

Common Compendium B - Belgium

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Country Code: B**Organisation (s):** GCB/GF/CB

1. Basic Information (GCB/GF/CB)

This section is aimed at all three organisations. The questions are repeated three times to be filled out by each organization

1.1. If relevant, please indicate the name of the organisation that operates as:

Green Card Bureau: Bureau Belge des Assureurs Automobiles – Belgisch Bureau van de Autoverzekeraars

Guarantee Fund: Fonds Commun de Garantie Belge – Belgisch Gemeenschappelijk Waarborgfonds

Compensation Body: Fonds Commun de Garantie Belge – Belgisch Gemeenschappelijk Waarborgfonds

Information Centre: Fonds Commun de Garantie Belge – Belgisch Gemeenschappelijk Waarborgfonds

1.2. What is the legal status/form of your organisation? Only one option can be selected by each organisation.

Please answer in your capacity as Green Card Bureau:

Non-profit organisation

Association of legal entities

Limited liability company

Other. Please specify. Click or tap here to enter text.

Please answer in your capacity as Guarantee Fund:

Non-profit organisation

Association of legal entities

Limited liability company

Other. Please specify. Click or tap here to enter text.

Please answer in your capacity as Compensation Body:

Non-profit organisation

Association of legal entities

Limited liability company

Other. Please specify. Click or tap here to enter text.

1.3. How is the ownership of your organisation structured? Only one option can be selected by each organisation.

Please answer in your capacity as Green Card Bureau:

Owned/controlled by all Members equally

Part of state government

Other. Please specify. Owned/controlled by Members with a right to vote proportionally to their market share based on the number of insured (MTPL) vehicles

Please answer in your capacity as Guarantee Fund:

Owned/controlled by all Members equally

Part of state government

Other. Please specify. Owned/controlled by Members with a right to vote proportionally to their market share based on the number of insured (MTPL) vehicles

Please answer in your capacity as Compensation Body:

Owned/controlled by all Members equally

Part of state government

Other. Please specify. Owned/controlled by Members with a right to vote proportionally to their market share based on the number of insured (MTPL) vehicles

1.4. How is the membership/governance of your organisation structured? Only one option can be selected by each organisation.

Please answer in your capacity as Green Card Bureau:

Only insurance undertakings are Member to the organisation

Mixed membership of insurance undertakings and other members

Only Members participate in the governance

Others may participate in the governance

Other. Please specify. Click or tap here to enter text.

Please answer in your capacity as Guarantee Fund:

Only insurance undertakings are Member to the organisation

Mixed membership of insurance undertakings and other members

Only Members participate in the governance

Others may participate in the governance

Other. Please specify. Click or tap here to enter text.

Please answer in your capacity as Compensation Body:

Only insurance undertakings are Member to the organisation

Mixed membership of insurance undertakings and other members

Only Members participate in the governance

Others may participate in the governance

Other. Please specify. [Click or tap here to enter text.](#)

1.5. Is your organisation a VAT liable entity? Only one option can be selected by each organisation.

Please answer in your capacity as Green Card Bureau:

Yes

No

If answered yes to question 1.5., please indicate the VAT number: BE0409280711

If answered yes to question 1.5, is the service of claim handling VAT exempted?

Yes

No

In what instances is VAT refundable? Please specify. None

Please answer in your capacity as Guarantee Fund:

Yes

No

If answered yes to question 1.5., please indicate the VAT number: BE0407229655

If answered yes to question 1.5, is the service of claim handling VAT exempted?

Yes

No

In what instances is VAT refundable? Please specify. None

Please answer in your capacity as Compensation Body:

Yes

No

If answered yes to question 1.5., please indicate the VAT number: BE0407229655

If answered yes to question 1.5, is the service of claim handling VAT exempted?

Yes

No

In what instances is VAT refundable? Please specify. None

1.6. For a full overview of your national GCB/GF/CB please provide the link of your website:

GCB: <http://www.bbaa-bbav.be/>

GF: <https://www.fcgb-bgwf.be/>

CB: <https://www.fcgb-bgwf.be/>

The following questions are only aimed at Guarantee Funds and Compensation Bodies .:

1.7. On what legal basis is your organisation authorised to carry out compensation?

Please answer in your capacity as Guarantee Fund:

Please provide the name and date of the law: Loi du 21 novembre 1989 relative à l'assurance obligatoire de la responsabilité en matière de véhicules automoteurs = Wet van 21 november 1989 betreffende de verplichte aansprakelijkheidsverzekering inzake motorrijtuigen = Law of 21 November 1989 relating to insurance against civil liability in respect of the use of motor vehicles

Please answer in your capacity as Compensation Body:

Please provide the name and date of the law: Loi du 21 novembre 1989 relative à l'assurance obligatoire de la responsabilité en matière de véhicules automoteurs = Wet van 21 november 1989 betreffende de verplichte aansprakelijkheidsverzekering inzake motorrijtuigen = Law of 21 November 1989 relating to insurance against civil liability in respect of the use of motor vehicles

1.8. Is compensation by your organisation subsidiary? Only one option can be selected by each organisation.

Please answer in your capacity as Guarantee Fund:

Yes

No

Please provide further explanations: Click or tap here to enter text.

If the compensation is subsidiary, which entities are excluded? Click or tap here to enter text.

Please answer in your capacity as Compensation Body:

Yes

No

Please provide further explanations: Click or tap here to enter text.

If the compensation is subsidiary, which entities are excluded? Click or tap here to enter text.

2. Applicable law (GCB/GF/CB)

This section is aimed at all three organisations. You are invited to complete this section in cooperation amongst your organisations, if applicable. Only one common answer is expected to be provided.

2.1. Provide the title and if applicable, the number of your national law which forms the basis for making a claim (Road Traffic Act, Insurance Law, Liability Law, etc.)

- Royal Decree of 1 December 1975 containing general regulations on the police of road traffic and the use of public roads
- Law of 21 November 1989 relating to insurance against civil liability in respect of the use of motor vehicles
- Royal Decree of 11 July 2003 determining the authorization and functioning of the Belgian Bureau and Guarantee Fund
- Law of 4 April 2014 relating to insurances
- Old Civil Code, Title IV. Non-contractual obligations (Provisions still in force since the introduction of the recent Civil Code)

2.2. What liability regime do your organisations operate with? Only one option can be selected.

Fault based liability

Strict liability

Other . Please specify. - If motorized injured party: fault based

- If non-motorized injured party (pedestrians, cyclists, passengers, ...) : regime based on the involvement of a motor vehicle. The fault of the injured party is irrelevant unless the non-motorized injured party voluntarily provoked the accident and its consequences (exception: injured party less than 14 years old). Only bodily injury is compensated on the basis of "involvement". Compensation of material damage requires, in principle, the establishment of a fault. Special regime: when two or more motor vehicles are involved and it is impossible to determine which party is liable (based on Liability Law) then the innocent victims are entitled to claim compensation to the MTPL insurers of those vehicles that might be liable but regarding which it is impossible to determine their fault. These MTPL insurers are jointly in debt of the

compensation. In this regard claims by innocent victims may also be addressed to public legal entities (e.g., the State, Regions, some Public Transport entities, ...) exempted from compulsory MTPL insurance.

2.3. Are there any restrictions to the activities of your organisations regarding the way the law applies to visitors with regard to:

Country of residence. Please specify. [Click or tap here to enter text.](#)

Nationality. Please specify. [Click or tap here to enter text.](#)

Other. Please specify. GCB/GF: no restrictions, but the country of residence may influence the rules applied regarding international private law (in Belgium the “Hague Convention” is applied); CB: the visitor is supposed to make a claim against the Compensation Body of the country of its residence that will be refunded by the Belgian Compensation Body. The Belgian Guarantee Fund being however also the Belgian Compensation Body it is possible that a visitor may be victim of an accident provoked in Belgium by an uninsured or unidentified motor vehicle and this victim is allowed to address a claim directly to the Belgian Guarantee Fund regardless the state of residence.

2.4. For what types/categories of motor vehicles is insurance compulsory?

For motor vehicles as defined in Article 1 of the Law of 21 November 1989 relating to insurance against civil liability in respect of the use of motor vehicles

Are there any exemptions? Please specify. Exempted from compulsory MTPL insurance are the motor vehicles intended for travel on land, which propelled by their pure mechanical power have a maximum speed of 25 km/h or less. Mopeds class A are not exempted. Motor vehicles which can be used for other purposes than the use consistent with the vehicle’s function as a means of transport are not exempted (e.g. bulldozer, excavator on wheels...) whatever their maximum speed. Certain entities belonging to the Government or closely associated with it are exempted from compulsory MTPL insurance. These include the State, the Regions and companies under public law, such as the Société Nationale des Chemins de Fer Belges.

2.5. Does the MTPL insurance law apply to private areas?

Yes

No

How do you define a private area according to your national law? Please specify. Those areas that are not considered to be a part of a public road, neither a public area nor area open to several categories of users that have a right of access. The concept is factual: even if an area is marked by a sign “private terrain” but it appears that several categories of persons have access to it without compulsory permission of the owner, the sign will not determine the status of “private area”. Moreover, it is a legal requirement that every MTPL insurance company’s contract also covers damage caused in a private area.

**2.6. What is the minimum amount of cover required for material and personal injury damage?
State the minimum value of sum insured, the date as of which it is in effect from and please indicate whether the limit is per accident or per victim:**

Damage arising from bodily injury : unlimited. Material damage : 100.000.000€ but indexed, meaning that as from 1 January 2021 the amount became 129.550.507,49€ per accident. There is no specific limit per victim.

2.7. In which cases is an MTPL-insurer permitted by Law to reject/refuse cover for a third party claim? Please specify for the below-mentioned sub-items:

Accident caused by stolen vehicles: The insurance contract may exclude from the cover: the liability of whoever has taken control of the vehicle through theft, assault or dishonestly receiving stolen goods.

Accident caused by drunk driving: no

Accident caused with intent (for instance homicide, suicide): no

Accident caused by a terrorist attack: no

Accident caused by a driver without a license: no

Other instances: - Force majeure: yes (damages at charge of the Guarantee Fund).

- Number of transported passengers exceeding the limits determined by Traffic Law: no.

- Lack of payment of premium: no, not as such if the insurer does not take the initiative to terminate the contract.

- Technical modifications to the insured vehicle: no.

- Omission to report all the specific elements or nature of the risk: no.

2.8. Does your national law require cover in respect of passengers carried in the vehicle?

Yes

No

Please specify. [Click or tap here to enter text.](#)

Is there any category of passenger excluded from this cover?

Yes

No

Please specify. [Click or tap here to enter text.](#)

2.9. Does your national law require the insurer and/or Bureau to make an offer of compensation to a claimant within a specified time?

Yes

No

If yes, what is the nature of the damages to which the time-limit applies? All damages

If yes, what is the specific time-limit? - If the liability (or the involvement of the insured vehicle regarding bodily injury suffered by non-motorized injured parties) is not disputed and the damages are quantified and not disputed, within 3 months of the date that the injured party presented his claim for compensation.

- If the liability (or the involvement of the insured vehicle regarding bodily injury suffered by non-motorized injured parties) and/or the damages are disputed, the insurer/GCB must comply with the obligations regarding motivated reply within 3 months, as transposed in Belgian law from MID. The penalty in case of absence of motivated reply is severe.

2.10. What is the statute of limitation periods (prescription) according to your national law against the MTPL insurer when there is a direct action?

The limitation period is 5 years from the date of the event having caused the damage or, in case of a penal offense, from the date of this offense. If the injured party proves that he only became aware of his right to act against the insurer at a subsequent date, the period only starts to run from that date without exceeding 10 years from the date of the event having caused the damage.

2.10.1. When does the period of limitation begin and when does it expire?

In respect to material damage: The limitation period is 5 years from the date of the event having caused the damage or, in case of a penal offense, from the date of this offense. If the injured party proves that he only became aware of his right to act against the insurer at a subsequent date, the period only starts to run from that date without exceeding 10 years from the date of the event having caused the damage.

In respect to bodily injuries: The limitation period is 5 years from the date of the event having caused the damage or, in case of a penal offense, from the date of this offense. If the injured party proves that he only became aware of his right to act against the insurer at a subsequent date, the period only starts to run from that date without exceeding 10 years from the date of the event having caused the damage.

2.10.2. Are there any provisions in your national law which allow the suspension/extension of the limitation period? How about interruption? Please specify.

The period of limitation is suspended in case of minors (until 18 years old), persons declared incapable of understanding (until this status is withdrawn), persons that for reasons of force majeure are prevented to make a claim. The injured party interrupts the limitation of his/her action by informing the insurer of his/her

wish to obtain compensation for the damage suffered by him/her, until the insurer notifies the injured party in writing of its decision to compensate, or not to compensate.

**2.10.3. Are there special circumstances in your national law regarding statute of limitations?
Please describe in short :**

Limitation period regarding the Guarantee Fund is not a period of “prescription”, but of “foreclosure”.

Are there any differences for limitation period of liable party? Any legal claim for damage based on extra-contractual liability is subject to limitation at the expiry of 5 years from the day following the date at which the injured party got knowledge of his/her damage or its aggravation and of the identity of the person responsible for the said damage.

In any case, a limitation period applies at the expiry of 20 years from the day following the date of occurrence of the event having caused the damage.

The following questions are only aimed at Compensation Bodies. Please answer in your capacity as Compensation Body:

2.11. Under your legislation, does a victim who has requested compensation under Articles 24 and 25 of the Codified Motor Insurance Directive have the right to remedy against the decision/omission of the Compensation Body?

Yes

No

If yes, please specify (i.e. appeal to administrative authority, judicial review of the latter’s decision or action to court directly, i.e., passive procedural legitimacy of the Compensation Body):

action to Court directly

3. Trucks and trailers (GCB/GF/CB)

This section is aimed at all three organisations. You are invited to complete this section in cooperation amongst your organisations, if applicable. Only one common answer is expected to be provided.

3.1. Does your national law regulate trailers?

Yes

No

3.2. Liability

3.2.1. If the truck is coupled with the trailer, does liability strictly fall on the truck or is there a division of liability? Please specify.

Strictly speaking, according to common law it is possible to establish liability on the side of the truck, or the trailer, or both. However, the compulsory MTPL insurance Law considers the coupled trailer as a part of the truck which means that direct action is only possible against the insurer of the truck.

3.2.2. Can liability arise in case of an uncoupled trailer in an accident?

Yes

No

If yes, what are the conditions? The uncoupled trailer may e.g. have been parked illegally on the spot where the accident occurred and this could be the reason why a driver had a bad view on other road users. If the uncoupled trailer is the cause of an accident, then the MTPL insurer of this trailer has an obligation of compensation.

3.3. Do trailers need to bear a registration plate in your country?

Yes

No

If yes, please specify the conditions: Trailers must be registered, unless their maximum permissible mass does not exceed 750 kg.

3.4. Is the trailer given separate plates or does it bear the same registration plate as the truck?

Yes

No

Please specify. Trailers must be registered, unless their maximum permissible mass does not exceed 750 kg. If 750 kg or less, the trailer will bear the registration plate of the towing vehicle. If more than 750 kg, the trailer has to bear its own registration plate.

3.5. Does your country have an established practice in determining where (the component parts of) a truck-trailer combination bearing the registration plates of different countries is/are:

- "normally based"

Yes

No

Please specify. normally based in the country of the truck

- "originating from"

Yes

No

Please specify. [Click or tap here to enter text.](#)

3.6. Is there an obligation to insure the truck and the trailer separately?

Yes

No

If yes, please specify the conditions/exemptions: Trailers must be insured, unless their maximum permissible mass does not exceed 750 kg. A trailer can be insured with its own contract, but also in the same contract as the truck even if its mass exceeds 750 kg.

3.7. Do trailers need their own Green Card?

Yes

No

Please specify. Trailers need their own green card, unless their maximum permissible mass does not exceed 750 kg.

3.8. If there is no insurance obligation for a trailer in your country but liability is ascertained under the applicable law, does the Guarantee Fund intervene?

Yes

No

Please specify. If the trailer has a maximum permissible mass of 750 kg or less, it is not considered a motor vehicle and the Guarantee Fund does not intervene if an accident is provoked by a non-coupled trailer of this class. If a trailer which is not subject to the insurance obligation is coupled to a motor vehicle which is subject to the insurance obligation, the Guarantee Fund may intervene if the **truck** is not insured.

3.9. If there exists a separate liability, is a claimant obliged to make a claim against either the truck or the trailer?

Yes

No

Please specify. [Click or tap here to enter text.](#)

3.10.If there is a division of liability?

Yes

No

If yes, Please specify.

- **the criteria (i.e. joint/several liability, percentage):** [Click or tap here to enter text.](#)

- **on what is the division of liability based (i.e. law/jurisprudence/agreement between insurers)?**

[Click or tap here to enter text.](#)

3.11.Can the division of risk between truck and trailer be based on any other rules than liability (e.g. such as on the basis of double insurance)?

Yes

No

Please specify. [Click or tap here to enter text.](#)

3.12.Who is responsible for the damage to a connected trailer in case of a solo accident?

The towing unit

The trailer

Other.

Please specify. Depends. The accident may be caused by a fault/negligence of the driver, but the accident may be caused solely by a technical failure of the trailer and in that case we see no reason why the person liable for the truck should compensate the owner of the trailer. Please note however that pursuant to compulsory MTPL insurance law the MTPL insurer of the truck never has to compensate the damage to the trailer and the MTPL insurer of the trailer never has to compensate the damage to the truck. This results from the rule that the combination is considered to be one and only one vehicle. It is possible however to cover these damages on a pure contractual basis.

3.13. Who is responsible for the damage to a connected trailer in cases involving Third Parties?

The towing unit

The trailer

A third party, depending on the situation

Other. Please specify. Depends. The accident may have been caused by the third party which will have to compensate the truck and the trailer. The accident may be caused by a fault/negligence of the driver, but the accident may be caused solely by a technical failure of the trailer and in that case we see no reason why the person liable for the truck should compensate the owner of the trailer. Please note however that pursuant to compulsory MTPL insurance law the MTPL insurer of the truck never has to compensate the damage to the trailer and the MTPL insurer of the trailer never has to compensate the damage to the truck. This results from the rule that the combination is considered to be one and only one vehicle. It is possible however to cover these damages on a pure contractual basis.

4. Property Damage – Claims (GCB/GF/CB)

This section is aimed at all three organisations. You are invited to complete this section in cooperation amongst your organisations, if applicable. Only one common answer is expected to be provided.

4.1. For the following sub-items please state the different possibilities for a claimant to file a claim against a MTPL-insurer for property damage

4.1.1. How is vehicle damage covered with regards to repair costs?

Survey / expert report is needed.

It is commonly accepted that the insurer of the liable party should have the possibility to appoint an expert.

If for some reason this insurer refuses to appoint an expert, then the injured party will probably proceed to repair, and it will be almost impossible to dispute the damage afterwards.

If the injured party does not agree with the assessment, he may appoint an expert as well and in some cases, arbitration is the only solution.

The expert should evaluate whether repair is technically justified.

The expert should evaluate whether repair costs exceed the value of the damaged vehicle. This value is the replacement value, meaning the amount needed to acquire a vehicle of the same type, use, age, condition/quality etc., minus the value of the wreck. This is not the amount that the owner would have received if just before the accident the vehicle had been sold.

In Belgium most often the survey is done by the “direct insurer”, meaning the MTPL insurer of the non-labile party, because in Belgium a “direct settlement” agreement is applied since 50 years.

An expert report is only acceptable if it is made by a person capable of exercising the automotive expert profession as defined in the Act on the recognition and protection of the automotive expert.

4.1.2. How is vehicle damage covered with regards to total loss?

Survey / expert report is needed.

It is commonly accepted that the insurer of the liable party should have the possibility to appoint an expert.

If for some reason this insurer refuses to appoint an expert, then the injured party will probably proceed to replace the vehicle, and it will be almost impossible to dispute the damage afterwards.

If the injured party does not agree with the assessment, he may appoint an expert as well and in some cases, arbitration is the only solution.

The expert should evaluate whether repair is technically justified.

The expert should evaluate whether repair costs exceed the value of the damaged vehicle. This value is the replacement value, meaning the amount needed to acquire a vehicle of the same type, use, age, condition/quality etc., minus the value of the wreck. This is not the amount that the owner would have received if just before the accident the vehicle had been sold.

4.2. Does the claimant have right to compensation for loss of value for a damaged vehicle?

Yes

No

If yes, Please specify. In principle: No. Only in exceptional cases (damaged vehicle brand new, or conversely a valuable old timer badly damaged and impossible to find other than recent spare parts). Loss of value normally evaluated up to 10% of the value before the accident.

4.3. Does the claimant have right to compensation for costs of expert reports?

Yes

No

If yes, Please specify. According to the highest case law, if it is “necessary” for the injured party to appoint an expert, the reasonable fees of this expert are a part of the compensation. In practice it may happen that parties discuss about the “necessity” to appoint this expert.

4.4. Does the claimant have right to compensation for costs of vehicle recovery/rescue and towing a vehicle to a repair shop?

Yes

No

If yes, please specify the criteria: The principle is not discussed. In practice it may happen that the liable party (or its insurer) refuses to pay (back), or only partially, the invoice if the removal/towing was executed by a company situated at long distance from the place of accident.

4.5. Does the claimant have right to compensation for the loss of use of a damaged vehicle?

Yes

No

If yes, please specify the criteria: If there is a loss of use between date of accident and date of expertise, this loss may be compensated, followed by the loss of use during the time needed for repair. The latter has to be accepted by the expert. In case of total loss: loss of use between date of accident and date on which the injured party receives the notification that the vehicle is declared total loss, followed by the loss of use during the time needed to acquire another vehicle that will replace the damaged one. Experts tend to put in their reports that this delay would be 15 days, but claimants have the right to prove that these 15 days were not sufficient.

4.6. Does the claimant have right to compensation for costs of hiring another vehicle in case of a damaged vehicle and/or a lump sum as a substitute?

Yes

No

If yes, please specify the criteria: The claimant has the right to compensation for costs of hiring another vehicle but the hired vehicle should be of the same type and class. Normally the amount of the invoice is diminished with 10% (as a saving for the non-use of one's own vehicle). If no vehicle was hired, the injured party has the right to claim per day of loss of use a lump sum determined by the type/class of the damaged vehicle. Normally parties accept the lump sums as determined by the (non-mandatory but largely followed) "indicative table". (This table was drawn up by the National Association of Judges of First Instance and the Royal Association of justices of the peace and police courts.)

4.7. Does the claimant have right to compensation for registration fees related to cases where the vehicle is a total loss?

Yes

No

If yes, please specify the criteria: The payment of the registration fee of the damaged vehicle is not caused by the accident. The injured party should send the (official) registration plate back to the Registration Office.

If however the vehicle is replaced, judges often admit the compensation of the registration fees linked to the new vehicle, but the liable party may argue this is only a cost paid by anticipation.

4.8. Does the claimant have right to compensation for costs related to overnight accommodation and meals?

Yes

No

If yes, please specify the criteria: The question does not specify the circumstances leading to these costs. It should anyway be proved that without accident, these costs never would have occurred and why they were necessary. Moreover, the injured party should take all measures to keep the damage within the boundaries of what is normal and reasonable. If several possibilities exist to remedy equally a damage, it is considered an abuse to opt for the most expensive one. It is probably an item that leads to litigation.

4.9. Does the claimant have right to compensation for pre-financing costs related to a vehicle damage (for instance borrowing money because of an accident)?

Yes

No

If yes, please specify the criteria: Yes, but depending on the general state, type and age of the vehicle. Proportional to the value of the vehicle before the accident.

4.10. Does the claimant have right to compensation for general costs (i.e. telephone and mailing costs, administrative costs, etc)?

Yes

No

If yes, please specify the criteria: Yes, but they should be justified. In some cases a compensation of 50€ lump sum is awarded.

4.11. Any other instances/cases which are covered?

Yes

No

If yes, Please specify. VAT is an important item in case of total loss. If the injured party is not subject to VAT, or subject but exempted, it may claim the amount of VAT calculated on the basis of the damaged

vehicle before the accident. Also in case of total loss, the injured party is entitled to have the “tax on entry of the vehicle into circulation” (taxe de mise en circulation) recovered. This is a tax paid when buying a vehicle (new or second hand) and it depends basically on the age of the vehicle, engine power and environmental characteristics. The injured party may claim “storage costs” if such costs are invoiced by the repairer and this for the time needed for the expertise.

4.12. How can the claimant claim recovery for damages if the responsible vehicle is uninsured?

Please specify. Compensation claimed to Guarantee fund

5. Personal Injuries and death – Claims (GCB/GF/CB)

For the following sub-items please state the different possibilities for a claimant to file a claim against a MTPL-insurer for bodily injury. Please specify for each question when applicable.

5.1. Does the claimant have right to compensation for costs of medical treatment?

Yes.

No.

Please specify. It is up to the claimant to provide a complete overview with proof of the medical and pharmaceutical costs due to the harmful event.

5.1.1. Does your national law make a distinction between public and private healthcare?

Yes.

No.

Please specify. [Click or tap here to enter text.](#)

5.2. Does the claimant have right to compensation for costs of care and increased needs due to an accident?

Yes.

No.

Please specify. Household damage and/or third-party assistance may be compensated on the basis of an expert report, in accordance with the non-mandatory “indicative table” (drawn up by the National Association

of Judges of First Instance and the Royal Association of justices of the peace and police courts). The necessity of using the assistance of a third party, his qualification and the nature and extent of his services must always be defined in concrete terms. The hourly remuneration will be determined on the basis of these criteria. The fact that such assistance is provided by a person close to the victim shall not in itself constitute an obstacle to its reimbursement.

5.3. Does the claimant have right to compensation for disability?

Yes.

No.

Please specify. Compensation is awarded for “personal” disability, disability affecting the capacity to carry out household activities and “economical” disability. Each of these entitle the injured to receive a separate award. The medical expertise determines (by a percentage) the importance of these disabilities.

5.4. Does the claimant have right to compensation for pain and suffering?

Yes

No

If answered yes, how is the amount of compensation assessed (fixed sum, tables, court)? Please specify. Other than in exceptional circumstances, pain is not compensated for separately. Only if the medical expert rules out the existence of exceptional pain can this damage be compensated separately. For "pain and suffering", the medical expert determines the duration and degree (on a scale of 1 to 7) which is multiplied by a lump sum, as determined in the non-mandatory "indicative table" (drawn up by the National Association of Judges of First Instance and the Royal Association of justices of the peace and police courts).

5.5. Does the claimant have right to compensation for loss of earnings?

Yes.

No.

Please specify. If duly justified. Normally, (income) tax papers will be used, salary documents obtained from the employer, documents obtained from the social insurer, etc.

5.6. Does the claimant have right to compensation for loss of future earnings?

Yes.

No.

Please specify. The loss of future earnings should be based on findings reported in the medical expertise. However, there is not a fixed rule, and everything is taken into consideration on a purely factual basis. Even if there is not a loss of earning as such, the concept of “economical” damage takes into account that the injured person, given the disability, will have to make supplementary efforts in order to gain the same income as before and/or that as a result of the disability the injured person has a weakened position/situation on the labor market. See non-mandatory “indicative table” (drawn up by the National Association of Judges of First Instance and the Royal Association of justices of the peace and police courts).

5.7. Does the claimant have right to compensation for loss of dependency (for instance a victim is fatally injured in a traffic accident and leaves a spouse/children behind)?

Yes.

No.

Please specify. Relatives who benefited from the deceased's professional income may claim that portion of the income from which they benefited personally in the absence of the accident. It is therefore important to determine the victim's share of personal benefit. The victim's share of personal expenses is calculated on the basis of the joint family income and should be deducted from the victim's own income. See non-mandatory “indicative table” (drawn up by the National Association of Judges of First Instance and the Royal Association of justices of the peace and police courts).

5.8. Does the claimant have right to compensation for funeral expenses?

Yes.

No.

Please specify. If the deceased was older than the claimant, then it can be argued that the award should take into account that the claimant would have had to bear the funeral costs even in the absence of the accident. The damage consists of the early payment of funeral expenses. Excessive expenses can be reduced.

See non-mandatory “indicative table” (drawn up by the National Association of Judges of First Instance and the Royal Association of justices of the peace and police courts).

5.9. Does the claimant have right to compensation for moral damages (limitations in life, loss of quality, etc)?

Yes.

No.

Please specify. See section 5.3. This is considered a “personal damage” in relation with the disability. See non-mandatory “indicative table” (drawn up by the National Association of Judges of First Instance and the Royal Association of justices of the peace and police courts).

Is it part of the pain and suffering according to your national law?

Yes.

No.

Please specify. Moral damages are not included in the damages for pain and suffering. Conversely, pain and suffering are usually included in moral damages. Unless the medical expert has estimated pain and suffering separately. See section 5.4.

5.10. Does the claimant have right to compensation in case of aggravation of the damage suffered?

Yes.

No.

Please specify. The aggravation has to be established by medical report. It has become nearly impossible to obtain an agreement with victims without accepting numerous “medical reserves” concerning possible future aggravations.

5.11. Are relatives/next of kin entitled to compensation (tort, pain and suffering, other)?

Yes.

No.

Please specify. The death of the victim affects the next of kin emotionally to such an extent that any possibility of experiencing an affectionate relationship with this person is nullified. The resulting damage, which is inestimable, must be compensated. The purpose of moral compensation is to acknowledge the existence of suffering. See non-mandatory “indicative table” (drawn up by the National Association of Judges of First Instance and the Royal Association of justices of the peace and police courts).

The amounts proposed in the indicative table (see table below) are lump-sum payments, determined according to the presumed intensity of the affective relationship with the victim. In practice, these

amounts are rather regarded as a minimum. In some circumstances, judges award higher amounts.

Victim	Beneficiary	Award
Married/living as partners	Partner	€ 15.000
Father/mother	Child cohabiting	€ 15.000
Father/mother	Orphan cohabiting	€ 24.000
Father /mother	Child non-cohabiting	€ 6.000
Child	Father/mother cohabiting	€ 15.000
Child	Father/mother non-cohabiting	€ 6.000
Miscarriage	Father/mother	€ 3.000
Brother/sister	Brother/sister cohabiting	€ 3.000
Brother/sister	Brother/sister non-cohabiting	€ 1.800
Grandparents	Grandchildren cohabiting	€ 3.000
Grandparents	Grandchildren non-cohabiting	€ 1.500
Grandchildren	Grandparents cohabiting	€ 3.000
Grandchildren	Grandparents non-cohabiting	€ 1.500

5.12. Any other cases? Please specify.

There are other items of damage (other than those mentioned above) that are compensated.

See non-mandatory “indicative table” (drawn up by the National Association of Judges of First Instance and the Royal Association of justices of the peace and police courts).

For example: material tools (adaptation of vehicle or home, etc.), loss of an academic year and the damage suffered by the victim between the date of the accident and that of his/her death. The latter damage, for which the compensation is a claim of the inheritance, should not be confused with the damage suffered by the next of kin.

6. Claims Settlement Procedures – in and out of court (GCB/GF/CB)

This section is aimed at all three organisations. You are invited to complete this section in cooperation amongst your organisations, if applicable. Only one common answer is expected to be provided.

6.1. What evidence is considered as acceptable/lawful in your country? More than one of the following options can be selected.

- Constat amiable (European Accident Statement)
- Police report
- Pictures
- Witness statements
- Medical statements
- Other

Please specify in detail: It might happen that an article published in a newspaper is used as a proof, videos, camera recordings, or even social media. However, the police report is deemed to be the most trustworthy evidence in relation with the circumstances of an accident.

6.2. Out of court settlement

6.2.1. What are the conditions for filing a claim according to your national law? Please specify in detail:

Nowhere formal conditions are specified. At least a date of accident should be mentioned and a country. It is not always possible for a claimant to specify the exact place of accident, but some information should exist. Normally, the elements of the accident appear from the annexes. The claimant has to identify him/herself, give some idea about the damages, give information about the liable party (vehicle, registration plate, insurance contract), witnesses (if not mentioned soon after the accident, there is some suspicion about their trustworthiness), number of police report, copy of European Accident Statement, etc. Claims are filed by the injured party, but also by brokers, lawyers, social insurers, insurers (MTPL, legal assistance, centers for aid to victims, hospitals, etc.).

6.2.2. Do you require proof for the following 3 indicators and please specify in detail (including limitations):

- **Proof of involvement – including the recording/requirement of the accident (i.e police report, constat amiable, etc.)**

Yes

No

Please specify. According to Belgian liability law the means to proof are free, but of course if a claimant directs a claim to an insurer/Bureau/GF etc. these proofs should be trustworthy. In some cases, it is sufficient to prove the “involvement” of the vehicle that gives cause to claim, in other cases liability must result from the proofs. As a rule, both claimant and those to whom a claim is addressed should be loyal in their investigation of the facts. It is not accepted by Courts anymore that an MTPL insurer is not proactive.

- **Proof of damage**

Yes

No

Please specify. Yes, but as a rule, both claimant and those to whom a claim is addressed should be loyal in their investigation of the facts. It is not accepted by Courts anymore that an MTPL insurer is not proactive. Concerning the damage, at least the claimant should specify why there is a damage, what is that damage, but this doesn't mean that right from the start the damage has to be quantified.

- **Proof of causal link between liability and damage**

Yes

No

Please specify. See section 2.2 above. Non-motorized victims only have to establish that there is a link between the damage and the involvement (not liability) of the motor vehicle. Only bodily injury is compensated on the basis of "involvement". Compensation of material damage requires, in principle, the establishment of a fault.

6.2.3. Is a visiting victim required to file a report about the accident to the local authorities before returning to the State of residence?

Yes

No

Please specify. It is more favourable to the claimant if a police report was filed.

If they fail to do so, does that exclude the visiting victim from filing a claim for compensation?

Yes

No

Please specify. [Click or tap here to enter text.](#)

6.2.4. Which are the conditions according to your national law in considering a vehicle as identified? Please specify in detail.

Purely factual. No rules determined by the law as such. Nevertheless, basically either it is possible to find the vehicle based on the information, or if this is not possible then the identification can result from a set of elements (found in European Accident Statement, police report, signed statements...) that make it improbable that the vehicle would not be the one appointed by the victim.

See also section 6.2.2 above: as a rule, both claimant and those to whom a claim is addressed should be loyal in their investigation of the facts. It is not accepted by Courts anymore that an MTPL insurer is not proactive. If the vehicle appointed by the victim is found, but seems to be not registered, or VIN number unknown, it will be considered identified nevertheless purely because it is found. If the victim specifies make/model and registration plate but the custodian of the vehicle can proof that is improbable that his vehicle could have been involved, then the vehicle is not identified.

6.2.5. Are there any other requirements for filing a claim?

Yes

No

If yes, please specify in detail. The claimant must have the capacity to claim in his own name (see minors, persons with mental problems declared incapable to administer their goods and belongings). If not, those persons appointed by law should file the claim (parents, administrator), or in a later stage intervene in the settling of the claim.

6.2.6. Are legal fees for out of court settlements reimbursed?

Yes

No

If yes, how are these fees assessed/calculated? Normally only fees related to Courts cases can be claimed and they depend (official scale) on the evaluation of the case. However, it happens that these fees are accepted, in order to avoid a Court case. Very often, bodily injury is a matter of negotiations and it is better to avoid a Court case rather than to provoke it by maintaining a stubborn refusal of the legal fees.

6.3. Court settlements

6.3.1. What are the requirements when filing a claim in relation to civil and/or criminal proceedings? Please specify in detail:

The claimant must have the capacity to file a claim in court. See section 6.2.5 above. This court should have the material and territorial competence. In Belgium only police courts (civil and criminal) deal with traffic accidents and damages resulting from them. A claim can be filed in the Court of the territorial entity where the claimant is registered/established, or where the accident occurred, or where the head office of the insurer is established. An injured party may easily file a claim in criminal court, if the accusations of the public prosecutor can be linked to the claimed damage.

In rare criminal cases the competent court is not the police court. Mainly this concerns offences where it appears that the tortfeasor acted on purpose and deliberately in order to provoke bodily injury.

6.3.2. What legal remedies are available (possibility of appeal, etc.)? Please specify in detail:

Appeal is possible. If one of the parties involved in the court case refrains from appearing (in person or by lawyer), the judgment is pronounced "in absentia". This can be followed either by an appeal or, if an appeal is not allowed (e.g. because the amount in dispute is too low), by an "opposition" from the failing party. The party that appeared can only make appeal. "Appeal" means that a judge of a higher level becomes competent. "Opposition" means that the same judge will examine the case a second time.

6.3.3. How do you handle any costs in connection with proceedings in and out of court and please specify the types of costs (lawyers fee, legal fees, court experts, translation, etc.)? Please specify in detail.

Out of court (arbitration/mediation, etc.) : - Lawyers fee: no.

- Legal fees: normally no, but yes if this may avoid a court case (see section 6.2.6 above).
- Out of Court Experts (motor vehicle/medical/real estate/rail/accountant/private detective: yes.
- Translation: yes.
- Costs related to the copy of the police report: yes. In Belgium, the MTPL insurer has to pay an amount depending on the number of pages of the police report.
- Costs paid to a municipality related to the obtaining of the exact address of a person: yes.

In court: - Lawyer fees: no.

- Legal fees: yes, if the case is lost, but this may be a matter of interpretation while anyway the Court decides.
- Experts appointed by the Court: yes, if the case is lost.
- Experts appointed by the injured party: yes, if the case is lost.
- Costs related to the registration of the case in court: yes, if the case is lost.
- If the case is introduced by way of a bailiff and the case is lost, the costs of the bailiff have to be refunded to the injured party.
- If a case is lost, a separate tax has to be paid based on the amount of the award.

6.4. Any other procedure of settlement? Please specify.

The evaluation of a damage may be subject to arbitration, but it is extremely rare that a claim or a case regarding the award is subject to arbitration. Belgium knows as well the concept of mediation, but in matters of damage settlement resulting from traffic accidents it is very rarely applied. MTPL insurers and GCB/GF have to care of “complaints” such as these are understood by the services of the “Ombudsman”.

7. Involvement of National Guarantee Funds (GF) EEA/Non-EEA

This section is aimed only at Guarantee Funds. Please only provide answers to this section in your capacity as Guarantee Fund.

7.1. In which cases does your National Guarantee Fund intervene (stolen vehicles, intent, etc.)? Please specify in detail. (Article 11 MID).

Unidentified vehicle – Uninsured vehicle – Stolen vehicle – Act of God/force majeure by which the driver is exempted from liability – Vehicle insured by an insolvent MTPL insurer – Motor vehicles exempted from compulsory MTPL insurance – In Belgium, the GF acts as CB as well.

7.2. What is the procedure (including any specific requirements) to be followed by a claimant when filing a claim to your national Guarantee Fund? Please specify.

By law, the declaration must be made by registered mail. However, the GF accepts declarations made by e-mail, via the website and by ordinary post. (However, if there is a dispute regarding the correct date of receipt of a declaration made by post, only a registered letter can provide sufficient proof to the declarant). The declaration must be made within 5 years as from the date of accident, independently of the injured party being aware of the damage or not. In case of insolvency: within 5 years as from the date the insolvency was published in the Official Journal.

7.3. Can a claimant who is resident in a foreign country make a claim against your National Guarantee Fund? Please specify.

Yes

7.4. Are there any exceptions when handling a claim for uninsured and/or unidentified vehicles (excess, property damage only when bodily injury, severity of bodily injuries, passenger voluntarily entering an uninsured vehicle, other)? Please specify in details.

If the claimant requests award for bodily injury, the accident should have been reported to the police within 30 days as from the date of accident. If the claimant refrains to give information requested by the GF while it may be presumed that this information is available, the GF is allowed to refuse. In case of unidentified vehicle, material damage is only subject to compensation if the accident caused important bodily injury. Excess is not applied. The person liable for the accident is excluded from compensation by the GF, unless it is a non-motorised injured party (see section 2.2). Are also excluded from compensation by the GF on the basis of non-insurance, the owner of the vehicle, even if it is only involved, for which the insurance obligation has not been complied with, the policyholder of that vehicle, the driver and the holder of that vehicle if they had knowledge that the insurance obligation has not been complied with. If the owner or holder of that vehicle is a legal entity, the directors, managers and associates are excluded. The restrictions that usually apply to any MTPL insurance policy (see section 2) can, of course, also be applied to compensation by the GF.

7.5. Does the statute of limitations mentioned above under “Applicable Law” apply for the National Guarantee Fund or are there any exceptions?

Yes

No

If yes, Please specify. The restrictions that usually apply to any MTPL insurance policy (see section 2) can, of course, also be applied to compensation by the GF.

7.6. Involvement of the Guarantee Fund or any other bodies responsible for insolvencies for protection of victims in case of insolvency of an MTPL insurer? / Insurance Guarantee Scheme

When does this intervention mechanism start its intervention? Only one option can be selected.

- The insurance undertaking is subject to bankruptcy proceedings
- The insurance undertaking is subject to winding up proceedings
- The insurance undertaking has had the authorisation withdrawn
- After withdrawal of the authorisation

Please specify. When the insurance undertaking is declared insolvent (not when bankruptcy proceedings start) by the Tribunal of Enterprises, but also after the forced withdrawal of authorisation by the supervising authority. Based on the law as it is, only accidents in Belgium are concerned.

7.7. Stolen vehicles- Are people who voluntarily entered the vehicle which caused the damage when they knew that the vehicle was stolen, excluded from the intervention of the body?

No, unless there is proof that these persons participated in the theft, or if their knowledge can be considered as dishonestly receiving stolen goods.

8. Involvement of Green Card Bureaux (GCB)

This section is aimed only at Green Card Bureaux. Please only provide answers to this section in your capacity as Green Card Bureau.

8.1. What is the procedure (including any specific requirements) to be followed by a claimant when filing a claim to your national Green Card Bureau? Please specify.

Application in writing within a period of 5 years from the date of the event having caused the damage or, in case of a penal offense, from the date of this offense. If the injured party proves that he only became aware of his right to act against the Bureau at a subsequent date, the period only starts to run from that date without exceeding 10 years from the date of the event having caused the damage. An application addressed to the correspondent is as valid as if it were addressed to the Bureau itself. A legal proceeding against the correspondent instead of the Bureau is void, but the correspondent has to invoke this during the proceedings.

Other formal conditions are not specified. At least a date of accident should be mentioned and a confirmation that the accident occurred in Belgium. It is not always possible for a claimant to specify the exact place of accident, but some information should be given. Normally, the elements of the accident appear from the annexes. The claimant has to identify him/herself, give some idea about the damages, give information about the liable party (vehicle, registration plate, insurance contract, green card number), witnesses (if not mentioned soon after the accident, there is some suspicion about their trustworthiness), number of police report, copy of European Accident Statement, etc. Claims are filed by the injured party, but also by brokers, lawyers, social insurers, insurers (MTPL, legal assistance, centers for aid to victims, hospitals, etc.).

Excess is not applied.

The restrictions that usually apply to any MTPL insurance policy (see section 2) can also be applied to compensation by the GCB, except where the law governing the GCB provides otherwise.

8.2. Does a claimant resident in a foreign country have a direct right of action against the local Bureau of the country of accident or the agent/ insurer representing the Bureau?

Yes

No

Please specify. Yes, meaning the Bureau only.

8.3. Are there any other considerations that claimants should bear in mind? Please specify.

In case of an accident with a combination Truck-Trailer, please **note the registration plate of the truck**, because pursuant to MTPL insurance law only the insurer of the truck may be subject of direct action. The truck might bear a foreign plate (giving competence to the Bureau), but its registration number must be specified and preferably also the country of origin. If not, it may become impossible to identify the vehicle. In recent years it happened more and more that the registration plate noted in the European Accident Statement is not correct, which leads injured parties to take photos. It is however not compulsory to take photos.