

Personal Injury Compensation in Europe: An Updated Comparison Among Different Systems Within the European Market

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Updated figures: a ‘double comparison’

Starting from the analysis issued in January 2014 “A Comparison of Compensation for Personal Injury Claims in Europe”,¹ the main aim of the present publication is to give an update of the estimated compensations for bodily injury claims among the most relevant European systems, and to highlight the main changes in comparison with our previous publication.

The current analysis, taking into consideration the peculiarities of each country, attempts to achieve the highest level of standardisation identifying common factors useful for the comparison. Such method may allow the forecasting of some potential developments of the casualty business and their economic/insurance impact.

Countries subject to analysis

In the former 2014 publication the markets chosen for comparison were **Italy, Germany, France, Spain, England and Wales**. In the current update the **Polish** market was included for analysis, given its relevance within Eastern Europe in terms of collected premiums. The Polish non-life insurance market, including personal accident and healthcare written by non-life companies, continued its steady growth in 2020 with PLN 42.7 billion premiums (EUR 8.9 billion), increasing by more than 7% compared to 2019 (PLN 39.6 billion). The growth of non-life premiums has been decelerating since 2017 when the market grew by 18.28%, largely because of significant increases at that time in motor rates.²

With reference to the other markets subject to the present analysis, in 2020 Germany tops the list of collected premiums in the non-life insurance sector with EUR 133 billion, followed by the UK and France with EUR 87 and EUR 82 billion, respectively. Far below the aforementioned amounts appear Spain and Italy with EUR 36 and EUR 33 billion, respectively.³

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About This Newsletter

Aimed at property/casualty claims assessors, these articles address various aspects of modern claims assessment – facts and trends relating to the international claims assessment scene, case depictions and information on day-to-day claims assessment practice.

Fatal road accidents in Europe

Over the past 20 years, the number of fatal road accidents has fallen at a steady rate in many European markets.

In 2020, following the initial impact of the COVID-19 pandemic, an exceptional decrease in road accidents was reported: 18,800 people were killed in road accidents, an unprecedented annual fall of 17% compared to 2019 (almost 4,000 fewer people). Lower traffic volumes, as the result of the COVID-19 pandemic, had a clear, though unmeasurable, impact on the number of road fatalities.

Over the previous decade between 2010 and 2019, the number of road deaths had dropped by 36%, below the EU target of a 50% decrease set in 2010. Only Greece (54%) exceeded the target, followed by Croatia (44%), Spain (44%), Portugal (43%), Italy (42%) and Slovenia (42%).

While the unprecedented developments in 2020 led to some changes in the ranking of countries' fatality rates, the safest roads remain in Sweden (18 deaths per million people), while Romania (85 deaths per million people) reported the highest rate. However, with 42 road deaths per million inhabitants overall, Europe remains the continent with the safest roads in the world. As a comparison, the world average lies at more than 180 deaths per million people.⁴

The ambitious target set by the European Parliament of halving the number of EU road deaths in the 10 years from 2010 to 2019, although not achieved, proved to be a powerful driver for EU countries to adopt important measures that have helped to save thousands of lives. The action plan confirms the EU's long-term goal of moving close to zero fatalities and serious injuries in road transport by 2050.

In the analysed markets the number of fatalities per million inhabitants were – excluding the UK due to its departure from the EU – in 2020 Spain 29 road deaths (-44% from 2010); Germany 33 (-25%); France 39 (-36%); Italy 40 (-42%); and Poland 65, the highest number (-37%).

Despite constant improvements in road safety, traffic collisions remain one of the highest external causes of death for young people aged 15 to 30. The risks are especially high for young men and for young motorcycle riders. Fatal road accidents remain the leading cause of death for young people, amounting to 5,182 in the EU⁵ – 3,434 fewer than in 2010 but still representing 23% of all road deaths in 2019⁶.

However, in a positive result, road deaths per million young inhabitants went down by 34% over the period 2010–2019, compared to just 19% for other age groups over the same period.

In Italy, road deaths among young people represent 25% of deaths from all causes compared to the EU average of 18%. This is mainly caused by a wider use of powered two-wheelers by young people in Italy compared to many other European countries.



Compensation for fatal injuries

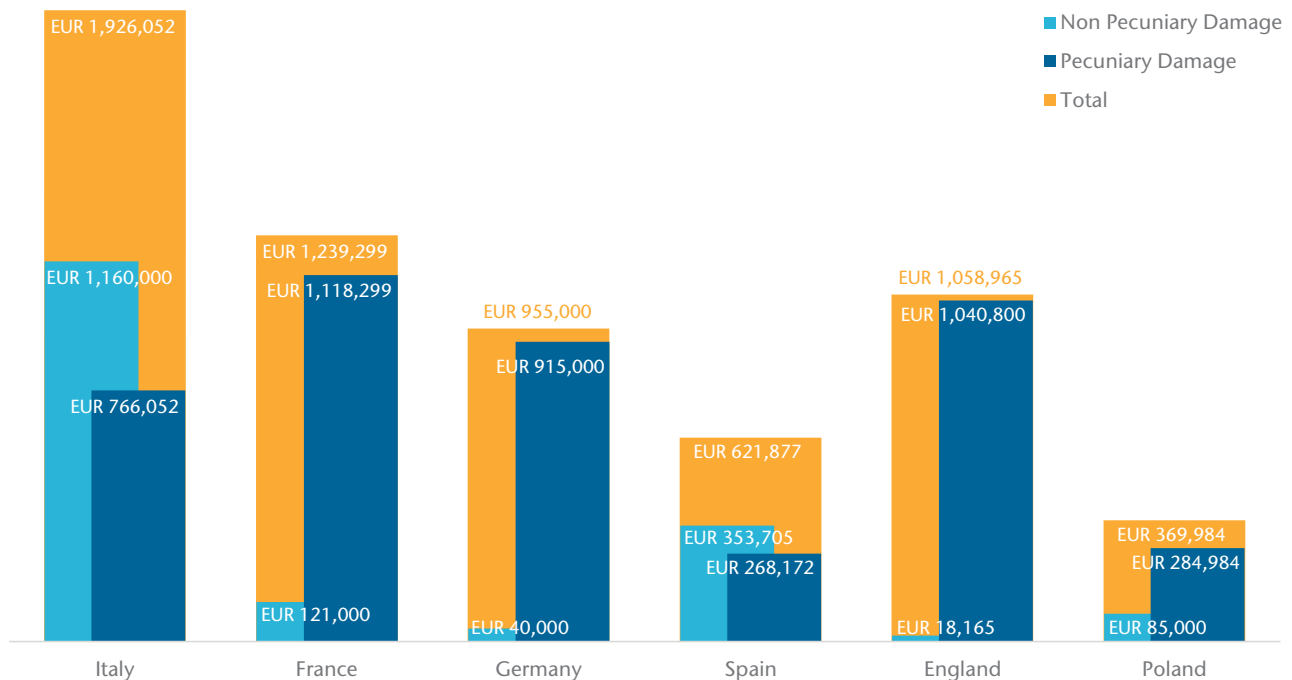
When analysing how compensation is paid for damages of this kind in the main European insurance markets, it should be noted that the same method of compensation applies to loss of life covered by other major classes of insurance, such as third-party medical liability insurance and third-party employer liability insurance, which leads to a higher number of fatal accidents (in Italy, 1,221 fatal accidents at the workplace were reported in 2021).

The comparison of compensation systems for fatal injuries is based on two case studies representing: **1.** the case with the highest level of compensation within all systems (death of a 41-year-old man), and **2.** the most frequent event (death of a 17-year-old boy).

For both case studies a comparison among European systems with respect to the current estimation of the standard compensation for fatal road accidents will be presented. The current figures will be compared with the estimation reported in the 2013 analysis.

Graph 1 – Case 1: Death of a 41-year-old man, an employee with an annual income of EUR 40,000.

Heirs: wife, two sons (six and nine years old), one parent, one brother



As shown in Graph 1, despite the will to harmonise demonstrated by the EU, several large differences among the analysed countries are still in place. **Italy** and **France**, despite both having a system based on compensation tables created and developed by local courts, have enormous differences in the overall amounts.

A compulsory law prescribes compensation tables for **Spain**, reformed in the new Baremo (the compulsory compensation system designed for fatality or injuries in traffic accidents and extended to personal injury in non-traffic accidents), which entered into force in January 2016.⁷

The system in **England and Wales** is governed by statutory provision as laid down in two statutes. The Law Reform (Miscellaneous Provisions) Act 1934 provides for the estate of a deceased person to bring a claim for the pain and suffering that the deceased felt prior to death, as well as for funeral costs. The Fatal Accidents Act 1976 deals with the estate’s ability to bring a claim for bereavement, as well as damages in the form of past losses incurred by the deceased prior to death, and the construction of a claim for loss of services and income by dependents of the deceased.

Mandatory law provides compensation guidelines for **Germany** and **Poland** but without setting a specific quantification method, currently left to the discretion of the courts.

Non-pecuniary damages in fatal injuries

The main differentiation between the systems of compensation lies in the meaning and the application of **non-pecuniary damages**. Graph 1 shows the so-called “Italian anomaly” resulting from the enormous emphasis placed by the compensation for pain and suffering. The **Italian** compensation system works on discretionary basis because the legislator has not provided any specific parameter or mandatory guideline for quantification of fatal injury compensation.

The estimation of the non-pecuniary component of damages (“moral” damages) is performed using some indicative parameters in tables of compensation drawn up by individual local courts. In this scenario, the tables of compensation created by the Tribunal of Milan are currently the most used ones across the whole country.⁸

However, as it stands today, the “leadership” of the Milan Tables on fatal losses is being challenged by multiple decisions issued in 2021⁹ which strengthen the applicability of the Rome Tables instead. The hypothetical scenario of the full application of the Rome Tables rather than the Milan ones might generate a potential increase of compensation between 5% and 6% of the overall fatal claims incurred.



Indicative reference tables drawn up by individual courts or on a regional basis are also used in **France**, for compensation under Civil Law of non-economic damages which are claimed in the event of death by the family of the deceased. However, as a further demonstration of the uniqueness of the Italian system among the European landscape, these ranges stipulate amounts equivalent to approximately 10% of the amounts set out by the table of the Court of Milan.¹⁰

The French tables drawn up by local courts are not legally binding – neither the method, nor the figures – for single judges but, in the actual claims-handling practice, are usually followed by most judges and in out-of-court settlements.

Under the new Baremo in **Spain**, compensation for death is covered by articles 61 to 92 and the corresponding tables. In case of death the law provides three

types of damages: basic personal damages, specific personal damages and material losses. Specific personal damages can increase up to 25% the amount of compensation payments for basic personal damages upon specific circumstances such as, for example, an accident involving relatives with disabilities in the same household; death of both parents in an accident; or death of an only child.

In terms of non-economic damages, the bereavement amount awarded in **England and Wales** currently equals GBP 15,120 (last increase in May 2020; before the amount was GBP 12,980). The amount is set by the Lord Chancellor under the terms of the Fatal Accidents Act 1976. There is no claim in England and Wales for loss of association with the deceased for the wider family (parents, grandparents, siblings, etc.), although in Scotland the “loss of society” is recognised. The law in Scotland was laid out in the Damages (Scotland) Act of 2011, which codified who may claim, and what they may claim in the event of a premature bereavement caused by the negligence of another. The actual damages payable will vary by claimant, and by emotional proximity to the deceased. Often awards will be determined by reference to previous precedents and case law.

The England and Wales system sparked a great deal of debate. There is a constant pressure from the claimant lobby to revise the situation in England and Wales, and to bring it into line with Scotland’s. However, in 2020 the UK Ministry of Justice confirmed that this was not to be the case.

In **Germany**, starting from July 2017,¹¹ a new provision of § 844 (3) BGB (the German Civil Code) grants compensation to the bereaved for non-pecuniary damage in the event of the tortious death of the related deceased. An adequate causation and negligence are also required.

For the definition of the bereaved, the law demands a special personal proximity between the survivor and the deceased. Such a proximity is presumed for spouses/life partners, parents and children. For other survivors, such as companions, fiancé/es, step- and foster children, and siblings, the proximity needs to be proven. In terms of quantification the Legislator did not set a fixed amount, but instead has put it in the discretion of the courts. Five years on from the introduction of the new law, the average amount awarded is about EUR 10,000.¹²

The **Polish** market works quite similarly to the German system in terms of non-economic damages: the principle of the compensation for fatal injury is provided by law, introduced in 2008. No fixed amount is set, instead the quantification is left to judicial discretion. In the current case law, depending on the degree of the relationship to the deceased, the non-pecuniary damage lies in a range between EUR 5,000 and EUR 20,000¹³ but this is only indicative and varies depending on the circumstances and the court deciding the case.

Pecuniary damages in fatal injuries

Looking at the pecuniary component **Spain** currently plays a significant role in our analysis considering that the new Baremo fully reshaped the economic component of damages on the principle of full indemnity. The main aim of the new provision was restoring the victim to a situation as similar as possible to the one prior to the accident.

The calculation of pecuniary damages originates from a specific actuarial model: the net income of the victim is multiplied by a coefficient resulting from a combination of different variables. A minimum of 10% is allocated to cover the proper needs of the victim (*quota sibi*), and then the law provides multiple distribution criteria: 60% for the spouse or in case there is only one relative claiming for compensation, when there is more than one relative the share of the spouse will be 60% (including 30% to the children) and 20% for other relatives. Other factors such as statutory pension, the duration of financial dependency, the risk of death and the discount interest rate also need to be taken into account.¹⁴

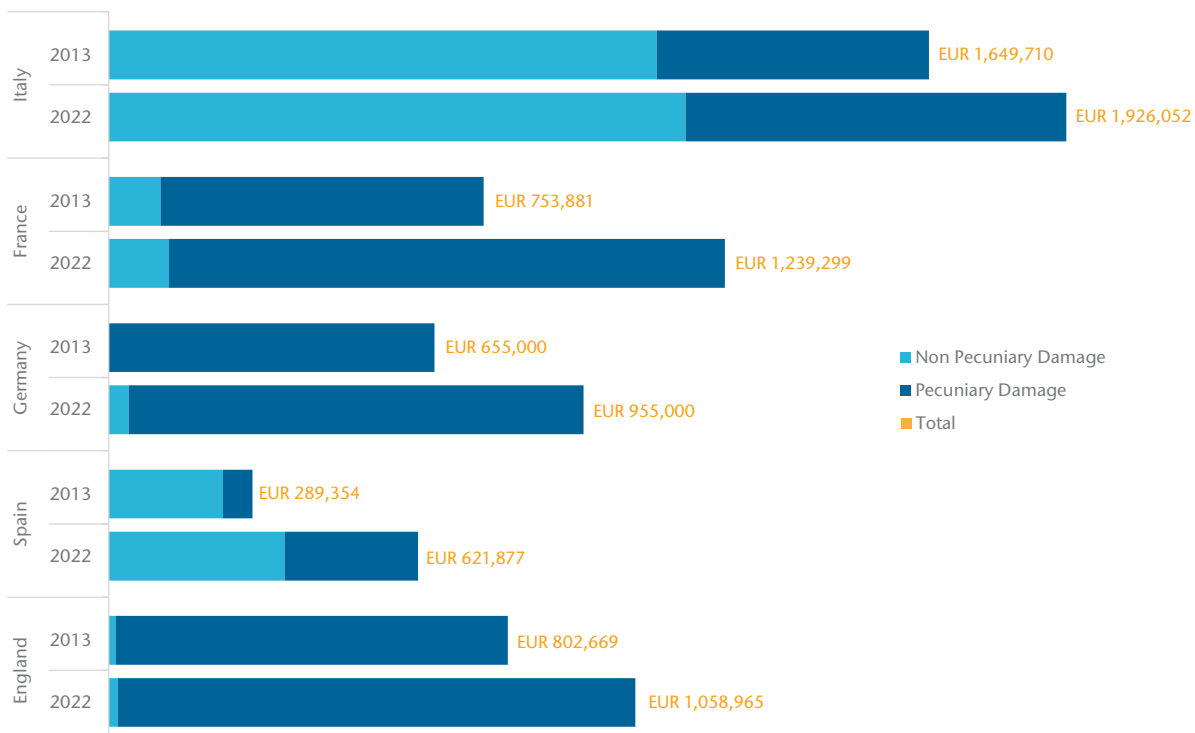
With reference to pecuniary damages among all countries, as we stand today, apart from the Spanish system discussed above, the method for calculating economic damages looks quite similar. However, the different outcomes emerging from Graph 1 arise from the peculiarities pertaining to each national law, such as the use of mortality tables (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 maintenance for survivors. This amount is then added to the claim items due to the spouse and children.

Under the **Polish** system the compensation of economic damage will be an accessory to the social benefits paid by the State to the family. Looking at Case 1, in compliance with the principles of civil law, the spouse is not entitled to receive until retirement a given share of the income of the deceased as happens in other countries, because she/he is supposed to be able to work and generate an income by himself/herself. However, an economic loss will be considered for the time the children stay at home until the end of their studies at the hypothetical age of 25 and a supplement to the social benefit will be paid for the cost of living and education for each child in the form of a pension.

Graph 2 – Compensation for fatal injuries case 1; comparison on temporal basis: 2013 figures vs 2022

Case 1: Death of a 41-year-old man, an employee with an annual income of EUR 40,000.

Heirs: wife, two sons (six and nine years old), one parent, one brother



Besides the physiological increase resulting from a decade of inflation, Graph 2 reveals an increase of 114.9% in the pecuniary component of the damages for Spain, resulting from the already mentioned introduction of the new Baremo in 2016. Looking at the previous estimation made in 2013, at that time the system provided a fixed compensation for fatal injury depending on the degree of relationship to the deceased and his/her age. These fixed amounts were subject to a lump sum adjustment depending on the victim's income.

Apart from the significant increase recorded for Spain, the comparison reveals several other changes that occurred in almost a decade (2013–2022) impacting the other legislation systems.

A relevant difference comes from the **German** system and the introduction in 2017 of the non-pecuniary damages compensation for fatal injuries. At the time of the 2013 analysis no compensation for non-pecuniary damages was contemplated under the German law or jurisprudence. This was justified by the argument that this would have been a payment for a party that had been injured only indirectly – a result not desired under German law – and compensation was awarded only if the death of the relative had an immediate effect on the body or health of the bereaved.

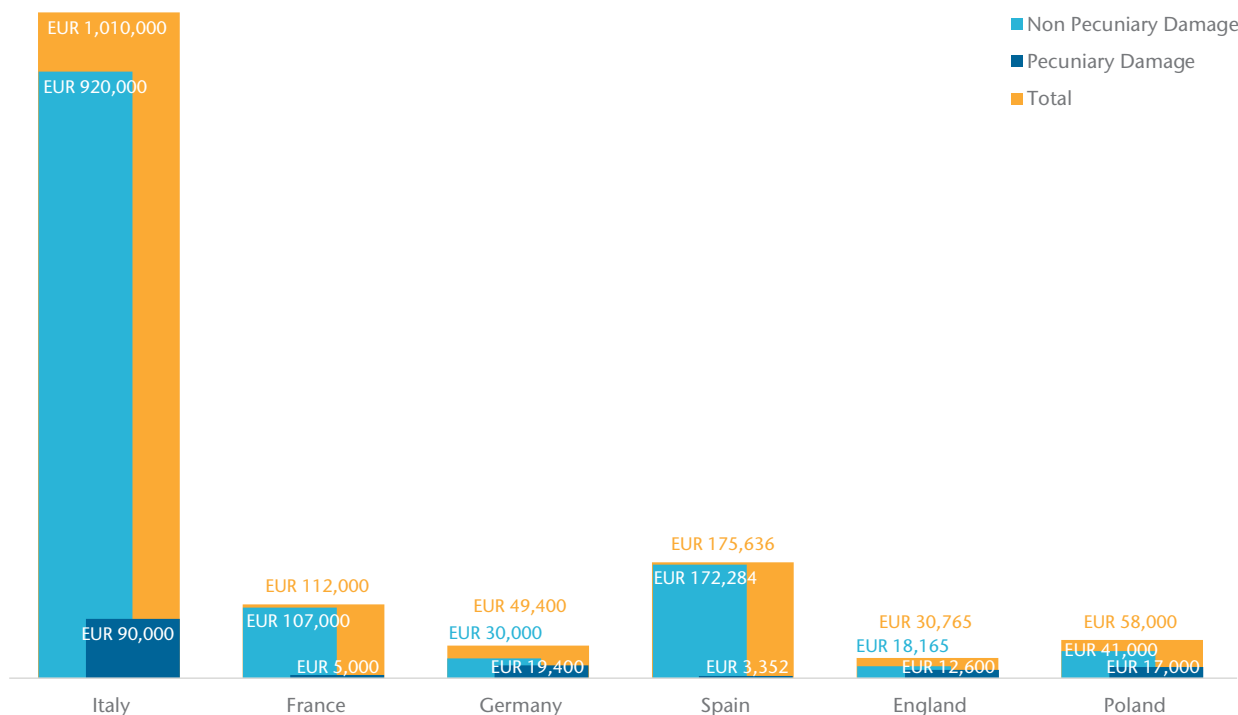
On the contrary, as we stand today, due to the introduction of the new Bereavement Damages, also the non-pecuniary damages component is recognised by the German compensation system in case of fatal injuries in certain circumstances.

The **French** figures comparison shows an increase mostly resulting from the inflation rate and the change of the table of capitalisation.

The comparison of 2013 estimation versus 2022 shows that in **England and Wales** the amount for compensation registered only a small increase resulting from almost a decade of low inflation.

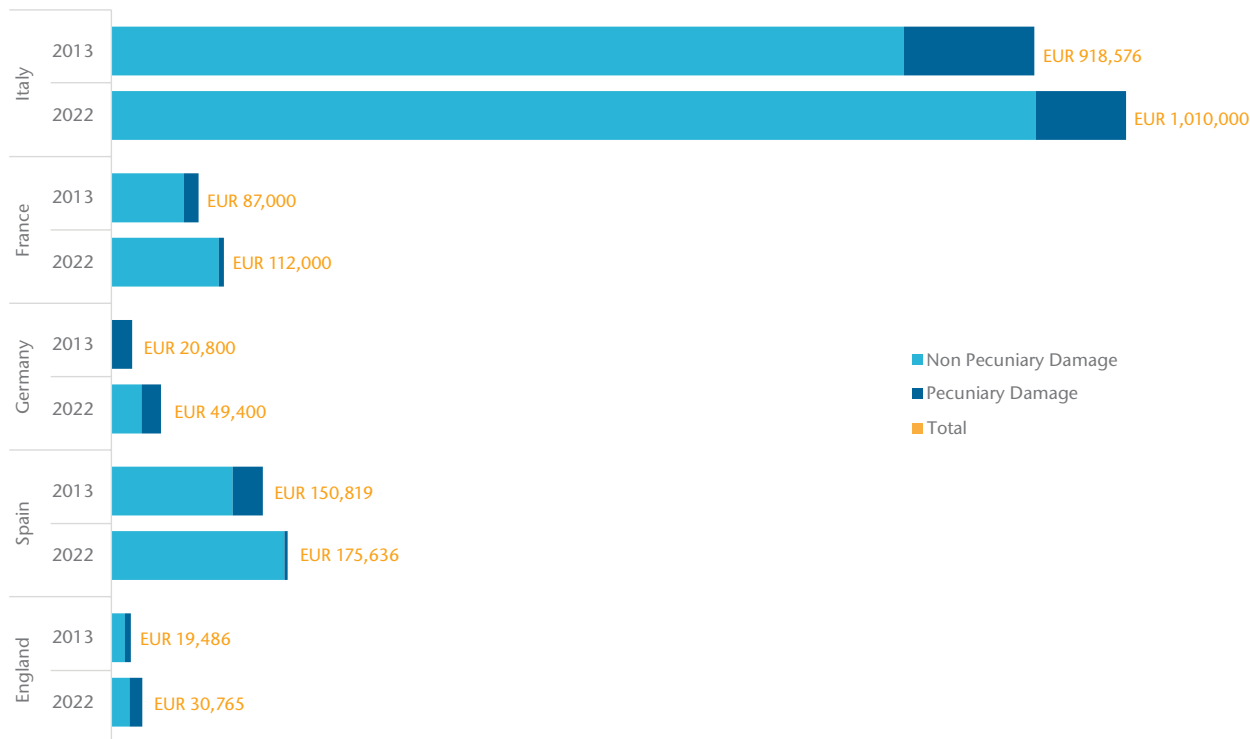
The large differences between European systems especially on the non-pecuniary component of the compensation become even more evident in the second case study.

Graph 3 – Case 2: Death of a 17-year-old boy, a student. Heirs: parents, 14-year-old sister and two grandparents



As shown in Graph 3, the level of compensation arising from economic damages is negligible, mainly comprising funeral expenses, legitimate future expectations and loss of contributions to domestic tasks potentially expected from the young victim. This final form of compensation represents a peculiar characteristic of Germany and Poland. The gap between the Italian compensation system and the other European countries in terms of non-pecuniary damage estimation looks relevant.

Graph 4 – Compensation for fatal injury case 2; comparison on temporal basis: 2013 figures vs 2022
Case 2: Death of a 17-year-old boy, a student. Heirs: parents, 14-year-old sister and two grandparents



Looking at the above comparison between 2013 and 2022 in Graph 4, the Spanish new Baremo did not impact much in this case, as could be predicted, because no big impact on pecuniary damages can be reported. All the other increases among different systems originate from the same legislative changes as mentioned for Case 1.

A last comment that might be worth adding regards the Italian compensation system for fatal injuries and, in particular, the amount normally awarded as non-pecuniary damages in favour of grandparents of a young victim. This specific type of damage was introduced with the 2009 edition of the Milan Tables for compensation.

The current range in the 2021 edition of the Milan Tables is between EUR 24,000 and EUR 146,000, depending on several circumstances such as the age of the victim, the eventual cohabitation and the strength of the relationship. The standard amount usually awarded in litigation ranges between EUR 25,000 and EUR 50,000, while the standard out-of-court settlements usually lie in a lower range. However, there appears to be a trend to a more common recognition of this type of damages compared to previous practice.

Compensation for severe bodily injury

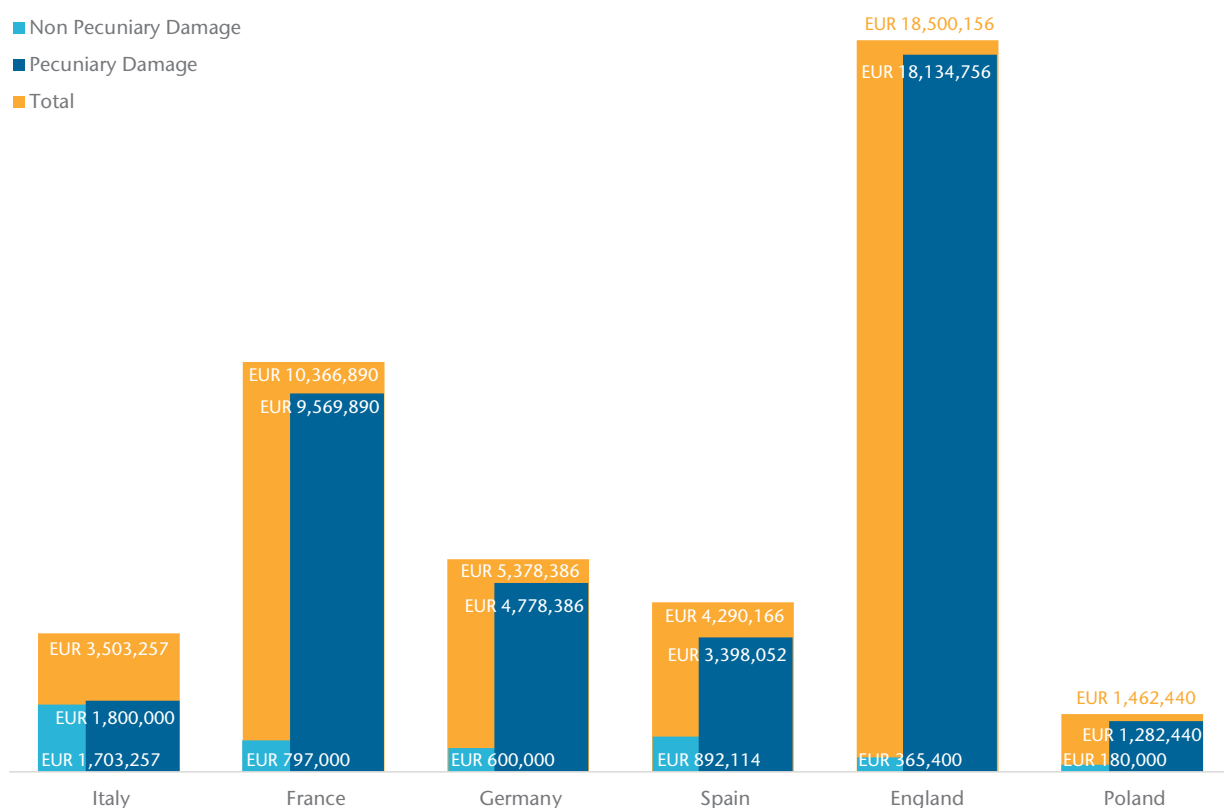
The trend of declining accident fatalities within Europe is by no means clear and uniform if we turn our attention to serious bodily injury. The only point beyond dispute seems to be the fact that the same reasons that led to a sharp decline in fatalities also explain why claims for serious long-term damage have not decreased by the same amount.

While improved medical treatment methods and increased road traffic and motor vehicle safety in general result in a significant reduction of fatalities, the reported number of severe bodily injuries in Europe is not decreasing to the same

degree. In general, based on the 15th edition of the European Transport Safety Council's "Annual Road Safety Performance Index (Pin) Report" issued in June 2021, the number of serious road traffic injuries in the EU countries as a whole stagnated during most of the decade,¹⁵ to suddenly drop in 2020 due to COVID-19 lockdowns. With specific reference to year 2020, the frequency of severe bodily injury claims decreased dramatically, mostly due to the restrictive measures and limits on vehicle circulation enacted to fight the pandemic.

In terms of compensation to be estimated, as made in 2013, Graph 5 shows a comparison regarding one of the most severe injuries, a quadriplegia case affecting a 41-year-old man (quadriplegia refers to paralysis from the neck down, including the trunk, legs and arms).

Graph 5 – Case 3: Quadriplegia case – 41-year-old man, an employee with an annual income of EUR 40,000.
Heirs: wife, two sons (six and nine years old)



'Non-pecuniary' damages

Graph 5 shows that the non-pecuniary damages continue to enjoy a preferred status in Italy, where compensation payments are twice as high as in France, almost three times the German estimation and almost five times the quantification based on the England and Wales system. Non-economic claims thus assume in Italy a kind of compensatory role for the rather neglected economic damage component.

In general terms Italian, French and Spanish systems of compensation are all based on tariff tables with one main difference, already underlined in the previous paragraph: Italy and France do not have a mandatory law and the whole system has been created and developed by local courts, while in Spain the Baremo legislation provides compensation tables. In Germany, England and Poland the compensation amounts result from case law precedents.

The Baremo system in **Spain**, reformed in 2016, is a legal tariff that sets out a certain number of disability points for all kinds of injury. The complete damages assessment and the task of determining the exact number of points is assigned to the party that carries out the legal medical evaluation. As mentioned for fatality, the new Baremo is divided into three types of damages: basic personal damages, specific personal damages and material damages including loss of earnings.¹⁶

In case of severe permanent disability, as well as the injured person the close relatives of the injured are also entitled to receive compensation.

As already mentioned, the **Italian** Legislator has not provided (yet)¹⁷ any specific parameter or mandatory guideline for the quantification of bodily injury compensation that works on an equity basis. The main driver of compensation for personal injury is the tariff table issued by the Court of Milan (last version issued in 2021). The tariffs set out non-economic damages in terms of a score that increases in line with the percentage of disability (from 1% to 100%).

In compliance with the Supreme Court orientation, the last edition of the Milan Court tables issued in 2021 includes, within the non-pecuniary damages, a clear distinction between two autonomous categories: biological damage and pain and suffering. An additional amount of compensation up to 25% for severe injuries, known as “customisation”, may be awarded by each court under peculiar circumstances upon specific proof, although during the last decade such increase due to “customisation” has been applied only occasionally.

In **France**, the current structure of the limits of damages able to be compensated in Civil Law has been drawn up in the *Nomenclature Dintilhac* which was published in 2006. While it has not yet been codified in law, this report has become a resource in the French compensation system in Civil Law. It lists all recoverable damages (economic and non-economic), describing in detail forms of compensation and the methods of evaluation.

The indicative compensation guidelines drawn up by the French Civil Courts always refer to this structure of limits of damage. According to it, the most important non-economic damage is the *déficit fonctionnel permanent* which comprises psychological and physical integrity of the injured person (*Atteinte à l'Intégrité Physique et Psychique*), permanent suffering and loss of amenities.

This is expressed as a percentage on a scale from 1% to 100% and each Court of Appeal assigns a monetary value that increases in line with the disability score and decreases according to the age of the victim.¹⁸ Still based on the *Nomenclature Dintilhac*, the tables set out ranges of compensation (usually on a scale of 1 to 7) relative to the level of suffering and aesthetic damages.

The updated *Recueil méthodologique commun pour l'indemnisation des dommages corporels* “suggests” at EUR 2,000 the maximum limit for the compensation awarded in case of minor injuries (*très léger*), while for a very serious injury (*très important*) the payable amount ranges between EUR 50,000 and EUR 80,000. This amount can be greater than EUR 80,000 in case of exceptional injuries. It is left to the discretion of the judge to place a value on damages that are rooted in sexual issues, relationships, leisure/sport activities (*préjudice d'agrément*) and the possibility of establishing a family because of the disability sustained (*préjudice d'établissement*). In France, these forms of compensation typically range between EUR 20,000 and EUR 50,000 depending on the circumstances and the age of the victim.

The system in **England and Wales** does not provide tariff tables for personal injury compensation. The judges estimate damages or dismiss cases based on case law depending on the peculiarities of the case. In 1992, however, a major institution that is in charge of training of future magistrates drew up a set of guidelines known as *Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases*, now in its 15th edition. The document represents guidance only since it is not enshrined by law and can be departed from if the circumstances of the case so require. It is the most



commonly used tool for quantifying compensation for pain, suffering and loss of amenity. For each injury, the guidelines set out a defined range of compensation amounts for reference, including pain and suffering and all other possible forms of non-economic damages.

The situation described in the England and Wales is quite similar to the compensation system in **Germany**, where non-economic damages are dominated by the figure for the all-encompassing *Schmerzensgeld*, which includes all the consequences of any damages not related to income under section 253 of the German Civil Code (BGB). When assessing *Schmerzensgeld*, the court must therefore take into account the severity of the injury, the age of the victim, the intensity of the pain and all other factors that influence total damages.

For such evaluations, judges and the insurance industry are “supported” by the collective case law, which is specifically prepared by private institutions and used to set benchmarks – although these do not have any legal weight or represent a binding precedent. In the most severe cases, *Schmerzensgeld* payments can range between EUR 500,000 and EUR 600,000. To some extent, it can be paid in form of annuities.

Similar to the German and English systems, in **Poland** non-pecuniary damage is on the rise in both monetary terms and variety. Decision (Ref. III CZP 36/17) handed out on 27 March 2018 by the Supreme Court, based on article 448 of the Civil Code, has introduced a new type of damage, for close family members. It is supposed to compensate the damage caused to the social life of the family and the altered relationship between family members.

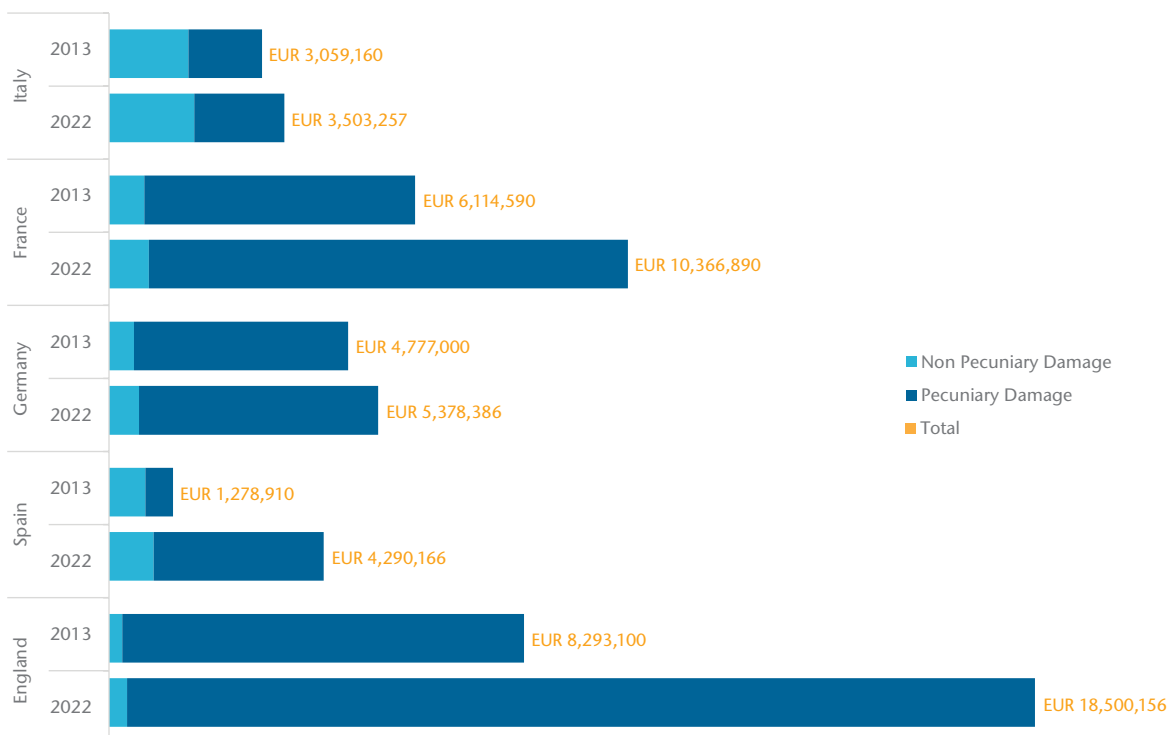
This new type of non-pecuniary damage also benefits the injured person him/herself. It is also characterised as an infringement of the personality rights. Since this type of damage was introduced very recently, the current issue for the stakeholder in the market refers to the assessment of this damage. In a first approach, we propose for the sake of this study to reserve EUR 10,000 per beneficiary. The jurisprudence will have to develop a range of compensation for this item.

The non-pecuniary damage of the injured, could be assessed at EUR 120,000, but there is no fixed amount. It depends on the peculiarity of the case and the court deciding it.

Graph 6 – Compensation for serious personal injury; comparison on temporal basis: 2013 figures vs 2022

Case 3: Quadriplegia case – 41-year-old man, an employee with an annual income of EUR 40,000.

Heirs: wife, two sons (six and nine years old)



Graph 6 shows a comparison made on a temporal basis from the 2013 analysis. The current figures, with reference to the non-pecuniary damages, show no relevant differences in amounts, except for an overall increase due to inflation. With particular reference to the **German** market, there seems to be a general tendency to award higher compensation for pain and suffering in cases of serious injuries, especially if the injured party consciously experiences the limitations associated with the loss.

On the contrary, looking at the pecuniary component of the damages, a massive increase in the compensation immediately emerges in **Spain**, resulting from introduction of the new Baremo that, as already mentioned, fully reshaped the economic limits of damages.

Pecuniary damages: costs of future care

The essential and most relevant difference among the various assessments is represented by the economic loss component. Looking more closely at this type of damages it emerges that the costs of nursing needs enormously influence the compensation amounts. The nursing care component, already very significant at the time of the first analysis in 2013, becomes central in the current figures as demonstrated in Graph 7.

Graph 7 – Share of total claim

	Italy	France	Germany	Spain	England	Poland
2013	17.98%	54.27%	45.38%	29.05%	72.69%	n.a.
2022	23.12%	65.60%	47.06%	56.57%	76.14%	62.22%

The different amounts paid for costs of care result not only from the different structures found in each method of compensation, but from the different way each country organises its health and social security systems.

Among all the countries subject to the current analysis, only **Spain** has a legal system by which this claim type is defined in statutes. As already mentioned, how material damage is determined is one of the most important aspects of the reformed Baremo.

One important change introduced by the new Baremo concerns the anticipated expenses for future healthcare, which the insurer needs to pay directly to the public health service. The injured party will be directly compensated for the costs of prostheses and orthoses, care at home or for outpatient care, technical devices or products that enable personal independence, changes required for the home and the resulting costs for mobility (e.g. modification of a car) and other necessities.

The amount is the result of multiplying the cost of the care services (1.3 times the legal minimum wage) with the value for the relevant injured party based on the following factors: the right of the injured party to get help and care from a third party; duration; age; risk of death; and the discount interest rate.

Compensation for loss of earnings is calculated on the basis of the victim's net income. The model is similar to the one described above: the victim's net income serves as a basis or statistical figures in the case of minors and victims who are responsible for the household. This value is multiplied by a coefficient that is the result of the following factors: the entitlement of the victim to public allowances for home care; duration; age; risk of death; and the discount interest rate.

Examining the other five compensation systems and the weight of the economic component in the overall estimation, **the Italian anomaly** is immediately obvious, with 23% representing the share of nursing care in the overall estimation, while the same level of damages in the other countries ranges between 47% (Germany) and 76% (the English system). In Poland, although the share of the nursing care component represents 62% of the total, it must be reported that the overall estimation is much lower than in the other countries.

Italy and **Poland** are distinguishable by a significantly lower amount referred to the pecuniary component of damages. The principal difference lies in the fact that future nursing services in Germany, France and in England – 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 **England** claimants retain the right to access state-funded health and care services, but it is not a requirement that they are reliant upon them. Even where it would generate a double recovery, claimants are still entitled to claim the costs of their care and other medical input in full (dependent on the liability agreement) from a compensator, and then fall back on state-funded care and support should they decide to do so. There are exceptions, and in many cases claimants will rely upon state-funded care, particularly in critical illness cases, but in the main many catastrophic injury claim reserves will reflect a full private care and therapeutic regime.

With specific reference to the **English system** Graph 7 shows a massive increase in the amount related to nursing care costs: compared to the 2013 analysis, where the nursing care costs equaled approximately EUR 6 million, the amounts have more than doubled in 2022 when, as can be seen, the nursing care costs are approximately EUR 14 million.

There are several complex factors behind the higher costs of care. One is previous litigated decisions: precedent has determined appropriate hourly rates for nursing care and clinical care, as well as things such as an expectation of holiday pay for employed care regimes.

UK pensions legislation has made direct employment of carers more expensive, and case management of care regimes has also become something of a “cottage industry” while being advocated by the courts. Additional pressure on therapies for claimants, therapeutic facilities such as hydrotherapy pools, and extensive equipment/aids and appliances lists for powered wheelchairs, exoskeleton devices and sophisticated beds have all become the norm, while an associated reduction in care packages has not been supported by the courts. In spite of a wealth of assistive technology, double-up, or even triple-up care regimes are increasingly common.

In **Italy**, a levy of 10.5% is deducted at source on each third-party motor insurance premium in favour of the national health service (in 2020 the deducted share amounted to approximately EUR 1.3 billion). As a result, the same national health

service provides most of the assistance services required by seriously injured people in collaboration with regional organisations and often by contributing to or entering into agreements with private businesses. For this reason, damages for the costs of future care in Italy are often subject to negotiation and settled with a lump sum.

In addition to the above there are other differences among the national systems regarding calculation methods for the costs of future care and the way such costs are paid. In **France**, there are proper agreements, often reproductions of the same tariff tables prepared by the courts, that illustrate in detail the breakdown of how expenses should be calculated, providing information such as the minimum number of days and hours to ensure adequate care, the cost per hour and the indexing rate for costs as well as any discount rates to be applied in case of expected capitalisation.



With particular reference to the latter situation, care costs are usually paid in the form of an annuity in the three systems where these costs are highest. Rigorous mathematical and actuarial criteria are employed to calculate the annuity, and these make it necessary for players in the insurance sector to allocate very high reserves in order to meet future payments.

In this connection, periodical payment orders (PPOs) – a form of annuity-based adjustment – are significant in **England and Wales**, where they became increasingly common until 2017, since when the incidence of PPO use has fallen dramatically when the Discount Rate was reduced to -0.75%.¹⁹

PPOs are compensation awards in personal injury claims which, in addition to providing a lump sum for damages for pain and suffering and for past financial loss, provide regular index-linked payments for some or all of the future financial loss.

There are risks in terms of longevity, inflation and interest rate fluctuations. These risks are transferred by the injured person to the person liable for the damages and thus to the insurance (and reinsurance) sector.

The final key element to note is the manner in which assistance is assessed and managed in some of these countries. In the **UK, France and Germany**, in particular, the needs of injured people are verified and evaluated by medical and other experts who consider every aspect of possible intervention with the aim of ensuring the greatest possible rehabilitation in physical terms as well as social and occupational reintegration.

In contrast, in **Italy** this broad and very proactive approach to dealing with an accident that results in serious injury is still very limited. Here it can often prove very difficult and complex to manage such cases, giving rise to frequent debates that fail to thoroughly investigate the level of damage in social, professional and interpersonal terms. As a result, the need for adequate management is not evaluated carefully with respect to what guarantees can be made on this front by the national health service and the local authorities usually involved.

In Italy, injured people receive a great deal of support from the family unit in terms of assistance, and this support is partially compensated for in the form of non-economic damages paid to the injured party and to his/her most immediate family members. While in Italy this type of compensation refers to non-pecuniary damages, in France and Germany, by contrast, the compensation described above for the cost of future care is calculated and paid in almost the same way as the pecuniary component, even if assistance is provided by one or more family members of the injured person.

Conclusion

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 component of damages claim is the factor that 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 very significant impact upon the amount of the overall compensation. In this scenario the peculiarities of each national healthcare and social security system play a key role that must always be taken into consideration when comparing the amount awarded by each legal system.

As a result, over the years there has been increasing attention paid by each system on the pecuniary component of the damage, steadily growing year on year since our first analysis in 2013.

In conclusion, despite the will to harmonise demonstrated by the EU, several large differences among the analysed countries are still in place, mainly resulting from standard practices, legislative provisions and case law. Even in a decade since our first analysis in 2013, no relevant changes toward harmonisation can be reported.

As we stand today it is still very difficult to imagine having a uniform or similar compensation practice for all European systems. In any case, isolated comparisons of individual claim items and distinct aspects of the various adjustment systems often do not provide an adequate understanding of the interconnections and can thereby cause considerable confusion.

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Endnotes

- 1 <https://www.genre.com/knowledge/publications/2014/january/cfpc1401-en>
- 2 Insurance report 2020, Polish Chamber of Insurance.
- 3 Ania, Italian Insurance Report 2020–2021.
- 4 European Commission – Press Release, 20 April 2021 “Road safety: 4,000 fewer people lost their lives on EU roads in 2020 as death rate falls to all-time low”.
- 5 The report includes all EU Member States except Lithuania and Malta due to insufficient data.
- 6 European Transport Safety Council, reducing road deaths among young people report October 2021.
- 7 For further reference see: Federico Maroto, The New Baremo and Its Impact on the Insurance Industry: Reform of Spain’s Injury Claims Assessment, 2016, <https://www.genre.com/knowledge/publications/2016/april/cmint16-2-en>
- 8 In 2011 the *Amatucci* judgment n. 12408 issued by the Supreme Court of Cassation and followed by several further decisions on the same direction, gave a general recognition to the Milan Court Tables. These tables are currently used by the vast majority of the Italian Tribunals in litigation and are also used in the large part of out-of-court negotiation across Italy.
- 9 The first judgment against the Milan Court Tables of compensation for fatal injury was the *Scoditti* decision, n. 10579 issued in April 2021 by the Supreme Court of Cassation.
- 10 The methodological guideline for bodily injury compensation (“*Recueil méthodologique commun pour l’indemnisation des dommages corporels*”) drawn up in March 2013 and regularly updated since then by a large group of French Appeal Courts, sets out a compensation range in favour of the spouse in case of the death of a partner or in favour of the parent in case of the death of a child between EUR 20,000 and EUR 30,000, while the 2021 Milan Tables stipulate a range between EUR 168,000 and EUR 336,000
- 11 BGBl. I 2017, 2421. In 2012 a first draft to amend this provision was submitted by the Bavarian Ministry of Justice, and the introduction of a Bereavement damages claim was agreed upon in the coalition agreement of the Federal Government in 2014. The provision was enacted on 17 July 2017.
- 12 For further reference see Martin Peiffer, Bereavement Damages – A New Form of Compensation Under German Law, 2018, <https://www.genre.com/knowledge/publications/2018/april/cfpc1804-en>
- 13 This represents only an indicative amount and it may vary depending on the circumstances of the occurrence and the Court deciding the case.
- 14 See endnote 6.
- 15 120.000 people were seriously injured on EU27 roads in 2019, based on the latest PIN report issued in June 2021: <https://www.nrso.ntua.gr/etsc-15th-annual-road-safety-performance-index-pin-report-june-2021/>
- 16 Basic bodily compensation contains an overview of the different injuries including psychological and physical damage, in addition to organ and sensory damage. The medical Baremo also includes the classification, description and assessment of the individual injuries. The degree of disability is measured in points, with 100 representing the highest possible rating. Specific bodily damages are defined as additional non-pecuniary damages, up to 25% of the overall compensation, for the impairment of quality of life due to permanent disability, also in favour of the severely injured relatives.
- 17 In January 2021 the Italian Ministry of economic development, with the declared aim of harmonization, issued a draft of National tables very similar to the Tables of compensation of the Milan Tribunal (to be applied only for bodily injury compensation for non-small permanent disability from 10% to 100%, nothing provided for fatal losses). The aforementioned drafted National Tables are still under discussion; no law has been formally issued yet but apparently, according to the recent doctrine, the National Tables will be formally issued in the upcoming months.
- 18 The last updated *Recueil méthodologique commun pour l’Indemnisation des dommages corporels* sets out a “suggested” limit to the compensation that can be paid out as déficit fonctionnel permanent (DFP), and this amount is approximately EUR 866,000 even if the guideline expressly foresees that the value has to be considered merely indicative.
- 19 The rate was re-set again in late 2019 and now stands at -0.25% for England and Wales (-0.75% for Scotland) but in most cases a negative rate will generate a very attractive lump sum for claimants where they have the ability and the willingness to invest those sums for an anticipated return. Most PPO cases awarded now are in cases where the injuries are of a level of severity that means that the claimant no longer has the capacity to make their own decisions, and their interests are represented by a Deputy who is responsible to the Court of Protection.

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