twice as high as in France and Spain. Non-economic claims thus assume a certain compensation role for the rather neglected economic damage claims, which can be confusing when a direct comparison of claim items is made. In the other countries non-economic damage claims are nowhere near as thoroughly compensated; nonetheless, claim compensation payments there are substantially higher on the whole.

### Non-economic damage claims

In Italy, Spain and France, compensation for non-economic damage claims is determined with the aid of tables. In Germany and the UK, case law precedents or guidelines assist courts and insurers in the assessment and quantification of claims.

The paragon of such a table-based compensation system is the legally binding Baremo in use for motor vehicle accident compensation claims in Spain. It prescribes a certain number of invalidity points for each injury, similar to a dismemberment schedule. The overall assessment of the claim and the exact allocation of the points are the tasks of forensic medical experts. The table also prescribes a basic point value (including the non-economic claim) and correction factors that depend on the injured party's net income and particulars of the injury (e.g. necessity of nursing care). Even here the economic and non-economic damage claims compensations are combined to a certain extent.

In Italy the tables published by the Milan Regional Court (Tribunale di Milano) constitute the most important guideline for compensation of bodily injury claims. In its judgment 12408/2011, the Italian cassation court (Corte di Cassazione) ruled that the Milan tables are a "fair guideline" for Italian

jurisprudence.<sup>7</sup> In 2009 the Milan tables (first issued in 1995) were revised completely to take most recent case law and legislative developments into account. Today they provide for a compensation of non-economic loss (*danno non patrimoniale*) that increases in proportion to the degree of invalidity. This new computation form (multiplied by the invalidity points) serves as a basis for adjustment of standard cases and also takes the psychological and physical burdens to the injured person into account, regardless of the injured party's capacity to work, as well as non-economic loss. If, in individual cases, the plaintiff can prove suffering beyond that level, then the judge has the discretion to adjust the compensation within fixed percentage parameters (up to 25% for serious injuries).

In France the tables are prepared by the individual courts or groups of courts in the case of larger jurisdictions. As a result of the Rapport Dintilhac, published in 2006, these tables have a similar structure in all jurisdictions. The Rapport, describing individual claim items (economic and non-economic losses) in a uniform and detailed manner, has not yet been adopted into law, yet is seen as the basis of the French compensation system. The French courts and claims handling practice have both largely accepted it.

The most important claim item in the French tables is the *déficit fonctionnel permanent* (DFP), representing a non-economic component for impairments to psychological and physical integrity (AIPP – *Atteinte permanente à l'intégrité physique et psychique*) of the injured party. It is quantified as a percentage on a scale of 1 - 100. Every Cour d'Appel assigns a monetary value that increases according to the degree of invalidity and decreases with the age of the injured.<sup>8</sup> Also based on the Dintilhac nomenclature, the tables prescribe compensation ranges (usually on a scale of 1 - 7) for

quantification of pain and suffering and esthetic damages. The *Recueil méthodologique commun pour l'indemnisation des dommages corporels* of March 2013 recommends a maximum of EUR 1,500 for "very minor" (*très léger*) injuries and a minimum of EUR 45,000 as well as a maximum of EUR 70,000 for "very serious" (*très important*) injuries. In contrast the quantification of claim components, such as impairment to sexual life and relationships (*préjudice d'agrément*) or the impaired ability to establish a family (*préjudice d'établissement*), is left to the discretion of the individual courts. In the French market these items are compensated with amounts ranging from EUR 20,000 to EUR 50,000. Even in the cases of the most serious impairments, this amount is rarely exceeded. In comparison, the German "Schmerzensgeld" encompasses these various non-economic claim items as a combined total.

In the UK there is no table for assessing bodily injury claims. The courts judge the cases based on precedents and the particulars of the individual case. However, in 1992 an important judicial education institution developed guidelines.<sup>9</sup> These are revised regularly and have become the most widely used instrument to calculate compensation for bodily injury claims. These so-called "JSB Guidelines" prescribe a certain compensation range for each injury, including both pain and suffering (non-economic damages in the widest sense) and every other form of non-economic loss.

The situation in the UK strongly resembles that in Germany where the non-economic damages are dominated by the comprehensive compensation element



Table 1

	France	Germany	Spain	UK	Italy
Nursing care	EUR 3,318,240	EUR 2,168,000	EUR 371,529	EUR 6,028,500	EUR 550,000
Share of total claim	54.27%	45.38%	29.05%	72.69%	17.98%

known as “Schmerzensgeld”, to which all damage consequences that can be remunerated are assigned pursuant to §253 of the German Civil Code (BGB). Thus the court has to consider the gravity of the injuries, the victim’s age, the intensity of suffering and all other circumstances that could have an impact on the total amount of damages awarded. Judges and claims specialists are assisted in this assessment by case law compendia also published in part by private institutions and adopted as reference parameters. Obviously they do not have the force of law, and they do not constitute binding precedence cases. In the most serious cases, the pain and suffering awarded can range between EUR 500,000 and EUR 600,000, whereby a portion thereof can be awarded in the form of an annuity for pain and suffering. This annuity is included in the non-economic damages of the case illustrated with its annuity at present value, i.e. discounted.

**Economic damages: Nursing care**

In our study of serious bodily injury claims, the actual and essential difference in the various assessments lies in the economic loss component. If this claim component is examined more closely, it can be seen that the costs of nursing needs enormously influence the compensation amounts, even if this influence sometimes differs considerably depending on the country (see Table 1).

The variety is not only dependent on the different structures found in the compensation systems. It is also due to differences in the way each country organizes its health and social security systems. For this reason, failure to take these differences into account when directly comparing these items can result in misleading conclusions.

First of all, it must be noted that of all the countries studied here, only one has a legal system by which this claim type is defined in statutes: Spain, whose

Baremo provides for fixed amounts for claims arising out of third-party nursing service for future long-term supervised care of a seriously injured party. On the other hand, even here – as already mentioned for fatal injury – it must be remembered that in Spain the injured party also receives a state annuity with no right to recovery from the tortfeasor or liability insurer and where there is no offset of these amounts when measuring the economic damages.

Examining the other four compensation systems, one finds that both the amounts awarded and their weighting in the overall compensation award are comparable in Germany, France and to some extent in the UK as well (although the amounts paid in the British system are markedly higher). Among other things, this is due to differences in the cost of living. Italy is distinguishable by a significantly lower amount (and despite certainly more “cautious” estimates and awareness that in Italian adjustment practice even much lower sums are the rule in many similarly constituted cases). The principal difference lies in the fact that future nursing services in Germany, France and in the UK – depending on the needs of the injured party and the benefits of the healthcare system – are rendered by public and private entities. Hence, there is potential for imposing the entire burden on the tortfeasor in the context of civil law liability.

In contrast to Spain, the payments of health insurers and social security entities are deducted when measuring the compensation to be paid to the injured party in these countries. Usually there is no such transfer in Italy either, since there is a withholding deduction levied against every motor vehicle insurance premium to benefit the National Health Service (SSN). That means the SSN, together with the regional authorities often subsidized and in cooperation with the private facilities, renders the largest portion of nursing services needed by

the seriously injured in the form of contribution-financed government health service. For this reason, in Italy the claim item pertaining to the future need for supervised care is often part of the negotiations and is settled on the basis of lump sums. It is also in this respect that a direct comparison of the compensation amounts is confusing.

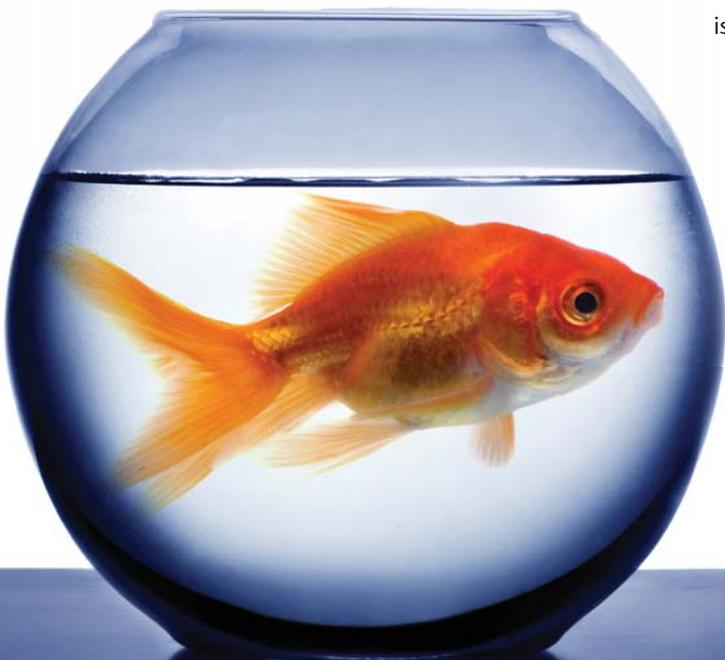
In addition to this first fundamental difference between the five systems, there are the different calculation modalities for the costs of future supervised care and the different means of payment. In France, for example, there are parameters given that are often published together with the damages tables of the respective court stating in detail the components that must be included in the calculation of these costs, such as number of days or minimum number of hours that constitute reasonable care, hourly rates and indexing coefficients for the payments, as well as applicable discount factors to be used in the case of premature capitalization. Special attention given to this aspect shows that the payments in the three systems with the highest nursing costs are usually rendered in the form of an annuity. The calculation of the annuity value to be reserved applies strict actuarial criteria that force the insurer to accrue very high, even if discounted, provisions for future payments. Thus there are differences in the measurement of the annuity payments: in France, for example, indexed annuities are common where the amount is linked to an index, while in Germany,

annuity adjustments must be specifically justified. Moreover, specifications for calculating the insurer's annuity provision, especially the interest rate applied, vary from country to country, influencing the amount of damages in the claim examples described without having any direct influence on the final claim expense to be paid.

In this connection the so-called periodic payment orders (PPOs) – a form of annuity-based adjustment – are significant in the UK, where they have become increasingly common in recent years.<sup>10</sup> They are calculated with high indexation (linked to the cost changes in the healthcare industry) combined with substantial risks for life expectancy, inflation and volatility shifted from the injured party to the liable parties under civil law and hence to the insurance (and reinsurance) sectors. The rate used to index the PPOs in the UK (ASHE 6115 – Annual Survey of Hours and Earnings)<sup>11</sup> has been approximately 2% above the CPI over the past ten years. For this reason, an insurer or reinsurer must take this indexation and the profits from interest income for future expenses into account when accruing provisions.

Characteristic for this model is a substantially higher claim expense than with an indemnification settlement by which the immediate adjustment of high compensation is made by disbursement for a claim discounted at a rate of 2.5%, as was still common in the UK a few years ago and is still the practice in cases where PPOs are not used to settle claims, but common lump sum adjustments are made.

The last essential element in this claim component is the manner in which supervised care is valued and organized in some countries. In the UK, France and especially Germany the needs of the injured party are determined and appraised by certified care experts who evaluate all aspects of potential need and according to the standards of best possible rehabilitation regarding bodily restoration and reintegration into society and the workforce.



This proactive and long-term-oriented approach to supervised care cases is not too common in Italy, which often makes case management very difficult and complex, and leads frequently to litigation. In a lawsuit, however, the social, occupational and family circumstances are not examined carefully. In most cases the needs of the affected party are not considered with respect to the performance of the SSN and local health authorities involved. In Italy there is a strong reliance on the family of the seriously injured party for home care. This support is partially compensated by the comparatively high payment for non-economic damages to which both the injured party and immediate dependents are entitled. In contrast the compensation for costs necessary for future nursing care in France and Germany are quantified and adjusted in the manner described above even if one or more relatives effectively performs the nursing.

## Conclusions

This comparative study illuminates some important points that must be considered.

In the case of fatal injuries – apart from the special case of Italy with its non-economic damages that cannot be compared with any other European system – the injured party’s income and hence the economic damage claim is the factor that really drives up the amount of compensation awarded.

In the case of serious injuries, however, it is the cost of medical care and rehabilitation as well as current and future supervised care that have a central impact upon the amount of damage claims determined. These are not assessment or adjustment differences dependent merely on the different legal situations and case law; rather the differences in national healthcare and social security systems play an important role. Hence this central element must always be included if the differences in the compensation amounts in the various legal and claims compensation systems are to be reasonably assessed.

However, the differences between specific and lump sum calculations also become clear in different situations. In the case of serious injuries, the lump sum compensation system tends to yield lower compensation amounts. Nevertheless, it would be a mistake to estimate such motor vehicle liability markets as generally “cheaper”. Often the compensation awards for minor and ordinary injuries are higher than when applying specific claim calculation. This is typically the case when the injured party is able to continue his or her occupational activity without permanent income loss (e.g. office work) despite the injury (e.g. leg amputation). Whereas with specific damage calculation no long-term income damages are incurred and hence there is no such compensation, the lump sum systems, such as in Spain, measure a degree of invalidity. Using this factor, an income loss is calculated without regard for whether financial loss has actually occurred.

By examining all the divergent approaches in the various countries, the result of established case law and conscious legislative decisions, it is also clear that it will be difficult to create uniform compensation practice for all of Europe. In any event, isolated comparisons of individual claim items and distinct aspects of the various adjustment systems for personal injury claims often do not provide an adequate understanding of the interconnections, and can thereby cause considerable confusion.

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## Endnotes

- 1 France EUR 68 billion, Spain, EUR 31.1 billion, Italy EUR 35.4 billion, Germany EUR 94.4 billion (see ANIA Report L'assicurazione Italiana 2012-2013 The Italian Insurance Market 2012-2013).
- 2 Germany: 3,601 deaths; France: 3,653; Italy: 1,768; Spain: 1,834; United Kingdom: 1,768. European Transport Safety Council (ETCS), Annual Report 2013.
- 3 The Spanish Baremo prescribes a fixed compensation for fatal injury depending on the degree to which the beneficiary is related to the deceased and the age of the deceased. These fixed amounts are subject to a lump sum adjustment depending on the victim's income.
- 4 See Vismara/Eidam, PHi 2011; 139.
- 5 In March 2013 more than 50% of the French appeal courts published a new guideline for compensation of personal injury claims (Recueil méthodologique commun pour l'indemnisation des dommages corporels). In comparison to the previous tables of the appeal courts in Bordeaux, Grenoble, Limoges, Toulouse and other courts, the new guidelines are more comprehensive and detailed. Due to the high degree of acceptance of these new guidelines by the appeal courts, they have meanwhile been adopted, inter alia, by the courts in Paris and Aix-en-Provence.
- 6 Fatal Accidents Act of 1976, amended by the Administration of Justice Act of 1982.
- 7 See PHi, 2011, 139.
- 8 The Recueil of 2013 already cited prescribes a maximum sum for psychological or physical impairment (DFP) of approximately EUR 820,000.
- 9 Judicial Studies Board, The Judicial Studies Board's Guidelines for Assessment of General Damages, 11th edition, September 2012.
- 10 See O'Dea, Hellmayr, Piggot, Periodic Payment Orders in the UK – A Reinsurer's View, 2012, Topics No. 19.
- 11 The ASHE 6115 is a survey of hourly wages for nursing employees from which an index is generated.



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