



# Motor Claims – European Trends

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# Trends in European Motor Claims

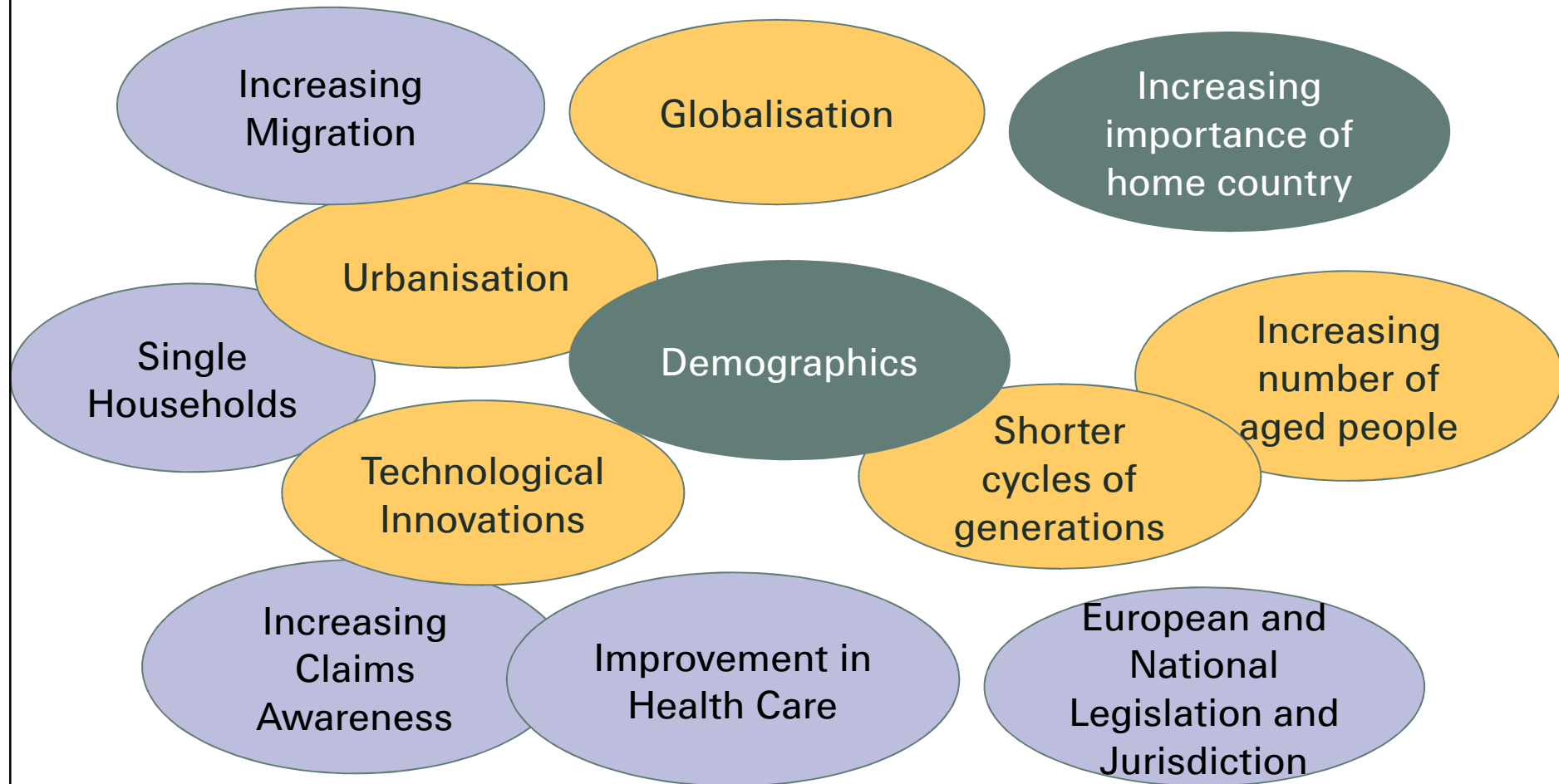
- Potential Trends
- Impact on Motor Business

## "What are Trends?"

- "changes in certain **elementary characteristics** of all aspects of our life, of economics and environment in a longer perspective "
- "focus to **social and economic fundamentals**"
- "impacts **human behaviours** in the daily life and a long-term perspective, as well as families, economics and values"



## Present Trends in European Development - General Observations and Remarks -



# Trends in Motor Insurance Claims Managements



## Cross Border Claims

- Guarantee function in the Green Card Regulations
- EU-MIDs harmonization of MTPL regulations
  - increase of limits
  - liability in case of uninsured or unregistered cars
  - protection of victims

## Jurisdiction

- Increasing number regulations and conventions on national, EU and international level
- Additional places of jurisdiction
- Direct legal action
- Place of jurisdiction
- Applicable Law

## Bodily Injury Claims

- No uniform methodology – different national practices and compensation concepts
- Lump sum agreement vs. annuity payments
- Increasing costs of assistance (care) and pain & suffering)

## Large Loss Scenarios

- Tunnel accidents
- Train accidents
- Bus accidents

## Case – United Nations Employee



### Facts:

A British employee (claimant 1) of the UN living in Vienna, Austria, was injured at an accident in Macedonia sitting in the back of her car when the accident was caused by her partner, the driver of the car. She suffered paraplegia. After completion of her medical treatment she moved back to London. Another Canadian person (claimant 2) was involved and also injured.

### Motor-Policy:

The car was registered in Austria to the name of claimant 1 and the policy was issued by an Austrian motor insurer with a limit of EUR 10M.

### Claimant 1:

- Claim in Macedonia via Green Card in the amount of EUR 100.000
- Claim at London High Court against Austrian insurer with GBP 12,5M (= € 17M)

### Claimant 2:

- Claim in Macedonia via Green Card in the amount of EUR 100.000
- Potential additional claim at Vienna civil court of around EUR 2 M

## Green Card System and Cross Border Settlement / Jurisdiction

- Macedonian Green Card Bureaux settled the claim with Macedonian minimum limit of EUR 100.000
- London High Court could be appealed by the British claimant (EU-citizen) on the basis of 4<sup>th</sup> EU-MID
- London High Court argued that the Austrian insurance policy limit will not bind the British Court
- Potential claim of the Canadian claimant (non-EU-Citizen) in Austria due to the insurer's policy liability in accordance with International Private Law

Swiss Re



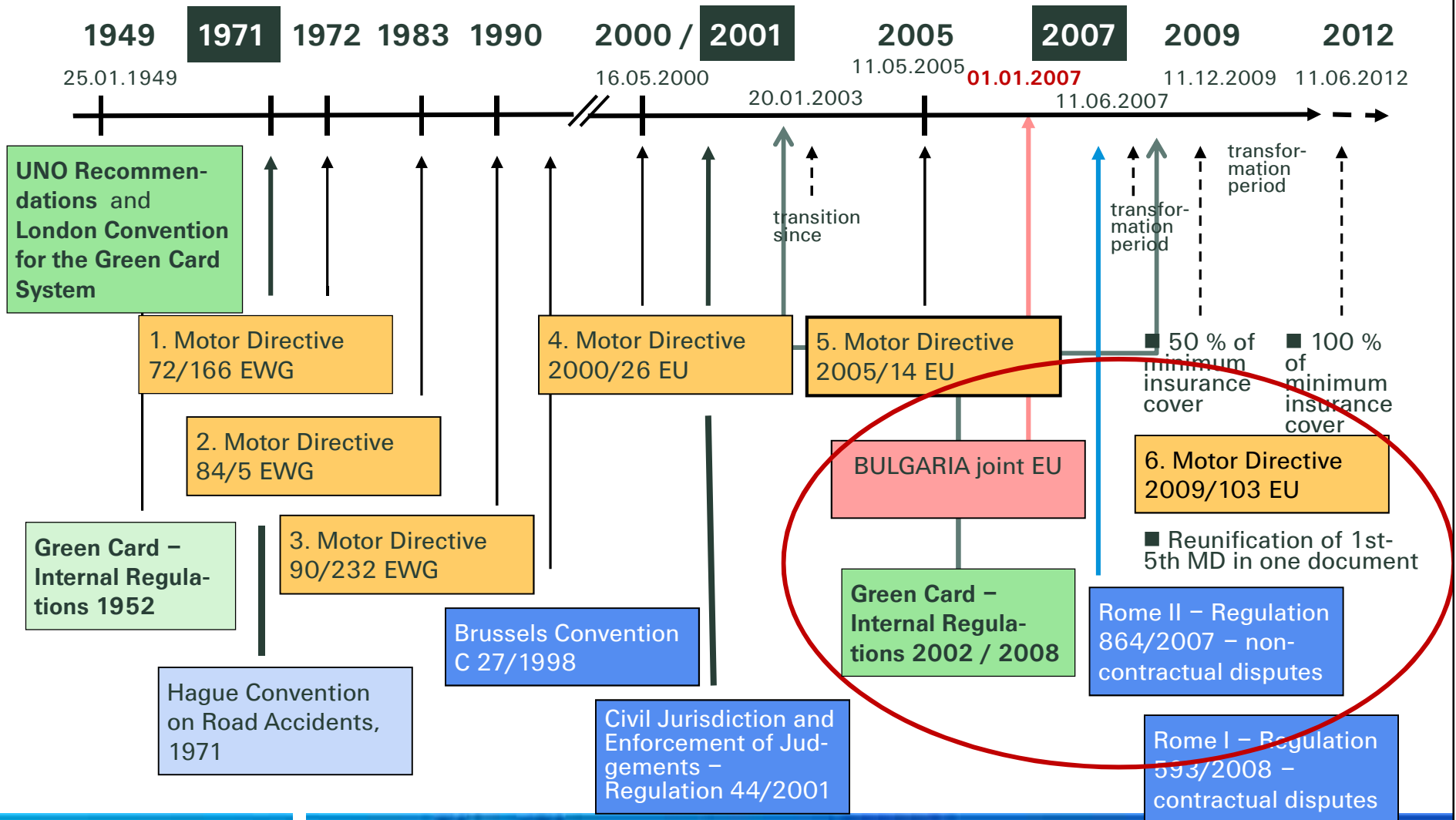
Source: Swiss National Bureau of Insurance, [www.nbi.ch](http://www.nbi.ch)



# Cross Border Claims

- Legal Regulations
- Minimum and Policy Limits
- Differentiation between Green Card and EU-MID Claims

# Chronology and System of Legal Regulations Cross Border Motor Claims Liability



## Motor Insurance Limits in EU-Member States (shorter EU + GC System open)

- Green Card Regulations
  - Different national minimum limits depending from the country of accident
  - Scope between EUR 3.940 for personal injuries in Russia and unlimited cover in Norway
  
- EU-Motor Insurance Directive (2009/103/EU-16.09.2009) prescribes limits for
  - **Personal injuries:** EUR 1 mio. per victim, or EUR 5 mio. per accident
  - **Property damages:** EUR 1 mio. per accident
  
- Amounts were adjusted by EU Memorandum 2010/C332/01 from EUR 1 mio. to EUR 1,12 mio. and EUR 5 mio. to EUR 5,6 mio.
  
- Transition period will terminate **11.06.2012** – new limits in most countries already implemented (Bulgaria change in June)

# Inception of Minimum Limits in EU



Bureau Code	5th MID - for EEA Bureaux only			Minimum amount of insurance coverage			
	5th MID implemented	Transitional period applied?		Bodily injury		Property Damage	
		Yes/No	until (date)	Per Person	Per Accident	Per Person	Per Accident
Austria (A)	Yes	No	/		€ 5.000.000		€ 1.000.000
Belgium (B)	Yes	No	/		Unlimited		€ 100.000.000
Bulgaria (BG)	Yes	Yes	31 December 2011	€ 1.000.000	€ 5.000.000		€ 1.000.000
Cyprus (CY)	Yes	No	/		€ 30.000.000		€ 1.000.000
Czech Republic (CZ)	Yes	Not in respect of new MTP L insurance contracts	In respect of old MTP L policies yes as such have to be brought in line with the new amounts by 1st June 2012 at latest	€ 1.417.000			€ 1.417.000
Germany (D)	Yes	No	/		€ 7.500.000		€ 1.000.000
Denmark (DK)	Yes	No	/		€ 13.964.000		€ 2.819.000
Spain €	Yes	No	/		€ 70.000.000		€ 15.000.000
Estonia (EST)	Yes	Yes	11 June 2012		€ 2.500.000		€ 500.000
France (F)	Yes	No	/		Unlimited		€ 1.000.000
Finland (FIN)	Yes	No	/		Unlimited		€ 3.300.000
United Kingdom (GB)	Yes, except for Gibraltar	No	/		Unlimited		€ 1.197.000
Greece (GR)	Yes	Yes	01 June 2012	€ 750.000			€ 750.000
			from 01 June 2012	€ 1.000.000			€ 1.000.000
Hungary (H)	Yes	Yes	31st December 2007		€ 5.286.000		€ 1.762.000
Italy (I)	Yes	Yes	31 December 2011		€ 2.500.000		€ 500.000
			from 01 January 2012		€ 5.000.000		€ 1.000.000
Ireland (IRL)	Yes	No	/		Unlimited		€ 1.000.000
Luxembourg (L)	Yes	No	/		Unlimited		Unlimited
Litunia (LT)	Yes	Yes	11 June 2012		€ 2.500.000		€ 500.000
Latvia (LV)	Yes	Yes	31 May 2012		€ 2.500.000		€ 500.000
Malta (M)	Yes	Yes	11 June 2012		€ 2.500.000		€ 500.000
Netherlands (NL)	Yes	No	/		€ 5.000.000		€ 1.000.000
Portugal (P)	Yes	Yes	11 June 2012		€ 2.500.000		€ 750.000
Poland (PL)	Yes	Yes	11 June 2012		€ 2.500.000		€ 500.000
Romania (RO)	Yes	Yes	01 January 2012		€ 2.500.000		€ 500.000
			from 01 January 2012		€ 5.000.000		€ 1.000.000
Sweden (S)	Yes	No		Global amount of € 32,636,000 / SEK 300,000,000 per incident			
Slovakia (SK)	Yes	Yes	31 December 2011		€ 2.500.000		€ 500.000
			from 01 January 2012		€ 5.000.000		€ 1.000.000
Slovenia (SLO)	Yes	Yes	31 December 2011		€ 3.700.000		€ 750.000
			from 01 January 2012		€ 5.000.000		€ 1.000.000

Source: Swiss National Bureau of Insurance, [www.nbi.ch](http://www.nbi.ch) (with adjustments per 01.01.,2012)

## Minimum Limits in Non-EU Green Card States

Bureau Code	Minimum amount of insurance coverage in non-EU states (as reported by the Bureaux at 20/09/2010)							
	Bodily injury				Property Damage			
	Per Person		Per Accident		Per Person		Per Accident	
	EUR	NC	EUR	NC	EUR	NC	EUR	NC
Albania (AL)	€ 144.000	LEK 20,000,000	€ 360.000	LEK 50,000,000			€ 36.000	LEK 5,000,000
Andorra (AND)	Global amount of € 50,000,000 per incident							
Bosnia-Herzegovina (BIH)			€ 511.000	KM 1,000,000			€ 178.000	KM 350,000
Belarus (BY)	€ 10.000	BYR 39,186,000	€ 30.000	BYR 117,558,000	€ 10.000	BYR 39,186,000	€ 30.000	BYR 117,558,000
Switzerland (CH)	Global amount of € 3.793.000 / CH 5,000,000 per incident							
Liechtenstein (FL)			€ 5.000.000				€ 1.000.000	
Croatia (HR)			€ 481.000	HRK 3,500,000			€ 206.000	HRK 1,500,000
Israel (IL)	Unlimited				No compulsory insurance			
Islamic Republic of Iran (IR)	€ 39.600	IRR 530,000,000	Unlimited				€ 974	IRR 13,000,000
Iceland (IS)			€ 11.491.000	ISK 1,780,000,000			€ 1.743.000	ISK 270,000,000
Morocco (MA)	Global amount of € 869,000 / DH 10,000,000 per incident							
Moldavia (MD)	€ 21.500	MDL 350,000	€ 43.000	MDL 700,000			€ 30.700	MDL 500,000
F.Y.R.O.M. (MK)			€ 100.000	MKD 6,117,000			€ 50.000	MKD 3,059,000
Russia (RUS)	€ 3.940	RUB 160,000			€ 2.950	RUB 120,000	€ 3.940	RUB 160,000
Serbia (SRB)			€ 76.500	USD 100,000			€ 153.000	USD 200,000
Tunisia (TN)			Unlimited				Unlimited	
Turkey (TR)	€ 76.700	TRY 150,000	€ 384.000	TRY 750,000	€ 7.600	TRY 15,000	€ 15.350	TRY 30,000
Ukraine (UA)	€ 9.500	UAH 100,000	Unlimited		€ 4.750	UAH 50,000	€ 23.760	UAH 250,000

Source: Swiss National Bureau of Insurance, [www.nbi.ch](http://www.nbi.ch) (with adjustments per 01.01.,2012)

## Differentiation of Green Card and EU-Motor Ins. Directive Claims

### Green Card Claim

- Losses and accidents caused by a foreigner abroad in a foreign country (EU-State or non-EU-State)
- Relevant Limit:
  - Non\_EU-States: National GC limit
  - EU-States: policy limit of the liable car (if higher than the national limit)
- Loss adjustment and settlement within the limits in the country of accident (art. 3 IR)
- Settlement in excess of the applicable limit only after consultation of the foreign Bureau or MTPL insurer (art. 3.5 IR) – (only if no EU-State is involved)

### 4<sup>th</sup> MID (EU) Claim

- Losses and accidents with a foreigner caused by a native in his home country (EU-State)
- Relevant Limit:
  - National limit of the country of accident or the applicable policy limit of the insured cars
- Loss adjustment and settlement in the country of the victim

## Settlement of Claims under Green Card and EU-Motor Ins. Directive

### Green Card Claim

- Sole responsibility of
  - National Bureau of the country of accident
  - Correspondent (if nominated) in the name of the bureau
- Settlement in conformity with the national law of the country of accident
- Complete autonomy of the Bureau and Correspondent (art. 3.4 para 1 IR)
  - no interference or advice of the foreign Bureau or the foreign liable MTPL insurer
  - generates often lack of information and partly late advice
- Direct action against
  - National Green Card Bureau or
  - Correspondent

### 4<sup>th</sup> MID (EU) Claim

- Responsibility for the settlement
  - national representative of the insurer
  - in maximum 3 months
- Settlement in accordance with
  - applicable IPR and
  - national law of the victim (tendency to the country of litigation)
- Direct action against the foreign MTPL-insurer (not the representative!)
  - at the place of residence of the victim or
  - at the place of the usual jurisdiction of the MTPL-insurer

## Refund of Claims Payments

### Green Card Claim

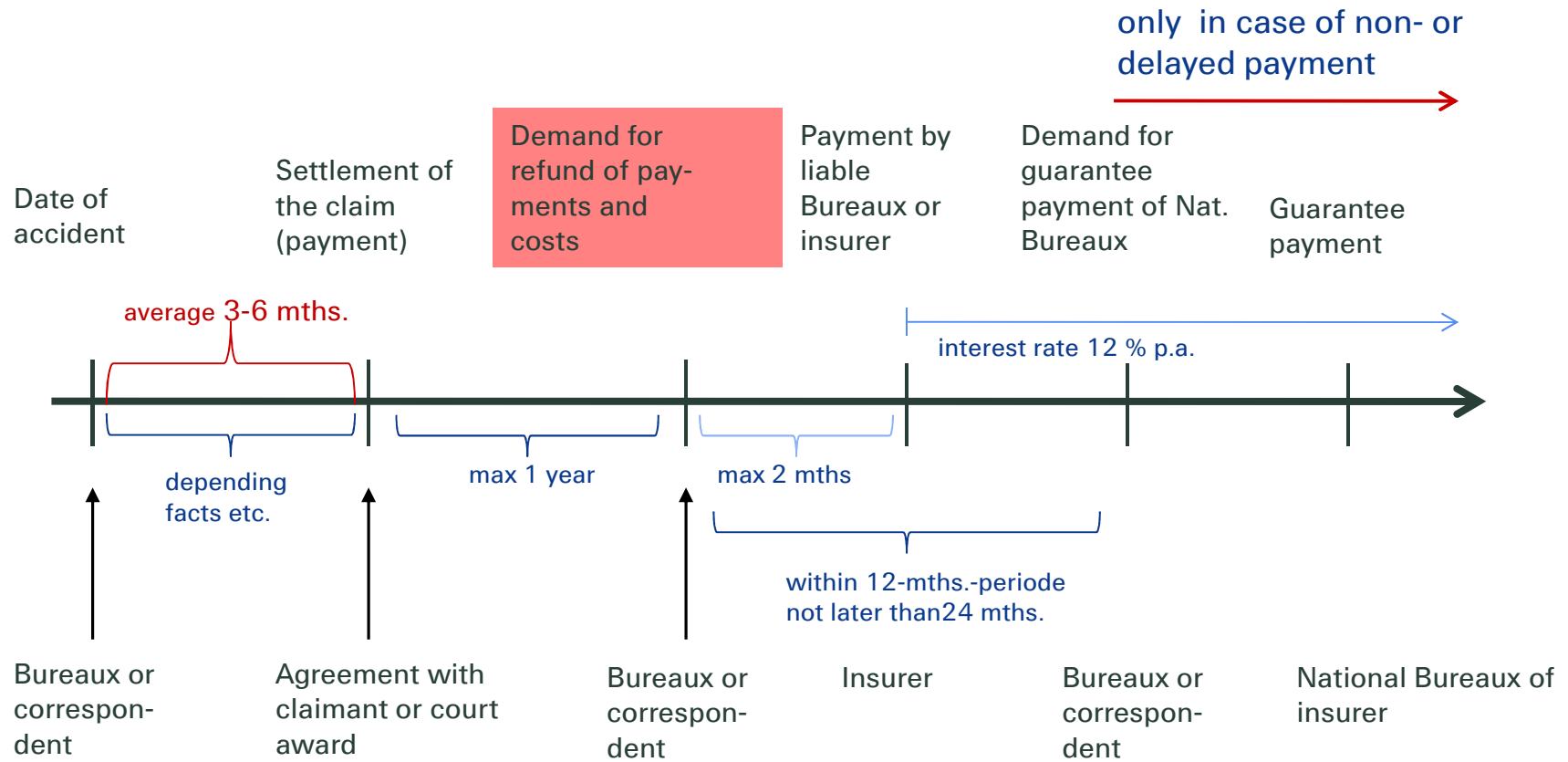
- Guarantee of the Bureau who's member issued the Green Card for expenses and costs (art. 6 IR)
- Direct reimbursement between Correspondent and foreign MTPL-insurer (art. 4.7 IR) -
- Requirements for reimbursement and specifications only re
  - amount paid as compensation
  - sum of costs for external fees and own handling fee
  - no detailed information to loss
- Refund due 2 months after the date of first demand
- In case of delay interest of 12% from the date of first demand (art. 5.2.IR)

### 4<sup>th</sup> MID (EU) Claim

- Direct refund of the representative by the foreign MTPL-insurer
- Proceedings directly agreed in the contractual line between MTPL-insurer and representative



# Phases of Refund of Green Card Claims



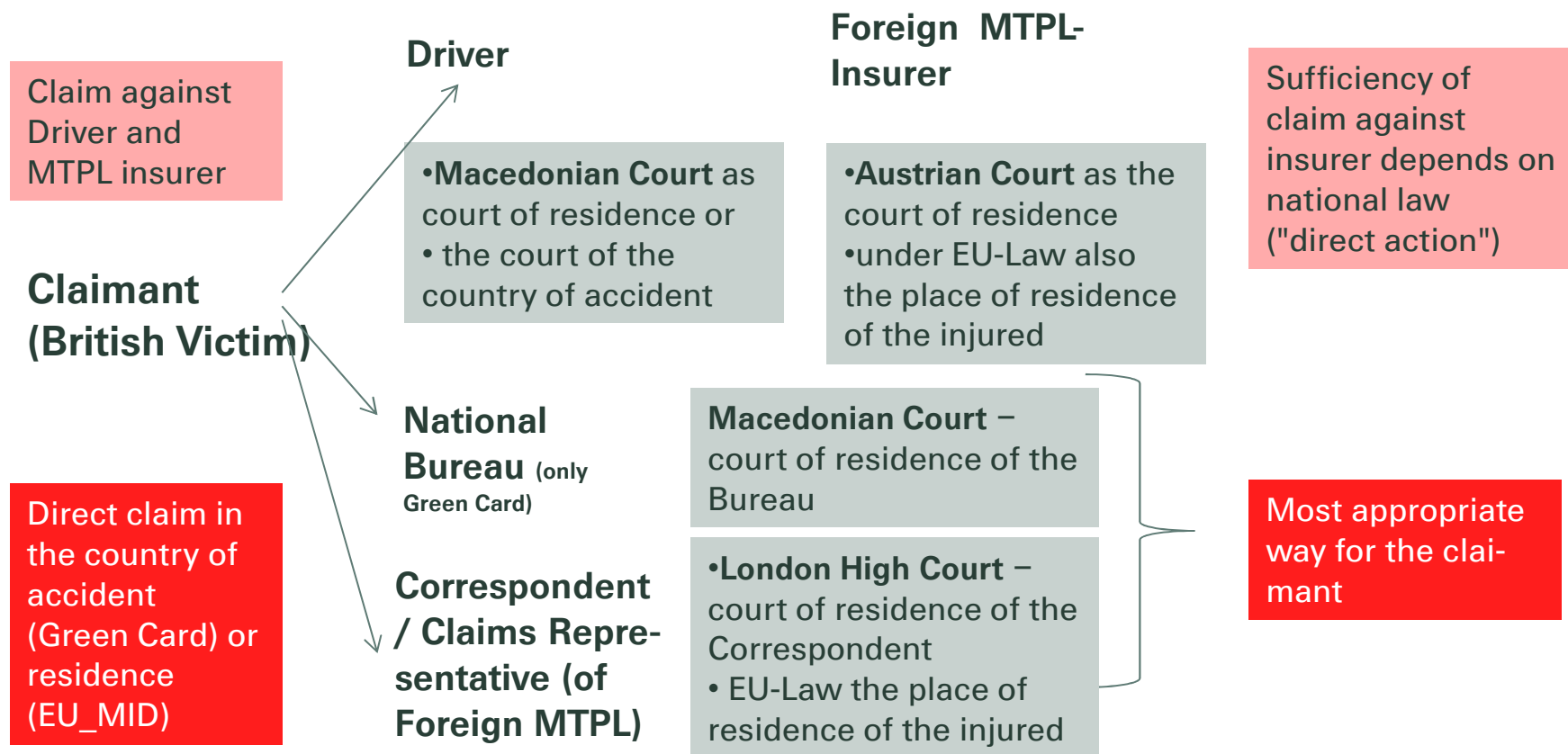
# Direct Action and Practice of Jurisdiction

## Trends in Jurisdiction

- We note increasing number of places of jurisdictions and decisions of courts outside the country of accident
- In Green Card claims places of jurisdiction are still
  - the country of accident and
  - the place of residence of the liable driver and insurer (non-EU-States)
- In Green Card claims with EU-relevance and claims under the EU-MID additional
  - additional place of jurisdiction in the country of residence of the victim by EU-law (4<sup>th</sup> EU-MID, EU-Reg. 44/2001 and Brussels Convention)
  - judicial practice of courts shows increasing application of national insurance and tort law
- Determination of applicable tort law by Rome II – EU regulation 864/2007
  - law of the country where the damage occurs; not necessarily the country of the event (art. 4 para 1)
  - law of the country of a common and habitual residence of the participants (art. 4 para 2)
  - law of the country of a potential contractual context , e.g. travel group (para3).

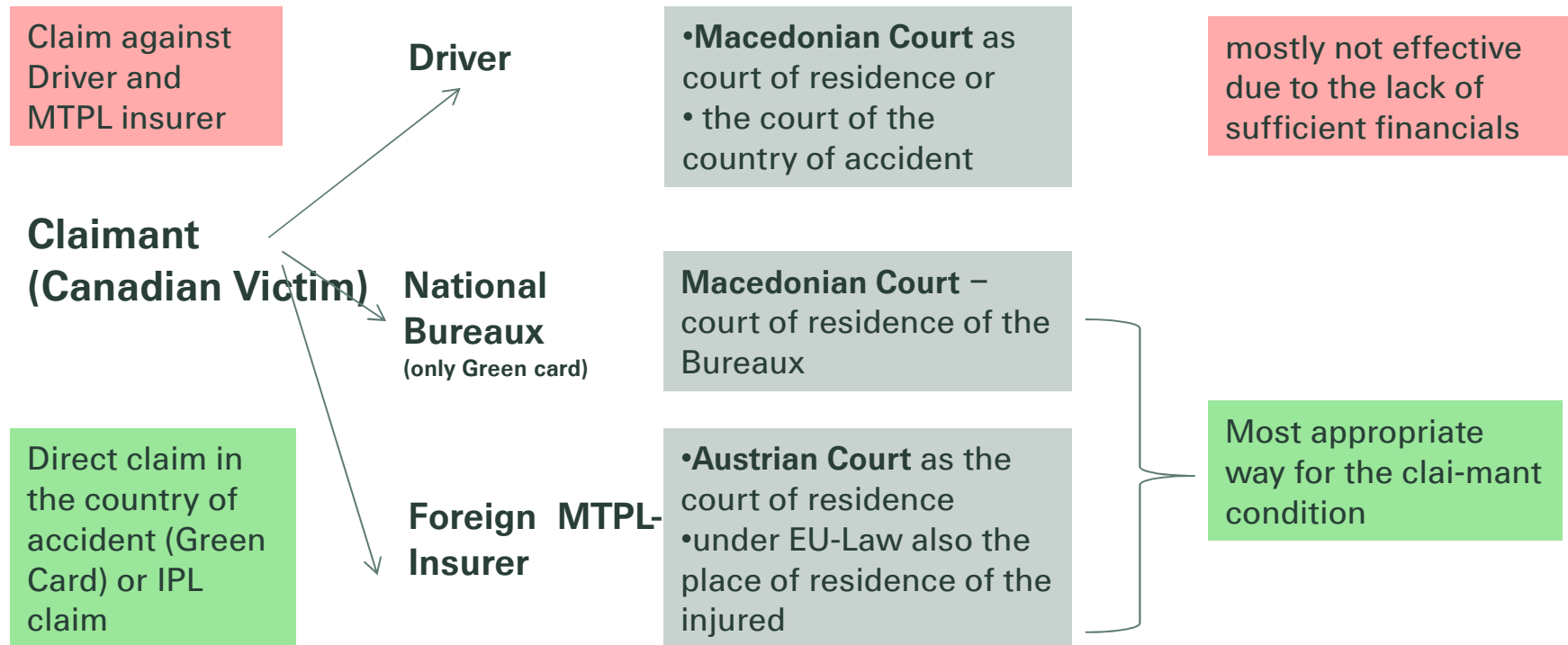
## Legal Ways to Enforce Claims

Assumption: Possibilities of the British victim (claimant1) for legal action



## Legal Ways to Enforce Claims

Assumption: Possibilities of the Canadian victim (claimant2) for legal action



# Bodily Injury Claims – Cost Drivers

- Assistance and Care Costs
- Pain & Suffering

## Swiss Re Bodily Injury Landscape (Model)

### Exemplary Case

- Injured person: male, 30 years old
- Family status: married, wife at home without own income, two children ( 5 and 2 years old)
- Average income of an employee
  - Scenario: 100% disabled
- Bodily injuries:
  - Tetraplegic without artificial respiration
  - (further scenarios in SR BI Landscape: quadraplegic and fatality)
- Needed care:
  - 12 hrs. care through external assistance
  - addit. mentoring assistance (Reha etc.)
- Additional actions:
  - needed rebuildings at home

### Cost factors (Calculation basis of Swiss Re)

- Loss of Earnings
  - Income on a monthly basis with increase factors (Brutto- / Netto)
- Assistance
  - Care costs, esp. long-term care without medical costs
- Pain and Suffering (PS)
- Remainder (further costs)
  - Medical costs
  - Housekeeping
  - Pain & Suffering of relatives
  - Rebuilding of house or premises
  - Other specific costs
  - Attorney's and court fees

# Swiss Re Bodily Injury Landscape – European Comparison\*) /1 –

\*) Tetraplegic (facts and calculation according Swiss Re Bodily Injury Model – see below

- Black line shows comparable increase of wages, comparing cost level 2010 (assistance) – basis Germany - is marked with a dotted red line
- Special cost drivers in EU
  - increase of assistance, e.g. care costs
  - increase of pain & suffering, esp. in young EU-states
- No coherent development in EU-states, depending to different compensation systems
  - e.g. Italy dominated by claims of relatives (REM) but less care costs

LOE=Loss of Earnings  
 ASS=Assistance  
 PS=Pain & Suffering  
 REM=Remainder





## Swiss Re Bodily Injury Landscape – European Comparison\*) / 2 –

- Moderate development of costs and pain & suffering in Austria – trends comparable to Germany in care and assistance but below German level, pain & suffering with max. EUR 220.000 in jurisdiction significantly lower.
- Young EU- countries like CZ or HU are still significantly below the comparable level, but partly trends of increase of costs esp. pain & suffering are recognized, e.g. recent court decisions in CZ (with a trend to german levels) show trend for increase but initiative of the CZ motor bureau for a proper calculation gives a firm basis and seems to stop the stated development.



\*) Tetraplegic

— Lohnkostenentwicklung

## Pain & Suffering – Scope

- Different systems of compensation of Pain & Suffering in EU-states
  - strict case law ("in the discretion of the judge") in UK, Germany, Austria, Poland, Slovenia etc.,
  - tables prescribed by court practice (as above) in France, Italy etc.,
  - tables legally prescribed by public regulation (Barema) in Belgium, Spain or Slovakia.
  
- Components for compensation of pain & suffering (jurisdiction of most states) concern all aspects of
  - extent and time of pain – non-consciousness usually does not affect the claim,
  - extent of medical treatment and disfigurement (awareness no precondition)
  - all economic circumstances of living ("quantum must be reasonable and correspond to the current cost of living" – Polish supreme Court) and
  - the degree of fault (severity of the act).
  
- Strict personal right of the victim –
  - compensation cannot be claimed by relatives or another third party
  - claim can be transferred to heirs – partly under the condition that the claim was acknowledged previously or is pending at court.

## Compensation of Relatives

- Relatives have in nearly all European countries (except e.g. Germany, Netherlands or Scand.) an own rights (claim) of compensation in case of fatality of a close family member
  - close social and familiar relationship – but different interpretation from joint household (Austria, UK) up to the wider legal family relationship (Italy, Greece)
  - amounts determined by law (e.g. Czech Code Civil art. 444) or tables created by mixed board (judges, administration, insurers and social funds) or by court decisions / case law (Austria etc.) – in the average of T€ 15-30 for parents or spouse, lower for brothers and sisters (but exemption Greece Areopag)
  - amounts also prescribed by judicially decided tables (France, Italy) – partly great difference in the amounts due to different legal compensation concepts

# Large Losses

## Mont Blanc Tunnel Fire – March 24, 1999



- Belgian truck carrying flour and margarine caught fire in the middle of the tunnel; creating intense heat and toxic fumes
- Fire duration 53 hours; 3 year tunnel closure
- **Damage Estimate – EUR 973M**

### Damage:

Value in EUR

39 fatalities

27.000.000

34 injured

23 trucks, 12 cars destroyed

6.000.000

Property damage to tunnel and road

750.000.000

Loss of tunnel toll

Loss of road toll

70.000.000

Damage claimed by regional government

120.000.000

Estimate on public accessible information and data

## Tauern Tunnel Fire – May 29, 1999



- Truck crashed into four cars waiting at a traffic light in the tunnel
- Force of collision pushed cars into the back of another truck carrying containers of spray paint
- Resulted in a series of explosions; fire duration 16 hours
- **Damage Estimate – EUR 46M**

### Damage:

Value in EUR

12 fatalities  
 49 injured

14.500.000

16 trucks, 24 cars destroyed

5.000.000

Property damage to tunnel and road

6.5000.000

Loss of tunnel toll

20.000.000

Estimate on public accessible information and data

## Wiehltal Bridge – August 26, 1999



- Intertoxicated driver without license lost control of the Wiehltal bridge (elevation 100m) and skidded into a truck trailer loaded with 30.000 litres of gasoline
- Trailer fell over and exploded; fire with temperature of 1,300 °C melted and deformed the steel frame of the bridge
- Repair of the mostly heavily damaged 20m section of the bridge were impossible
- Reconstruction carried out via procedure adapted from shipping that had never been applied or tested in bridge work before
- **Cost of traditional method** (demolition and rebuilding) was estimated with **EUR 30M**

### Damage:

### Value in EUR

1 fatality

>500.000

1 trailer truck destroyed

>100.000

Property to bridge

8.0000.000

Estimate on public accessible information and data

# Lambrecht Rail Crash – August 17, 2010



- Driver of a Garbage truck gave way to an oncoming vehicle and tumbled down the unsecured embankment onto the railway tracks.
- An oncoming high speed train (ICE) with 320 passengers travelling at a speed of around 90 km/h (top speed > 250 km/h) collided with the overturned truck and derailed.
- **Estimated Damage – EUR 37M**

Damage:	Value in EUR
14 injured	1.000.000
Property damage to ICE	27.000.000
Business interruption ICE	7.000.000
Property damage and business interruption to infrastructure	1.500.000
Other damage	500.000

Estimate on public accessible information and data



## Various Bus Accidents



### Germany – September 26, 2010

- Polish bus on the way back to Poland was pushed against a bridge pillar on the German highway A 10 close to Berlin
- The accident was caused by a car which entered the highway careless
- 11 fatalities, 31 injured persons hereof 16 severe injured
- **Estimated Damage – EUR 10M**



### Austria – August 11, 2004

- British tourist bus with 48 passengers was pushed from the road and overturned multiple on a 30m deep blanket
- An overhauling car caused the accident
- 5 fatalities, 35 injured persons hereof 16 severe injured
- **Settlement of the loss – EUR 8M** (original reserve was >EUR 12 M)



### France – July 12, 2007

- A Polish pilgrim bus with 26 passengers brake through the crash barrier and plunged in a more than 20m canyon of the French alpes
- The bus caught fire and was totally destroyed
- All 26 passengers and the driver died
- **Estimated Damage – below EUR 2M** (settlement on the basis of the travel agency's liability insurance – "contractual context" see Rome II)

## ...what's important:

- There is no single and unique methodology for bodily injury claims
- The national insurance practice is one of the sources for the settlement of bodily injury claims – these can be lump sum agreements as well as annuity payments
- Individual requirements of the victim as well as facts of the accident and specialities of the relevant applicable law

## Personal Data

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Thank you



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