

# Evolution of the legislation on Motor Insurance and the compensation rights in Spain

## Slide 1

Ladies and gentlemen  
Dear Colleges

I would like to thank InterEurope for the organization of its 8th international conference and for the opportunity to participate as a speaker.

During previous conferences I have closely followed the quality of its encounters in several countries and the importance of its scientific work that InterEurope makes within the framework of International Motor Insurance in law and practice.

I must recognize that no other organization than InterEurope attends the demand for training and information regarding the legal systems in Europe.

To be here, in Rome, today is a pleasure and an honour to me. My lecture has the aim to explain the latest changes in the Spanish MTPL legislation and to help all of you to understand the particularities of a legal system that still needs a route to adapt entirely to the European levels.

## Slide 2

WELCOME TO SPAIN: A country that extends on a surface of 504,645 km<sup>2</sup> in the Southwest of Europe. Spain is divided into 17 Independent communities in addition to the independent cities of Ceuta and Melilla in the north of Africa.

Legal Background: MTPL was established in Spain in 1962, but the law was not in force until 21 March 1968 and in the first period only covered personal injuries at a low level. The normal situation in Spain was to contract a compulsory insurance and also a voluntary MTPL insurance with unlimited cover and risk Casco insurance.

Spain acceded the European Union in 1986: since this date the legal system has been progressively adapted to European Directives.

In 1995 Spain finished all transitory periods to adapt to the European legislation and in 1995 the three first Directives were completely incorporated in our legislation.

### Slide 3

Allow me to invade this room with introductory images and music for some seconds.

Slide 4: no text

Slide 5:

The Control Insurance Authority, the Council of Compensation of Insurances and the Direction General of Traffic Works jointly established a system that allows the detection of vehicles that circulate without insurance.

The system was initially designed to recognize the licence plates of the vehicles in circulation and to identify if the vehicle is covered by a MTPL-insurance, which is obligatory by law.

The Border Customs Authorities are responsible for the control of the insurance cover of all vehicles arriving from countries outside the EEA. A "Border Insurance System" is established by all companies authorised to work on MTPL in Spain. Under a Co-insurance Agreement, every company takes its part according their ratio in the general portfolio of the Spanish Market.

The Spanish legislation sanctions drivers of vehicles that are not insured with fines between 601 and 3,005 euros. In addition the vehicle may be temporarily immobilized. In any way the law imposes the immobilization of uninsured vehicles.

## Slide 6:

The MTPL insurance represents 40% of the nonlife-insurance in Spain.

As you can see in the figure, the importance of motor insurance in non life insurance has slightly decreased in the last years.

The Motor insurance grew by 3.2% in 2005 and by 4.3% in 2006.

The forecast for 2007 is around 3.6%

## Slide7:

MTPL insurance policy may include other covers freely agreed between policyholder and insurer (voluntary covers in MTPL, passengers (for the driver) Casco insurance, theft, break of glasses; defence and claim insurance).

Here, we can see the different covers included in the motor policy and the perceptual level at which these products are contracted by consumers.

There is a high percentage of cover in legal defence, passengers (driver insurance), travel assistance and glass insurance.

Glass insurance is very popular in Spain, because contracting glass insurance through the National Guarantee Fund also covers damages in case of terrorism and catastrophes.

Casco insurance is only contracted in 31,16% of policies.

### Slide 8:

The Spanish market continues a progressive tendency towards concentration: However, it still remains atomized.

In 2006, the first 5 companies of the ranking divided a market share of 51% among themselves.

The distribution channels continue being brokers and agents (70% of sales), followed by telephone sales (15%) and direct sales through offices of the companies (9%)

### Slide 9:

In 2006, the top ten companies (group of companies) in the ranking accumulated a total market share of 74.5% .

### Slide 10:

Between 1990 and 1996 the ratio of accidents decreased due to a reduction of the frequency of accidents, the control of the average cost and the increase of premiums.

Between 1996 and 1999 the premiums decreased due to a price war in the market.

Between 2000 and 2002 the companies increased the premiums to fight against the negative results

and also there was a reduction of the number of accidents.

Between 2003 and 2004 the ratio of accidents increased, but it decreased moderately in 2004.

Between 2005 and 2007 a bullish tendency existed, but it was not superior to 2003.

### Slide 11:

The graphic shows the curve of accidents in the period between July 1998 and July 2007.

An important reduction of the number of accidents, as well as tendencies in quarterly averages (in network) can be observed. Monthly averages are indicated by the blue line.

### Slide 12:

The total cost of all accidents in 2006 was 8,217 millions Euros, covering the damages corresponding to 2.8 million accidents with material damages and 99.797 accidents with bodily injuries.

The number of accidents decreased in 2006 in respect to 2005, meaning there were 8.610 less accidents.

In September 2006 the number of traffic accidents decreased by 22% in respect to 2006 and the number of deaths in fatal accidents has decreased by 11% respect the previous year.

### Slide 13:

The comparative ratio of accidents versus premiums in some European countries:

- Germany 90%
- UK 83%
- France 82%
- Italy 80%
- Spain 79%

### Slide 14:

Civil liability arising from traffic accidents and the corresponding claims are governed by the Law of Civil Liability and the insurance in the circulation of motor vehicles.

The last Refund Text was approved by Royal Legal Decree 21/2007 of 11 July, which introduced the obligations derived from the 5th Directive concerning Third Party Liability (TPL) Motor Car Insurance in Spanish Law.

Damages for bodily injury are governed by the principle of liability through risk (objective liability).

Material damages are governed by the principle of negligence (causal acts) and both apply to the driver of the vehicle causing the accident.

## Slide 15:

Maximum sum insured. Since 1 January 2008 damages for bodily injury must be insured for up to € 70 million per accident. The Spanish law has changed the basic criteria on minimum limits for a criteria of maximum covers.

For property damage, the maximum sum is € 15.000.000 per accident, regardless of the number of victims.

Each year this sum increases according to the value of the European consumer prices.

The level of personal damages for each victim will be fixed by application of the legal scale included as an annexe to the law. (not modified yet)

In 2007 the legal scale value was increased by 4% according to the level of consumer prices.

The new limits established as maximum sums will come in force on 1 January 2008 but the increase of limits of cover in the law will not present any practical effect in the present compensatory system - only the legal scale was modified. The revision of the legal scale is foreseen for 2008/2009.

The maximum current level of compensation by means of application of the legal scale doesn't allow payments higher than 1.200.000€ for bodily injuries (medical damages and futures assistance fees not includes).



## Slide 16:

According to the Law 8/2004, 29 October, "Refund Text of law about Civil Liability and Motor Insurance Car" the insurance companies and Courts are obliged to calculate damages for bodily injuries in accordance with the system of a scale for the evaluation of damages set out in the annex of this Law, (excluding injury as a consequence of a premeditated criminal act).

The first section of the annex of the law prescribes a series of general criteria and the second section contains a series of rules explaining how the tables of the scale work.

The Court decisions are the basis for the articulated principles of full compensation and the principle of assessed compensation.

Law has determined who may claim damages for fatal accidents as well as those cases in which compensation may be recovered not only by the injured party but also by the victim's close relatives. In this respect, the scale law has defined the concept of damage and has determined what heads of damage may be claimed through a process which gives rise to relative certainty.

The payments made to a victim by the Social Security system of workers, or any compensation for injuries under a private insurance policy are not claimable against the MTPL insurance and they are independent of any right that the victim has

against the insurance company on the basis of the damage suffered.

### Slide 17:

In addition to the indemnifications fixed in accordance with the tables (legal scale), the expenses for medical aid, pharmaceutical treatment and hospitalization are compensated until recovery, whenever the cost is justified taking into account the nature of the medical assistance.

The Spanish insurance market has signed agreements with the Social Security in which the rates and prices of medical services are defined. The insurance companies cover the fees caused during a delay of two years from the date of the accident up to an unlimited amount. After this period the costs of medical treatments are the sole responsibility of the Social Security System.

Regarding the indemnifications for death, the expenses of burial and funeral costs - according to the local customs - will be satisfied in the quantity that is considered to be justified.

## Slide 18:

Claims for bodily injury.

According to the Law, 21/2007 of 11 July, Refund text "Civil Liability and Insurance Motor Car" the insurance companies and courts are obliged to calculate damages for bodily injuries in accordance with the system for the evaluation of damages set out in the annex of this Law, (excluding injury as a consequence of a premeditated criminal act).

The amount of indemnity is indicated in charts, which are revised yearly according to the general cost of living of the previous year. They can produce variations to reflect the socio-economic situation of the victim (mainly his family and economic circumstances etc.).

The payments made to the victim by the Social Security (pensions and economical previsions) are compatible with the economical compensations made by MTPL insurers.

## Slide 19:

1. Pain and psycho-physical injury (connected with permanent incapacity)
2. Temporary and permanent injury.
3. Aesthetic Damage.
4. damage to sexual function.
5. Loss of earning capacity, loss of congenial employment, and loss of housekeeping ability. (connected with permanent incapacity).
6. Loss of life expectancy: Not a separate category but connected with the permanent injury.

7. Damages for spoiled holidays: It constitutes an exceptional (atypical) kind of damage, which can be compensated independently.

8. The protection of mental health (permanent or temporary connected with permanent or temporary incapacity).

### Slide 20:

Spain has one of the lowest levels of compensation of grave injuries or permanent disability in Europe (particularly with regards to seriously handicapped and brain damaged persons).

The problem fundamentally consists in having a global appreciation of the moral damage and lost profit included in the evaluation system which does not permit the value to be adjusted objectively to the true dimension of the damages in certain cases.

The legal scale includes the evaluation of all the concepts of damages and their economic evaluation.

It is not therefore a flexible system that protects the victims in any case. In certain aspects it seems to want to protect the insurance companies.

Spain needs an urgent update of the legal scale in order to adapt the level of compensation payments to European standards referred to in the 5th Directive.

## Slide 21:

The whiplash problem in Spain does not differ to other countries. Normally in criminal proceedings the forensic doctor will determine the injuries concerning the whiplash damage and also the time needed for recovery in case of temporary incapacity or the permanent effects in other cases.

In case of civil proceedings the victim can prove the injury by means of a medical report from the Social Security medical services. The time of recovery is fixed by the medical expert and normally it is accepted as irrefutable proof of damages.

The whiplash is evaluated according to the legal scale for bodily injury according to the kind of incapacity suffered by the victim. Really this type of injury is considered as a source of fraud in some cases, in which the victim tries to extend the period of temporary disability or the seriousness of injuries.

Anyway it is difficult to fight against the medical expert solution if the doctor is a civil servant with a capacity to link the Social Security or the Criminal court decision.

## Slide 22:

An administrative body of medical experts (forensic doctors) has been established. These experts appear in the proceedings whenever it is

necessary to determine the existence of a personal injury and to provide medical assessment.

Each criminal Court has a forensic doctor assigned to it, who provides a medical report upon judicial order, which is always produced for the judge or the court. These doctors are legal experts in the medical assessment of personal injury.

In criminal courts, the judges always refer to the expertise of forensic doctors (civil servants attached to the criminal jurisdiction) who act only in criminal proceedings without being paid by either party. In other types of proceedings (civil action), a lawyer instructs a medical expert specialized in the assessment in personal injury.

### Slide 23:

The new legal regime will also oblige the insurance companies to justify their compensation offers and to convey the said offers within three months to the insured party.

The new legal regime will also impose other obligations on the insurance companies, including the establishment of a formal procedure for the regulation of indemnity payments.

If the insurance companies do not fulfil the aforementioned obligation (in the context of insurance companies that have admitted their civil liability) the new regulation will impose on the insurance companies default interest which will increase the compensation amount.

## Slide 24:

The interest of retard is 20% of the amount of payments to the victims since 3 months from the date of the accident, if payments are made within two years from the date of the accident. Still two years from the date of the accident the interest is the legal rate 1.5% .

If the term of three months elapses without receiving a motivated reply of compensation without justified cause, the insurer will have to pay delay interests.

Also delay interests will be imposed in cases, in which the injured party has accepted the reply and has not been satisfied within five days or the amount offered has not been briefed for payment.

The administrative sanctions may be fines up to 300.000 €. Also the sanction could be imposed as a Suspension of the administrative authorization to operate in one or several branches in a period of up to 5 years.

## Slide 25:

The national guarantee fund was created in 1962 and has covered the risk of uninsured vehicles since 1968.

The national guarantee fund in Spain is a public entity with independent juridical personality with

financial capacity independent of the national wealth but assigned under the dependency of the Ministry of Finance.

The national guarantee fund is financed by means of 3% of the total of the premium collected by the insurers.

The Guarantee Fund (Consortio de Compensación de Seguros Address Paseo de la Castellana 32, 28046 Madrid) is obliged to intervene if:

- ∅ The vehicle which caused the accident and its driver have not been identified (material damages must be included if it coincides with considerable bodily injuries, that is to say, death or hospitalization for at least 7 days).
- ∅ The vehicle causing the accident was stolen or was not insured (it must, however, be registered in Spain). There is no cover for passengers that occupied a place in the vehicle knowing the circumstance of the theft.
- ∅ The insurance company is bankrupt (or insolvency cases).
- ∅ The vehicle is registered in a third country outside the territory of the EU or EEA for accidents caused in Spain, if the vehicle was not insured by a green card or border insurance.
- ∅ The vehicle bears no licence plate, or if the plate is not or no longer legally issued for accidents involving in Spain.



∅ The Accident was caused by a vehicle concerned to Spain from another State member of the European Economic Space, whenever the vehicle is not assured and the accident has happened within a term of 30 days since the buyer accepted the delivery of the vehicle.

The Spanish system has chosen the National Guarantee Fond as the Information Centre because it was the administrator of the files for the insured vehicles (FIVA) established by law in 1991.

### Slide 26:

The owner -not the driver of an uninsured vehicle- will be responsible together with the driver for the damages to people and goods caused by this one, unless he proves that the vehicle had been removed him (stolen). This clause allows the National Guarantee Fund to recover compensation payments from the owner if the vehicle is an uninsured vehicle.

With the objective to reinforce the character of patrimonial protection for the insured, the possibilities of repetition by the insurer are limited to the cases anticipated in the Law.

The insurer, once he has paid the indemnification, will be able to claim recourse from the policy holder or insured, by causes established in Law 50/1980, of 8 of October, Contract of Insurance, and, according to the foreseen clauses in the

contract, in case of driving without a driving license.

For the first time the law allows the insurer to claim recourse from the insured or policy holder, if the accident was caused by a driver not authorized to drive or by a driver without a driving license.

### Slide 27:

Material damages claims.

Repair cost: The owner of the vehicle has the right to be indemnified for the cost of repairing the damage suffered. The cost can be proven by means of the repair bill, an estimate or a report from an expert.

The right to the indemnity doesn't presuppose that the vehicle is, in fact, repaired. The claimant can also repair for his own means.

If the repair exceeds the market value of the vehicle, the indemnity is reduced to the market value. However, the Court recognises the right to compensation if the owner has presented an invoice proving the total cost of the repair.

If the damaged party claims indemnification but is not interested in repairing the vehicle, an expert named by the insurer files a report considering only the damages of vehicle (not including hand labour or time necessary to repair, etc).

Normally this situation is only acceptable if the repair costs are more or less equal to the value of vehicle (technical total loss) and in this case compensation is only referred to the value of the damage caused.

Total loss: Where there is a total loss, the owner has the right to compensation for the value of the vehicle according to its age, reducing the value of the remains (salvage).

Decrease in value: Is only recognised by courts if the damaged vehicle was relatively new.

Cost of expert's report: The fees for an expert's report are not compensated, not even among MTPL-Insurers.

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Towing Charges: These fees can be claimed for transporting the damaged vehicle to the nearest workshop or workshop where the repair will be made providing there is evidence in the form of an invoice.

Costs of overnight accommodation and meals: Courts always recognise the cost of overnight stays and meals but, in practice, these costs are only paid in special cases and only if an invoice can be presented.

Hire car costs: Out of court it is difficult to obtain payments for a rental car. Courts only recognise the reimbursement of the cost for a rental car if

the claimant proves that a replacement car is entirely necessary for him. This mainly applies to taxi-drivers or commercial agents.

Loss of use: Instead of the costs for a rental car, the claimant can claim indemnification for loss of use. This claim is limited in principle exclusively to the cost of public transport, proven by the relevant tickets. In case of commercial vehicles, in addition to the loss of use, loss of income may be claimed. This is proven, for instance, by means of salary slips. Loss of value of the damaged vehicle for effect of the accident is not recognized. The technical control inspection (ITV) doesn't reduce the value of the vehicle or its capacity to circulate.

The cost of loss of use of a vehicle for the time needed to repair it, is only recognized for business and industrial vehicles destined to public transport, public services or transportations of goods.

No means of evaluation exist, but the number of days of immobilisation of the vehicle multiplied by the average profits gives the final solution to calculate for the loss of use.

Slide 29:

### Liability in case of towing vehicles

The Spanish legal system obliges each truck and each trailer to have an individual insurance. Before 1965, each insurer had to respond in proportion to the premium of the insurance contract. In 1986, the laws and regulations supplied no answer in relation with this matter. To solve the situations

the court's decision had the insurance companies' share 50% of the liability following the solidarity rule.

Currently the Spanish insurers have solved the problem by an agreement for towing vehicles sharing the liability according to the rule of 70% for the truck and 30% for the trailer. 95% of insurers work with this agreement for accidents in Spain and also for accidents in other countries of the Green Card System.

### Slide 30:

Investigation of the accident circumstances.

In principle, the police is not obliged to write a report for traffic accidents.

However, in the case of accidents with bodily injuries the police must do so. In accidents in which only material damages incur, the police usually only record the personal details of the parties involved and the details of the insurance companies, but only where the police happen to be present at the place of accident.

If the police does not appear and if the accident only involves simple material damages, it is best that those involved secure the evidence as complete as possible: it is advisable to take statements from witnesses and photos or drawings of the place of accident.

The law also obliges the parties involved in an accident where there are material damages to complete and sign the "constat amiable" (European Accident Report).

Since 15 June 1996 all insurance companies are legally obliged to inform the National Guarantee Fund (Consortio de Compensación de Seguros) of the registration numbers of vehicles insured in any moment.

This file is named F.I.V.A. (Informatics File of Insured Vehicles) and it is not a unified database but the combination of several databases (Traffic register and the databases of the insurance companies).

### Slide 31:

Civil action. The court for the region where the accident occurred is competent to handle actions based on traffic accidents.

For civil actions the competent court is the "Juzgado de 1ª Instancia" and in case of criminal procedures, the competent tribunal is the "Juzgado de Instrucción" (in the Spanish Legal System it is possible to pursue civil actions within the Criminal Proceedings).

In this case, the civil action derived from the damage caused by the initiator of the criminal act).

The claim is made against the driver, the owner and the insurance company. Regardless of the

amount claimed, the competence rests with the Juzgados de 1ª Instancia or Instrucción.

The criminal procedure prevails over the civil proceeding. The civil process pending a decision by a tribunal is adjourned until the conclusion of the criminal proceedings.

Adhesive proceedings. The defence of a civil claim in the process of criminal proceedings is always possible because Spanish law establishes that from all criminal acts a civil claim arises for damages, and article 1902 of the Spanish Civil Code states that "whoever by action or omission causes damage to another, by intervening fault or negligence, is obliged to compensate the damage caused" .

This is the reason why the civil action as a supplementary or "adherent claim" is common in criminal process.

Every victim has the right to claim in the criminal proceedings against the initiator of the damage and he also has a direct right against the MTPL-insurer of the driver/owner of the vehicle involved in the traffic accident.

In the criminal proceedings, the victim may not only claim the damages covered by compulsory insurance law, but he may also claim against the driver or owner and the insurance company -if the cover is unlimited- for all damage caused by the negligent act).

## Slide 32:

One of the most important things to know about the Spanish legislation is the short period of time established by the law for prescription. Only one year from the date of the accident without filing a claim is sufficient to make the victim lose the right to be indemnified.

The legal period required to report a crime (if the events had a criminal element) is 6 months. After this period it is only possible to take civil actions.

The victim or, their lawyer, can interrupt the period of prescription by means of an official letter (sent by certified, post or bureau fax or similar). In this case a new period of prescription will start to run for a new year, counted day by day.

The prescription is also interrupted if the insurer gives the victim an answer to their claim. A court decision derived from a criminal procedure has a prescription of one year if the victim doesn't claim in this period.

But for a civil court's decision the criteria to be considered is that the victim will have a period of 15 years to claim against the insurer.

## Slide 33:

- 1) New law 21/2007 has not fulfilled the mandate of the 5th Directive to increase the amount of the indemnifications.



- II) The increase of the limits is purely formal, because the compensations have to be calculated according to the legal scale that has not been modified.
- III) A legal modification of the scale is not foreseeable until 2009.
- IV) The insurers must activate the payment of the indemnifications by means of offers or answers motivated in three months from the date of the claim on the injured part.

Slide 34:

- V) Retard interests and penalties will be imposed to the insurers that do not fulfil the obligations of offers and motivated answers.
- VI) It is foreseeable that the insurance premiums of the automobile must increase in the next years
- VII) The levels of compensation in case of severe injuries (seriously handicapped persons) are very low with respect to other European states: the protection of these victims is not guaranteed.

Slide 35 : END