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La Fédération Française des Sociétés d'Assurances;
Le Fonds de Garantie Automobile;
Le Groupement des Entreprises Mutuelles d'Assurances.

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I. REGULATIONS ON THIRD PARTY LIABILITY

A. THE GENERAL PRINCIPLES

The law of 5 July 1985 establishes the principle of full compensation for victims of road traffic accidents. It also defines the cases in which such compensation may be reduced or extinguished.

Whatever the type of damage, *force majeure* and the act of a third party never cause the victim's compensation to be reduced, regardless of whether he is a driver in the incident.

When bodily harm is concerned, faults on the part of non-driving victims (passengers, pedestrians and cyclists) do not deprive them of their right to redress, except where the fault is particularly serious. However, a fault on the part of a driver reduces or extinguishes his right to compensation.

Regarding property damage, the victim is liable for the consequences arising from his fault, whether or not he was driving.

B. SPECIAL POINTS

1. The scope of the law

The law of 5 July 1985 stipulates: "the provisions of the present chapter apply, even when they are transferred under the terms of a policy, to the victims of a road traffic accident involving a landborne motorised vehicle as well as trailers and semi-trailers, with the exception of railways and tramways running on their own tracks".

a) The notion of a road traffic accident

The definition of a road traffic accident is extremely broad. It is not related to the movement of the vehicle: a stationary or parked vehicle is considered to be in circulation. Nor is it related to the location of the accident: this may be a private or public area (beach, field, car park, factory yard, building site, warehouse, repair workshop in a service station, golf course, etc.). It also concerns damages subsequent to the spread of fire originating from a vehicle which has caught fire or exploded.
b) The notion of involvement

This is an essential condition for application of the law of 5 July 1985. It is distinct from the notion of liability. The insurer of the vehicle involved must compensate the victim but it may subsequently seek redress.

The landborne vehicle which is involved in the accident, in whatever capacity and at whatever moment, is considered to be involved.

A vehicle is always deemed involved where there is a collision between it and the victim or the vehicle which the victim is travelling in or on.

In the absence of a collision, it is up to the victim to provide evidence of the causal link between the vehicle's presence and the damage incurred (e.g. pedestrian falling when startled by a horn, driver blinded by headlights, etc.).

When an accident is caused by a road train, decree n° 2007-1118 of 19 July 2007 specifies in its article R 211-4-1 the option for the victim to act either against the insurer of the towing vehicle or against the insurer of the trailer. The insurer involved may then take recusory action against the other party.

Please note that the Bureau Central Français [French Central Office] had already through its circular of 10 April 2006 asked managers to act in the name of the foreign insurer covering the trailer, in cases where it could not be established that the towing vehicle was parked.

c) The notion of a landborne motorised vehicle

Any vehicle which is used for the transport of people (even the driver alone) or objects, which is fitted with an engine and designed to travel along the ground is deemed a landborne motorised vehicle. This definition also covers trailers. Railways and tramways running on their own tracks do not fall within the scope of the law of 5 July 1985.

2. Force majeure or act of a third party

Neither force majeure (most commonly concerning natural phenomena: storm, lightning, snow, ice, leaves on the roadways, etc.), nor the act of a third party can be invoked to reduce or extinguish compensation of the victim. It is therefore important not to focus solely on the behaviour of the victim.

Example of an act of a third party: a car driver (A) ignores a Stop sign and runs into a cyclist who is thrown against a parked vehicle (B). The driver (A) then drives off. Vehicle (B) is involved since a collision has occurred. It cannot invoke the act of a third party (vehicle A) and must therefore pay damages to the victim (cyclist or other driver) to the extent that the latter has not committed a fault.

3. The victim compensation scheme
The victim compensation scheme, within the framework of the law of 5 July 1985, must be analysed in terms of the degree of bodily harm and property damage.

**a) Compensation for bodily harm**

<table>
<thead>
<tr>
<th>STATUS OF THE VICTIM</th>
<th>COMPENSATION SCHEME</th>
<th>EXCEPTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-driver aged under 16 or over 70 or suffering 80% disability regardless of age.</td>
<td>Full compensation</td>
<td>No compensation if the victim causes the injury deliberately</td>
</tr>
<tr>
<td>Non-driver aged over 16 and under 70, not suffering 80% disability.</td>
<td>Full compensation</td>
<td>No compensation if the victim is guilty of gross negligence, which is the sole cause of the accident or has caused the injury deliberately (cf definition hereafter)</td>
</tr>
<tr>
<td>Driver regardless of age and physical capacity</td>
<td>Compensation according to fault</td>
<td></td>
</tr>
</tbody>
</table>

As shown in the above table, the fault committed by the victim may be taken into account with the effect that his right to redress is either limited or extinguished.

The category of non-drivers includes passengers, pedestrians, cyclists and other less common cases such as horse riders, skiers, roller-skaters, etc.

Deliberate intent to cause injury most often occurs in cases of an attempted suicide on the part of the victim.

Gross negligence is a deliberate fault, of exceptional severity, exposing the individual for no justifiable reason to a danger he should have been aware of.

With regard to pedestrians, this primarily concerns a presence on roadways strictly reserved for vehicles: motorways, ring roads, bypasses.

The victim must have crossed barriers, safety railings, etc.

Gross negligence on the part of passengers is less common and, for instance, might concern leaping from a moving vehicle.

It should be noted that for gross negligence on the part of the victim to be proved, it must have been the sole cause of his injury, i.e. not also resulting from a fault by the driver (eg. a pedestrian on a motorway in collision with a vehicle breaking the speed limit).

**NB:** For all victims, excluding drivers, no reduction in compensation is applicable. Either they are fully compensated or they receive no compensation. Perpetrators and co-perpetrators of acts of theft as well as accomplices thereto have no right to compensation.
THE DRIVER’S POSITION IN THE CONTEXT OF THE BADINTER LAW;

The laws governing compensation of the driver in France often pose problems for foreign managers, especially when a foreign driver sees himself obliged to compensate the other driver involved, when he himself does not consider that he has committed fault.

That can arise because since the law of 5 July 1985 (“the Badinter law”) came into force, the rules for liability are no longer presented in the same terms for traffic accidents involving a landborne motorised vehicle, trailer or semi-trailer.

Whatever the type of damage (material or bodily) the driver or keeper of the vehicle involved in a traffic accident can never invoke force majeure or a third party act to free himself from his liability.

**Only a fault committed by a driver reduces or removes his right to compensation.**

The purpose of this note is to clarify the conditions for the payment of compensation to the driver in France.

**BEFORE 1985: the traditional rules for liability apply.**

Before the promulgation of the law of 5 July 1985, traffic accidents involving landborne motorised vehicles were governed by common public liability law (articles 1382 to 1384 paragraph 1 of the French Civil Code).

When there is an accident, the keeper of the vehicle which caused the damage is presumed liable by application of article 1384 paragraph 1 of the Civil Code. The latter can nevertheless free himself by supplying proof of force majeure, a third party act or a fault committed by the victim.

So, an accident occurring in indeterminate circumstances caused the reciprocal compensation of each of the parties by the other (on the basis of a double application of article 1384 of the Civil Code).

**AFTER 1985, A DIFFERENT LOGIC**

Before analysing how compensation for the driver should be understood, according to the provisions of this law, it is appropriate to understand fully its framework and objectives.

1) **The Badinter law is an independent law, which is only applicable to the victims of a traffic accident in which a landborne motorised vehicle is involved:** the provisions of the common liability law are then systematically waived in favour of the Badinter law once the conditions for its application are all present: by default, articles 1382 and 1384 paragraph 1 apply.
2) Any victim who proves that the conditions for applying the Badinter law are all present has in principle a right to 100% compensation against

Only a fault committed by a driver reduces or removes his right to compensation.

That stems from article 4 of the Badinter law:

“A fault committed by the driver of the landborne motorised vehicle has the effect of limiting or excluding compensation of the damage he has incurred”.

In other words, it must be considered on reading this article that the driver of a landborne motorised vehicle who is the victim of a traffic accident in which one or more other vehicles are involved has a right in principle to compensation for his bodily damage.

Any fault committed by this driver can however lead to his compensation being limited or even excluded. It is the attitude of the driver that must be assessed in order to judge his right to compensation rather than that of all the drivers involved in the accident. It is therefore up to the judges to determine to what extent his behaviour reduces or excludes this right.

CONCISE HISTORY OF PRECEDENT

The Badinter law departs from the traditional logic relating to common law liability. It is none the less true that precedent has taken a long time to become established.

The Court of Cassation considers that a proven fault which contributed to the damage caused to the driver reduces or removes his right to compensation.

A judgment in principle by the mixed chamber of the Cassation Court, delivered on 28 March 1997 clearly specifies the scope of article 4:

“Whereas when more than one vehicle is involved in a traffic accident, each driver has a right to compensation for the damage he has incurred, except if he has committed a fault which contributed to the causing of his damage; that it is then up to the judge to assess without appeal whether this fault should limit or exclude the compensation”.

With this judgment the Cassation Court confirms that even if he is the only one at fault, a driver who is a victim is not left without compensation for that reason. His fault must be assessed and characterised without regard to the behaviour of the other driver. *He may therefore be obliged to compensate a driver against whom no fault is found, and present a claim himself. Compensation of the victims is therefore no longer assessed based on a total of 100%;*

Going further still, on the fault of the driver who is a victim, through a judgment on 4 July 2002, the Cassation Court considers the fault of a driver for the reason that he took the wheel under the influence of alcohol to be behaviour that is punished by the French highway code, but as having no influence on the cause of the accident.

This precedent has just been abandoned by a Plenary Meeting of the Cassation Court, which declared to the contrary on 6 April 2007 (n° 05.81.350 and 05.15.950) and finds that where a
driving fault did not play a part in the accident, the presence of alcohol in the driver’s blood has no causal connection with the incidence of the damage. In other words, there must be no confusion between breaking the law and driving error.

**IN CONCLUSION:** the effect of the provisions of the Badinter law and of precedent is that the insurer of a driver involved in a traffic accident is obliged to compensate the other driver involved against whom no fault is found, even if he considers that he has not committed a fault. But he can himself present a claim to obtain from this driver his own compensation (which will be assessed based on his own behaviour).

**OTHER VICTIMS, PASSENGERS, PEDESTRIANS, CYCLIST.**

Compensation for these victims is governed by Article 3 of the Badinter Law, which provides a very protective scheme for these categories of victims, granting them compensation almost automatically, in the event of personal injury.

Article 3 provides two levels of protection:

1) Persons covered by special protection (under 16s, over 70s or persons with an invalidity or disability of more than 80%, regardless of age) who can only be challenged for deliberately seeking injury.

2) Other victims, who, in addition to deliberately seeking injury, can be accused of inexcusable negligence should this be found to have been the sole cause of the accident.

Therefore a cyclist will be compensated for his physical injuries in accordance with the provisions of Article 3 of the law.

**Area of application of Article 3 of the Badinter Law**

This relates to all victims of a road traffic accident other than drivers of motorised land vehicles and only deals with compensation for personal injury. It establishes an all or nothing compensation, without any possibility of shared responsibility, quite the opposite to driver compensation (Article 4 of the Badinter Law).

**Principle of compensation**

Article 3 provides that, just like a driver, in principle a cyclist is entitled to compensation for his injuries.

Behaviour excluding compensation:

- Specially protected victims: deliberately seeking injury.

- Other victims: deliberately seeking injury or inexcusable negligence, if such was the sole cause of the accident.
While the notion of deliberately seeking injury does not in principle pose any problem of interpretation (the victim, in wishing to commit suicide, sought his own injury), we must endeavour to define the notion of inexcusable negligence as sole cause of an accident and examine how case-law applies this to a cyclist.

**Definition of inexcusable negligence as sole cause of an accident.**

Three cumulative conditions are necessary to constitute inexcusable negligence:

- Exceptionally serious negligence.
- Absence of justification.
- Awareness of the danger.

In ten rulings rendered on 20th July 1987, the Court of Cassation defined it as follows:

“Only deliberate negligence of exceptional gravity, exposing its perpetrator, for no good reason, to a danger of which he must have been aware, is inexcusable within the meaning of Article 3 of the Law of 1985.”

The victim’s behaviour must also constitute “the sole cause of the accident”. This assumes that the accident was not caused by any other negligence and that the victim’s behaviour made the accident unavoidable. It should be stressed that inexcusable negligence as sole cause of an accident is assessed in terms of the victim. Case-law is very restrictive and protective of victims.

**Examination of case-law**

a) Behaviour not constituting inexcusable negligence as sole cause of an accident.

- A cyclist who does not obey a red light, stops suddenly, weaves between vehicles on his bicycle or places himself in front of a lorry which is moving off when the light is green.
- A cyclist who changes direction unexpectedly without signalling his intent.
- A cyclist who lets go of the handlebars with one hand and swerves to the left.
- A cyclist who crosses a continuous line on the road without making sure he can do so without danger.
- A cyclist who passes a stop sign, refusing to give way to a vehicle.
- A cyclist who, at night and without lighting, comes out of a one-way street and cuts across a motorist.
A cyclist who rides on the hard shoulder of a motorway, and then on the motorway, which he crosses from right to left.

Travelling in the opposite direction, a cyclist with a high blood alcohol level who turns left and is hit by a motorist.

b) Behaviour constituting inexcusable negligence.

A cyclist who is riding the wrong way down a boulevard, crosses an intersection on a red light and turns into a second street, still against the traffic.

Inexcusable negligence as the sole cause of an accident is therefore very rarely admitted, and the cyclist, even though he may be responsible, will practically always be compensated for his physical injury.

Compensation for the material loss of victims who are not drivers of motorised land vehicles is provided by Article 5 of the Badinter Law, paragraph 1 of which provides that:

“Negligence committed by the victim limits or excludes compensation for any material damage suffered. However, supplies and appliances provided on medical prescriptions are subject to compensation according to the rules applicable to reparation for personal injuries.”

It is a question of simple negligence that can be blamed on the victim and which entails either a reduction or elimination of compensation for material damage. However, supplies and appliances provided on medical prescriptions remain governed by Article 3.

Example:

A cyclist ignores a red light and is hit by a vehicle. He suffers physical injury, his bicycle is damaged and his spectacles broken.

He will be compensated for his physical injuries because there is no inexcusable negligence as the sole cause of the accident. (Article 3 of the Badinter Law).

The material damage to the bicycle will not be covered (Article 5 para. 1 of the Badinter Law).

He will be reimbursed for his share of the cost of replacing his spectacles within the framework of Article 3 of the Badinter Law. (see Article 5 para. 1).

**Recourse against the cyclist**
The motorist’s recourse against the cyclist is not covered by the provisions of the Law of 5th July 1985.

In fact, for a motorist victim, there is no involvement of a motorised land vehicle in the accident, an essential condition for application of said law (see Article 1 of the Badinter Law).

The motorist must exercise his recourse on the basis of Articles 1382 to 1384 of the French Civil Code, which does not affect his liability for compensation of the cyclist on the basis of Article 3 of the Badinter Law (unless he can provide evidence of inexcusable negligence as the sole cause of the accident).

It should be noted that all risks home insurance covers the risks related to civil liability when travelling by bicycle.

\[b\) Compensation for property damage\]

Compensation for the material loss of victims who are not drivers of motorised land vehicles is provided by Article 5 of the Badinter Law, paragraph 1 of which provides that:

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\[4. \textit{The principal rules of the French highway Code}\]

The rules governing road traffic in European countries are similar. There are a few key points worth noting:
a) Speed

This is limited to 130 km/h on the motorway; 110 km/h on expressways (dual carriageway separated by a central reservation); 90 km/h on other roads and 50 km/h in built-up areas (entry and exit to towns are always indicated).
In rain, the speed limits drop by 10 km/h (and 20 km/h on the motorway). In the event of visibility of below 50 metres, the speed limits are reduced to 50 km/h for the entire road and motorway network.
The municipal authorities have the option of reducing speed limits either throughout their towns and cities or in selected areas only.

b) Priorities

In principle, the vehicle coming from the right has priority.
There is, however, an exception in the case of roundabouts where vehicles already on the roundabout have priority. Traffic signals must be appropriate (roundabout signalled; priority markers).

c) Traffic lights

All drivers must stop when the traffic lights are red.
The lights change to amber (not flashing) before turning red, at which point vehicles must stop unless they have already entered the crossroad or are unable to stop safely. Amber alerts drivers to potential danger. Drivers should then continue cautiously. When situated at an intersection, the flashing amber light has no effect on the rules governing priority.

5. Examples

a) Opposite directions with encroachment

The grey vehicle crosses the middle of the road and collides with the white vehicle. To the extent that the driver of the white vehicle has not committed a fault, he will be compensated for both property damage and bodily harm.
The driver of the grey vehicle will not be compensated because he has committed a fault.
b) Opposite directions with encroachment – involvement of a third party

In order to avoid a pedestrian who is running across the road, the grey vehicle crosses the middle of the road and collides with the white vehicle. The solution is the same for the white vehicle. The driver of the grey vehicle could obtain compensation from the white vehicle's insurer because he has not committed a fault or, at least, the fault which he committed is not the single cause of the accident. The vehicles' insurers will then be able to seek redress from the pedestrian and his insurer.

II COVERAGE

A. BENEFICIARIES OF THE INSURANCE POLICY

1. Insurance policies cover the liability of all persons having custody of or driving the vehicle, even without authorisation

Articles L 211-1 and R 212-2 of the Insurance Code stipulate that policies for third-party car insurance must cover all physical or legal entities whose liability may be incurred, i.e. particularly the policyholder, the owner of the vehicle and the driver, these three statuses not being indivisible

The policyholder is the person who has signed the policy. His capacity as an insured exists to the extent that his liability is incurred due to his actions (if he is the driver, for instance) or damage caused by inanimate objects (if he has custody of the vehicle) or due to actions by a third party (in his capacity as principal, if an employee is driving the vehicle owned by the principal).

The owner is the person who enjoys ownership of the vehicle and who is responsible for taking out insurance: if he is neither the driver nor the guardian of the vehicle, nor the principal, his liability may be sought (for a fault inherent to the vehicle, for instance).

The driver is the person who uses, controls and directs the vehicle. The cover taken out by the subscriber covers not only himself but also "those acting on behalf of the owner", in other words all persons with custody of the vehicle or driving the vehicle even if they are not authorised under the terms of the law of 5 July 1985. The insurer is therefore required to cover the damage caused to third parties by the non-authorised driver (eg.: a teenager who drives his parents' vehicle without their permission or a car thief). The insurer then has the option of seeking redress against the perpetrator if he can establish that the vehicle was driven
or taken into custody against the owner's will. However, the damage suffered by the perpetrator, co-perpetrators or accomplices of a theft are not covered.

**The passengers:** the liability of a passenger who could cause damage (by opening a door for instance) must also be covered under the terms of article L 211-1 of the Insurance Code.

**Vehicle repair, sales and inspection specialists do not have the status of insured parties:** when you entrust your vehicle to a garage, for instance, the damage caused by the vehicle, while it is in the professional's custody, is not covered by the vehicle's insurer but the garage's insurer (the aforementioned professionals are subject to a specific insurance obligation intended to cover their liability, as well as that of those working on their premises, persons with custody of or driving the vehicle and passengers).

### 2. Only Government vehicles are exempt from this insurance obligation

Under the terms of article L 211 of the Insurance Code, Government vehicles are not required to have insurance (this exemption is automatic, i.e. no application is required). The French state has traditionally acted as "its own insurer".

This concerns vehicles belonging to the State authorities. Vehicles belonging to local authorities and to public establishments must be insured. However, the exemption does not mean that the State is prohibited from taking out insurance in this regard.

A distinction must be made for Government vehicles being used abroad. Government vehicles registered in the "State" series do not have a green card. When used abroad, the Bureau Central Français for the green card (BCF) is the guarantor for the compensation of victims of accidents they cause. The BCF advances funding and is subsequently compensated by the FGAO which seeks payment from the ministry concerned under the terms of a State/FGAO/BCF agreement.

Government vehicles registered in unmarked series may hold green cards. The BCF stands as guarantor for the compensation of victims of accidents they cause abroad.

### B. SCOPE OF COVERAGE

#### 1. Territorial scope of coverage

In application of article L 211-4 of the Insurance Code, the insurance must cover third party liability for EU member states as a minimum as well as the territories of all States for which the national bureaus of the European Union, instituted by the "green card" system, stand as individual guarantors for the settlement of claims arising on their territory and caused by circulation of a vehicle normally based there.

As of today, the following countries are concerned:
- Austria
- Andorra
- Belgium
- Bulgaria
• Switzerland
• Cyprus
• Czech Republic
• Germany
• Denmark
• Spain
• Estonia
• France
• Finland
• United Kingdom
• Greece
• Hungary
• Croatia
• Italy
• Ireland
• Iceland
• Luxembourg
• Liechtenstein
• Lithuania
• Latvia
• Malta
• Norway
• Netherlands
• Portugal
• Poland
• Rumania
• Sweden
• Slovak Republic
• Slovenia

Any clause restricting this territorial clause is considered null and void. This coverage, when enacted outside France, is only accorded within the limits and conditions provided for by the national legislation of the country where the incident occurred or, if the coverage is more favourable, that of the country in which the vehicle involved in the accident is based.

With the exception of the aforementioned countries, the insurer has the option of excluding from its coverage, all other territories, even those coming under the "green card" system. It also has the possibility of extending its coverage to a large number of countries which have not signed up to international agreements, the key point being that there is an appropriate level of correspondence between the general and special conditions in this respect.

The list of countries where coverage is mandatory may be extended if so decided by the European Commission, after consultation with the governments of the States concerned.
2. The scope of coverage over time

In general terms, car insurance policies stipulate that the damage must have occurred during the coverage period, i.e. between the date that the policy comes into effect and its date of expiry. As with the territorial scope of coverage, any restrictive clauses would be considered null and void in a court of law.

3. Legal exclusions of the coverage

This concerns risks which, in general terms and depending on the will of the legislature, fall outside the scope of the law on mandatory insurance and therefore outside the scope of the policy. This concerns:

- intentional fault on the part of the insured (article L 113-1 of the Insurance Code).
- war risks (article L 121-8 of the Insurance Code).

4. Coverage exceptions authorised by the Code

A distinction must be drawn between exceptions based on a nullity clause or a clause of the policy which fully releases the insurer from his obligation to provide coverage vis-à-vis third parties and exceptions termed non-enforceable. The latter requires the insurer to provide cover, subject to redress against the insured who is subject to the biennial time limit, starting the day when the injured party was compensated.

a) exceptions enforceable against third party victims

The only cases enforceable against third parties, whatever the nature of the prejudice incurred, are the termination or absence of a policy, (for example, when voided due to a deliberate false declaration).

The nullity and suspension of coverage do not discharge the insured from its obligation to assume responsibility for the compensation offer regarding bodily harm, it being incumbent upon it to take recourse action against the car Guarantee Fund (article 23 of the law of 5 July 1985).

b) exceptions non-enforceable against third party victims (article R 211-13 of the Insurance Code)

- The non-existence or the non-validity of certificates required by the regulations in force for driving vehicles, except in the case of theft, violence or the use of a vehicle without the insured's knowledge (article R 211-1° of the Insurance Code).
- Damage incurred by persons transported under inadequate safety conditions, as set forth in a joint order from several Ministries (article R 211-10 of the Insurance Code).
• Damage caused by a vehicle transporting ionising sources (intended for use outside of a nuclear facility) if such sources have initiated and aggravated the loss (article R 211-1° of the Insurance Code).
• Damage caused by a vehicle transporting inflammable, explosive, corrosive or consuming products (article R 211-11 of the Insurance Code).
• Damage arising from participation in car competitions, races or trials, when such events are subject to prior authorisation from the public authorities (article R 211-11 of the Insurance Code).
• A non-intentional false declaration when signing the policy or during the its terms (article L 113-9 of the Insurance Code).
• As a general rule, all forfeitures which an insurer may invoke (with the exception of the normal suspension of the policy for non-payment of premiums which, as mentioned in paragraph (a) constitutes an enforceable exception).
• Excesses provided for in the policy.

C. THE GUARANTEE FUND


1. Mission of the Guarantee Fund against road and hunting accidents

The role of the Guarantee Fund is to compensate the victims of road and hunting accidents when there is no applicable insurance coverage.

a) Case of Fund intervention

accidents caused by a landborne motorised vehicle occurring on the territory of France and certain European countries,

b) Compensation

• injuries incurred,
• property damage, as per specific rules.

c) The role played by the Fund

• Takes the place of the perpetrator of the accident where unknown,
• Takes the place of the perpetrator of the accident when non-insured or not covered by his insurer,
• Takes the place of the perpetrator's insolvent insurer, the insurance company being in liquidation subsequent to withdrawal of authorization.
d) Particular features

The Fund only compensates the victim of the accident and does not reimburse the welfare bodies,
the victim is compensated by the Fund if there is no other possibility of redress available to it,
its obligation is exclusively subsidiary.

e) Recourse against the non-insured responsible party

- The Fund arranges a settlement of damages directly with the victim and then requests from the responsible party, those sums settled on its behalf.

2. Conditions for fund intervention

The intervention of the Guarantee Fund is subject to certain conditions concerning, in particular: the nature and location of the accident, registration of the responsible party's motorised landborne vehicle, the status of the persons when the accident occurred, the law of liability, the time limits for applications to the Fund, the absence of compensation in another capacity, the bases for compensation.

a) Nature and location of the accident

The damage incurred by the victim must be the result of a traffic accident in which a landborne motorised vehicle is involved.
The accident must have occurred in metropolitan France, the overseas departments, the territorial communities or the overseas regions.

b) Registration of the landborne motorised vehicle responsible

The landborne motorised vehicle at the source of the accident must be registered in France or in a State that is not a member of the European Union.
If the vehicle is registered in a European Union member State or in an equivalent country, the accident must be handled by the French Central Office (BCF or Bureau Central Français).

If the vehicle of a member State is sent to France, the Guarantee Fund pays for the damage for the victims of an accident that occurs within 30 days starting from acceptance of delivery by the purchaser when the person responsible is known but not insured.

c) Capacity of persons at time of accident

Damage sustained by certain persons cannot be compensated by the Guarantee Fund:
damage incurred by the driver who caused the accident,
material damage incurred by the owner of the vehicle which caused the accident,
damage to property incurred by the State.

The victims or their entitled beneficiaries must prove:

- either that they are French,
- or that they have their main residence in the territory of the French Republic,
- or that they are nationals of a State which has signed a reciprocal agreement with France and they satisfy the conditions set under this agreement. Countries which have signed an agreement: Croatia, Morocco, Liechtenstein, Switzerland, Tunisia (Tunisia and Morocco: Damage to the person only).
- or that they are nationals or residents of a European Union member State, the Holy See, San Marino or Monaco.

\[d)\] **Right of liability**

Victims must prove that they have in French law a right to compensation against an uninsured or unidentified third party. Compensation may be limited or excluded if the victim is at fault.

\[e)\] **Court referral deadline for Fund**

When the party responsible for the damage is unknown, the application for compensation must be sent to the Fund within a period of 3 years from the date of the accident.

When the party responsible for the damage is known, the application for compensation must be sent to the Fund within the period of a year as from either the date of the transaction or the date of the final decision of the court.

In all cases, within a period of 5 years from the accident, victims must have either concluded an agreement with the Fund or have begun legal proceedings. A victim who has only incurred damage to property must refer the matter to the Fund within one year from the date of the accident at the latest.

\[f)\] **Absence of compensation on other grounds**

The victims must prove:

- either that it has not been possible to identify the party responsible for the accident,
- or that he is not insured or that his insurer is insolvent.

They must also prove that the accident cannot entitle compensation on other grounds.

As the Fund’s obligations are subsidiary, the Fund must not intervene if the victim can be compensated in full on another basis (by the insurer of someone
jointly responsible, of someone jointly involved, by property damage insurance, etc.).
If the victim can be partly compensated on another basis (by the Social Security system, mutual insurance, the employer, windscreen insurance, etc.) the Fund only pays for the remainder.
In the application of this principle of subsidiarity, third parties that have compensated the victim in full or in part have no recourse against the Fund.

g) **Bases of compensation**

- Bodily damage: no limit
- Damage to property
  - ceiling of 1,000,000 euros per claim, however many victims there are.

### 3. APPLYING FOR COMPENSATION

An application can be made to the Guarantee Fund either directly by the victim or his successors or by his insurer, which is frequently the case.
In the event of a direct application by the victim, details are provided of the various procedures which he must follow to have a file opened by the Fund, as well as the documents required to support his compensation application and the conduct of the compensation process.

In the event of an accident caused by a landborne motorised vehicle, the law of 5 July 1985 is applicable to the Guarantee Fund which must comply with the time limits set forth concerning the compensation offer.
It should be noted that if the Guarantee Fund contests the grounds for refusing coverage advanced by the insurer of the perpetrator of the damage, the latter must compensate the victim. If the guarantee refusal is subsequently justified, the Guarantee Fund will reimburse the insurer.

### 4. COMPENSATION BY THE GUARANTEE FUND

For any bodily harm, the Guarantee Fund proposes compensation:

**a) In the event of injury**

**Recovery without sequelae:** The Guarantee Fund makes a compensation offer on the basis of medical certificates forwarded, receipts for outstanding costs and loss of income after deducting the claim of welfare bodies.

**Injury with sequelae:**
- the Guarantee Fund makes one or more provisional compensation payments,
- the Guarantee Fund asks its expert physician to examine the victim who can request the attendance of a physician of his choice,
once the victim's health has stabilised, the Guarantee Fund sends him (or his insurer or lawyer if such exists) a detailed breakdown of the compensation proposed on the basis of the medical reports after deducting the claim of welfare bodies.

b) In the event of death

The compensation offer is addressed to the successors. It comprises compensation for moral harm, funeral expenses, outstanding costs and economic loss after deducting the claim of welfare bodies.

c) Options for the victim

When the victim receives the compensation offer, he can
- accept it: in which case payment is made,
- discuss it,
- refuse it: the amount of the compensation is then determined judicially. The Guarantee Fund proceeds with payment on the basis of the ruling handed down.

For property damage, the Guarantee Fund settles when the supporting documents are received.

In the event of a dispute, the amount of the compensation can also be determined judicially.

5. List of supporting documents to furnish with application

If the victim meets the stipulated conditions for an application, he must provide certain supporting documents concerning:
- his person,
- the accident,
- the absence of compensation in other capacities,
- the damages.

a) Supporting documents relating to the person

The victim must establish, by all possible means, that he meets the conditions concerning nationality and principle place of residence:

- photocopy of the ID card, passport, resident's permit, etc.
- or, in the event of death, family record book and notarial deed for the successors.
b) Supporting documents related to the accident

The victim must provide any document proving the material facts of the accident:

- a photocopy of the police or gendarmerie report (if this document is not in his possession, indicate the contact details of the authority which drew it up),
- failing this, a photocopy of the joint report of the accident signed by both parties,
- failing this, an accident report accompanied by one or more witness statements.

c) Supporting documents concerning the absence of compensation in another capacity

The victim must send the documentary proof of non-coverage or non-insurance, i.e. the letter from the insurer refusing the coverage, if the perpetrator of the accident has been identified. In the event of property damage, the victim must forward all documents indicating the absence of compensation in another capacity: e.g., insurance policy relating to the damaged property, specifying the nature of the coverage taken out and the absence of damage coverage (absence of all perils coverage, for instance).

d) Supporting documents concerning damage

The victim must forward the following documents:

in the event of injury
- the initial medical certificate describing the injuries (first certificate established, in theory, on the day of the accident by the hospital or attending physician),
- where appropriate, the certification of recovery or the certification of stabilisation

in the event of loss of income or outstanding medical or hospitalisation costs

- supporting documents concerning loss of income,
- supporting medical or hospitalisation documents regarding costs incurred and reimbursements made by welfare bodies.

in the event of death

- the invoice for funeral expenses and the amounts paid by welfare bodies,
- supporting documents concerning economic loss incurred due to the death.
- in the event of property damage: any document presenting an evaluation of the amount of damage: expert report or invoice settled.

III. PROPERTY DAMAGE
The damage must be clear and self-evident (i.e. determined or able to be determined) and effected or able to be effected. In addition, it must be direct: its origins lie in the incident concerned and repairs must be in relation with the damage.

**A. THE EXPERTS**

French law does not require an expert appraisal for the amount of damages to be determined. But insurers usually have recourse to a specialised expert holding a state diploma and listed on a national register (see website: [www.securiteroutiere.equipement.gouv.fr](http://www.securiteroutiere.equipement.gouv.fr)).

The expert is an independent technician to the extent that he is not the agent of the insurers.

1. *The role of the expert:*

He must examine the vehicle, evaluate the damage incurred in relation to the accident, and evaluate the cost of restoring it to its original state if possible and under which safety conditions for property and persons:

- The expert records the condition and the damage incurred by the vehicle duly identified after a visual inspection. When the damage is considerable, he furnishes a definitive opinion after prior disassembly in order to check which elements are damaged.

- He checks the imputability regarding the damage and must indicate, for instance, the presence of previous impacts, manufacturing defects, abnormal wear, etc.

- He determines the repair method: restoration to original state or replacement, and determines the list and price of spare parts. The time taken and cost of repair are calculated on the basis of pre-defined rates and scales (panel beating, replacement of parts, paintwork, etc.).

- He gives his opinion on the safety of the vehicle (steering elements, brakes, suspension, etc.) and must indicate whether or not it presents a danger. Depending on the case, he will decide whether or not the vehicle can be repaired and under what conditions.

The decision to repair lies with the vehicle owner. He gives the repair specialist the go-ahead to carry out the work in accordance with the expert's conclusions.

**B. SETTLEMENT OF DAMAGES**

Jurisprudence has established the methods for settling the loss depending on whether or not the vehicle will be repaired.
In the first case, the full repair will be ensured by the reimbursement of the costs for restoring the vehicle to its original condition and in the second case by the payment of a sum equivalent to its replacement value.

1. Repairable vehicle

The damage is assessed by the expert who is generally designated by the insurer of the person adversely affected.

The expert can, exceptionally, call on the services of a specialist (consultant) for additional examinations or analyses and to ensure, where appropriate, that technical evidence and elements are preserved (bailiff's report).

The expert draws up a report establishing the amount and nature of repairs regarding the damaged property including any accessories.

**Limit of damage: value of the replacement**

The vehicle will be repaired if the cost of repair is below the value of the vehicle itself. This value is not determined by the market value in the strict sense of the term (average value of an identical vehicle defined as per a rating published by the specialised press).

It is the value of the replacement according to the expert (VRADE) which serves as the evaluation criterion with regard to the vehicle's value. It constitutes the limit of the liability of the perpetrator of the damage.

The VRADE is calculated by the expert as part of a technical evaluation which includes calculations of the vehicle’s depreciation over time according to its age, the options available and the mileage. The calculation may also take account of the vehicle's general condition (bodywork, suspension, engine, etc.) as well as the state of maintenance and wear and tear.

An upward or downward coefficient can also be applied according to whether or not the vehicle is sought after on the second-hand market.

In addition, the expert can include examples from car sale advertisements on the local market in his evaluation.

In exceptional cases, repairs for a sum superior to this replacement value can be reimbursed (for instance, when the vehicle is old or rare).

2. Vehicle write-offs

When the repairs are more costly than the replacement value or greater than the difference between the replacement value and the scrap value, the vehicle is considered to be a write-off.

Given the large number of vehicle write-offs and in order to avoid the circulation of dangerous vehicles, French law allows for two distinct control procedures: the "VGE" procedure for seriously damaged vehicles and the "VEI" procedure for vehicles which are not economic to repair (see appendix). The car expert is the key player in this regard.

C. ANCILLARY LOSS
Consequential loss can give rise to compensation, depending on the case. It is only fully settled if a causal relationship exists, if it is proportionate to the consequences of the accident and the prices practiced and if it does not result from negligence on the part of the owner.

**towage, breakdown assistance, removal from public highway, custodianship:** When the victim has taken the necessary provisional measures and complied with his obligation to limit costs related to the accident, these damages are indemnified. They are generally settled on a fixed-sum basis, particularly according to information shown on the expert report.

Removal from public highway: an 8-hour day of labour being the time strictly necessary for the repair.

- **replacement vehicle: prevention of enjoyment:** the victim can claim a rental vehicle should he justify the daily use of one and have no other means of replacing his vehicle.

  The problem managers are faced with is essentially the question of the need to rent a replacement vehicle and the duration of its hire.

  When the replacement vehicle is granted, it must be of the same type as the vehicle damaged in the accident, or of an inferior type.

  The length of the rental period granted is equivalent to the effective period of the vehicle being off the road, provided that the injured party has not inadvertently or deliberately prolonged it.

  If the vehicle is replaced, the length of the rental period that can be granted is 10 days starting from the submission of an appraisal report recommending wrecking, to which is added the period elapsed between the date of the accident and that of the appraisal report.

  It is appropriate to take note of the following principles:

  - There is no distinction between the professional or non-professional use of the vehicle.
  - It is necessary to take into account rental invoices corresponding to the effective duration of the vehicle’s restoration and/or immobilisation, unless they demonstrate a situation of abuse in terms of either duration or costs.
  - It is not appropriate to deduct a flat percentage for "unreported costs".

  For vehicle immobilisation and the cost of vehicle rental following an accident occurring in French territory between French people and foreigners, the professional authorities have published a recommendation proposing on the one hand a flat daily amount for immobilisation depending on the category of the vehicle, while on the other hand recalling the principles for agreeing to assist with regard to the rental costs for a replacement vehicle.

**repatriation costs:** These will be due if the repatriation was necessary.

The cost of repatriating a vehicle which is roadworthy or presenting minimal damage (bodywork) for which the repair time is very short will be excluded.
Similarly, the repatriation of a wreck is not necessary once it is established that the vehicle has been reduced to the state of a wreck.

**depreciation:** Due to the repairs incurred, the resale price can be reduced. It will be granted by the expert if the vehicle is of very recent manufacture or top of the range and if the damage concerns the structure or safety features.

**costs for returning to circulation, destruction:** registration certificate, tax disc, and registration all come under indemnifiable losses where the vehicle is new, to be settled on production of supporting documents. Certain States request the payment of a disposal tax.

**hotel and telephone expenses:** These must have corresponding receipts and relate to the loss incurred. Loss of holidays and moral harm will be rejected except in special cases.

NB: Given the large number of ancillary items, it is normal practice to propose a total fixed sum, after having detailed what can be covered under applicable French law and what is not acceptable.

**expert expenses:** These are accepted in the case of measures taken by the victim to justify the extent of his loss.

**VAT:** Value added tax is fixed at 19.6% and must be settled without the victim being required to justify the vehicle's restoration to its original condition.

It will not be settled if the victim is subject to this tax due to his professional activity or the nature of the vehicle (company).

**lease-option agreement (LOA):** The lease-option agreement is a policy under the terms of which the user of an asset (the vehicle) rents this asset to a financial corporation.

The user has the choice, under the terms of a lease-back policy, of acquiring the vehicle by paying a residual indemnity or returning it to the financial corporation.

When this asset is damaged or destroyed, compensation for the loss is paid exclusive of VAT by the insurer (Council of State – 29 July, 1998) on the value of the expert appraisals or of the vehicle.

Regarding the cancellation indemnity, the Lease Back policy (signed between the Financial Corporation and the user of the vehicle) determines the calculation methods.

The insurer must settle this cancellation indemnity including VAT.

**vehicle repaired abroad:**

When the repair is not made in France, the compensation will be accorded on the basis of an expert report conducted by a local expert accompanied by photos.

The French insurer may require the repairs to be inspected by a second expert or a posteriori inspection by delegating his foreign correspondent.

If the cost of repair is low, an original invoice may be considered as adequate.

**IV. BODILY HARM**
As for material damage, bodily harm must be clear and self-evident (i.e. determined or able to be determined) and effected or able to be effected. In addition, it must be direct: its origins lie in the incident concerned and repairs must relate to the damage.

**A. MEDICAL ASSESSMENT OF THE LOSS**

1. **Proof of the loss**

It is the victim's responsibility to provide evidence of his loss. Subsequent to an accident causing bodily harm he is therefore advised to undergo a medical examination by a physician as soon as possible (at a hospital or by his attending physician) so that the injuries are formally recorded and to keep all medical certificates drawn up by the physician. It is on the basis of this documentation that the insurer establishes the victim's file. If it proves necessary, he may be required to undergo an expert medical evaluation.

2. **Expert medical evaluation**

   a) **Designation**

The experts charged with evaluating the bodily harm are independent physicians having received special training in legal redress for cases of bodily harm. They hold State diplomas and are most often assigned at the request of the insurers in the framework of the compensation procedure set down in law. The may also be appointed by the courts in the case of judicial proceedings. The victims may request assistance from a physician.

   b) **The role of the expert physician**

His brief normally consists in determining certain areas of indemnifiable loss and to provide an opinion on the sequellae which are directly related to the accident (see assignments ...). Thus, after evaluation of the bodily harm by the physician, the insurer establishes a monetary evaluation.

**B. COMPENSATION**

1. **Definition of the areas of loss**
in the event of injury:

- current health expenditure (medical costs, hospitalisation, etc.) up to healing or recovery, i.e. until the time when it is considered that care is no longer needed to improve the victim’s medical condition. When his condition requires it, care can be granted beyond the recovery date (future costs).

- temporary incapacity (incapacité temporaire, or IT) or current loss of professional earnings (Pertes de gains professionnels actuels, or PGPA) or temporary functional deficit (Déficit fonctionnel temporaire, or DFT):
  - Temporary incapacity or the current loss of professional earnings is for the period of unavailability during which, for medical reasons that relate certainly, directly and exclusively to the accident, the victim has not been able to perform his usual activity which provides him with remuneration, or for a job applicant the period during which the person concerned would not have been able to perform a job suited to his abilities.
  - Temporary functional deficit, for a person not gainfully employed is the period during which, for medical reasons that relate certainly, directly and exclusively to the accident, the victim has not been able to perform his usual activities.

- partial or total permanent incapacity (l’incapacité permanente partielle ou totale, or I.P.P.) or permanent functional deficit (le déficit fonctionnel permanent, or DFP): These relate to the definitive reduction of physical, psycho-sensorial or intellectual potential resulting from medically verifiable damage to anatomo-physiological integrity; damage to physiological and psychological integrity (l’atteinte à l’intégrité physiologique et psychologique, or AIPP) is assessed as a percentage from 0 to 100 in accordance with an indicative medical scale recognised by the courts and by insurers.

- Loss of future earnings, i.e. the reduction in the victim’s income consequent to a drop in activity attributable to the accident.

- Miscellaneous costs.
  - suffering endured (SE) or pain and suffering damage (PT): this concerns physical, psychological or moral suffering incurred by the victim of the accident up to the date of stabilisation. The physician quantifies them on a scale of 1 to 7 degrees.
  - disfigurement damage is represented by all static and dynamic injuries causally related to the accident and persisting after stabilisation.
  - Evaluation is performed on a scale of 1 to 7 degrees.
  - Loss of amenities corresponds to the impact of the accident on the victim's leisure activities.

b) In the event of death:
• funeral costs: reasonable expenses incurred by the family or close relations for the funeral.
• moral harm compensates the sentimental damage due to the loss of a loved one. It is automatically presumed for persons able to demonstrate a blood tie with the victim but must be proved for others.
• economic loss is accepted when the deceased worked to support and/or contributed to the support of a family.

2. Compensation method

a) costing the loss

In France, the law does not detail the conditions for compensation and there is no scale for costing loss. The courts normally draw a distinction between the areas of loss liable to be compensated due to the economic loss and areas of loss evaluated on a fixed sum basis:

• the cost of care or costs consecutive to death are reimbursed on the basis of the expenses actually incurred and supported by invoices.
• loss of earnings must be proven by all means (employer's certificate, tax statement, company's balance sheet, etc.). For persons not engaged in a professional activity, a fixed sum compensation may be granted.
• permanent disability is expressed in percentages from 1 to 100% depending on the extent of the sequelae. Each area of disability is compensated by a sum which varies according to the judicial area of jurisdiction of the Courts of Appeal on the basis of an established disability rate and the age of the victim. Eg: victim, 45 years old, broken wrist, IPP 5%, Paris Court of Appeal 700/750 euros per point, i.e. 5 x 750 = 3,750 euros.
• When the permanent disability or death has an impact on the professional activity of the victim, this item of prejudice may give rise to compensation which is economic in nature depending on the actual loss of earnings incurred.
• the other areas of loss considered to be personal in nature, suffering endured, disfiguration damage, loss of amenities or moral harm in the event of death, are compensated by a fixed sum depending on the degree of importance ascribed.

In order to evaluate the fixed sum compensation, the administrators have recourse to a database established by the insurers under the control of the public authorities who record the transactions and legal rulings subsequent to traffic accidents.

b) Recourse of welfare bodies

In accordance with the rules of international law, the granting of the right to recourse of a social organisation from a liable third party is determined by its national law. Each Member State undertakes to recognise this right.
In France, the law defines those who can benefit from a right of recourse: this concerns bodies administering a mandatory social security system, private insurance firms which supplement medical expenses, employers for supplementary pay to their employees and insurers when they make temporary disability or permanent partial disability payments.

- **Base for recourse of welfare bodies**

Since 21 December 2006, victims have a priority right over social organisations for each of the damage items for which the latter have provided a relative service. If the victim has committed a fault which reduces his compensation, the percentage reduction is applied to the amount of the damage, and not to the amount of the recourse of the social organisations.

- **Quantified examples**

Example I: no fault can be attributed to the victim

**Determination of the basis of recourse**  
(*also called asset damage*)

<table>
<thead>
<tr>
<th>Asset damage</th>
<th>Social Security Claim</th>
<th>Victim priority amount</th>
<th>Social Security Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical costs or health expenditure</td>
<td>3,000 euros</td>
<td>2,600 euros</td>
<td>400 euros</td>
</tr>
<tr>
<td>Loss of professional earnings</td>
<td>4,000 euros</td>
<td>3,000 euros</td>
<td>1,000 euros</td>
</tr>
<tr>
<td>AIPP.8%</td>
<td>5,000 euros</td>
<td>5,000 euros</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>12,000 euros</td>
<td>5,600 euros</td>
<td>6,400 euros</td>
</tr>
</tbody>
</table>

**Personal damage**

<table>
<thead>
<tr>
<th></th>
<th>Social Security Claim</th>
<th>Victim priority amount</th>
<th>Social Security Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suffering endured 2/7</td>
<td>1,000 euros</td>
<td>1,000 euros</td>
<td></td>
</tr>
<tr>
<td>Aesthetic damage 1/7</td>
<td>600 euros</td>
<td>600 euros</td>
<td></td>
</tr>
<tr>
<td>Pleasure damage</td>
<td>500 euros</td>
<td>500 euros</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>2,100 euros</td>
<td>2,100 euros</td>
<td></td>
</tr>
</tbody>
</table>

The victim receives:
- for his asset damage: **6,400 euros**
- for his personal damage: **2,100 euros**

The social organisation will be reimbursed in the amount of 5,600 euros.

Example 2: the driver committed a fault which reduces his compensation by a half

<table>
<thead>
<tr>
<th>Asset damage</th>
<th>Amount halved</th>
<th>Social Security Claim</th>
<th>Victim priority amount</th>
<th>Social Security Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical costs or health expenditure</td>
<td>3,000 euros</td>
<td>1,500 euros</td>
<td>2,600 euros</td>
<td>400 euros</td>
</tr>
<tr>
<td>Loss of salary</td>
<td>4,000 euros</td>
<td>2,000 euros</td>
<td>3,000 euros</td>
<td>1,000 euros</td>
</tr>
<tr>
<td>Category</td>
<td>Amount 1</td>
<td>Amount 2</td>
<td>Amount 3</td>
<td></td>
</tr>
<tr>
<td>------------------------</td>
<td>----------</td>
<td>-----------</td>
<td>-----------</td>
<td></td>
</tr>
<tr>
<td>AIPP.8%</td>
<td>5,000 euros</td>
<td>2,500 euros</td>
<td>2,500 euros</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>12,000 euros</strong></td>
<td><strong>6,000 euros</strong></td>
<td><strong>5,600 euros</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Personal damage</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Suffering endured 2/7</td>
<td>1,000 euros</td>
<td>500 euros</td>
<td>500 euros</td>
<td></td>
</tr>
<tr>
<td>Aesthetic damage 1/7</td>
<td>600 euros</td>
<td>300 euros</td>
<td>300 euros</td>
<td></td>
</tr>
<tr>
<td>Pleasure damage</td>
<td>500 euros</td>
<td>250 euros</td>
<td>250 euros</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>2,100 euros</strong></td>
<td><strong>1,050 euros</strong></td>
<td><strong>1,050 euros</strong></td>
<td></td>
</tr>
</tbody>
</table>

The victim receives:

- for his asset damage: **3,900 euros**
- for his personal damage: **1,050 euros**

The social organisation will be reimbursed in the amount of **2,100 euros**.
V. PROCEDURES

Article 12 of the law of 5 July 1985 stipulates that the insurer covering the liability of the owner, driver or person with custody of a landborne motorised vehicle involved (A) in a road traffic accident is required to take a number of procedural measures (B) with a view to making a provisional or final offer to the victim of bodily harm. This offer must be made within the time limits and according to the standards set forth in law (C).

A. DESIGNATION OF THE INSURER MANDATED TO MAKE AN OFFER

In almost all accidents, i.e. those involving two vehicles, the insurer of the liable party is designated to make a compensation offer.
Where there are several insurers liable to make this offer, for reasons of their involvement alone, the French insurers have developed a convention-based system which complies with the provisions of article L 211-9 of the Insurance Code amongst others, enabling immediate designation of the insurer charged with processing the bodily harm case and allowing the compensation offer to be made.

B. THE PROCEDURAL MEASURES TAKEN BY THE INSURER CHARGED WITH MAKING THE OFFER

1. Sending of a questionnaire

The mandated insurer must forward to the victim or his successors a questionnaire enabling certain mandatory information to be obtained, as established in law, such as the description of his injuries, his professional earnings, the contact details of his welfare body, etc.
The victim then has 6 weeks from the date of sending to respond in a comprehensive manner to this request for information. Failure to meet this obligation will result in suspension of the deadline imposed on the insurer to make a compensation offer (see para C below).

2. Information for the victim

The mandated insurer attaches to the aforementioned questionnaire an information notice describing the victim's rights, such as the right to receive the report of the Authorities intervening at the place of the accident or the medical expert's report, his obligations, as well as the offer procedure.
3. Mandatory implication of the welfare body

The victim of bodily or psychological harm can obtain benefits in kind and in cash, primarily paid by his Social Security organisation and his employer. These various benefits are considered compensation which allows the organisation to ipso jure benefit from a subrogatory right of recourse. Consequently, the insurer will deduct the claims of these organisations from its share of consequential damage due to the victim.

The mandated insurer must claim its provisional or final debt from the welfare body, according to the stabilisation or otherwise of the victim’s state of health. This welfare body must indicate its provisional or final debt within 4 months of the insurer’s request, on pain of forfeiture (this time limit is extended for one month if the victim or its welfare body is domiciled abroad or overseas). This information is essential if the insurer is to present a full and adequate offer within the statutory time limits. Relations between the Social Security bodies and the insurers are structured within a convention-based agreement (cf appendix).

The provisions of the law of 5 July 1985 concerning relations between insurers and welfare bodies are included in this text.

4. Determining bodily harm

The mandated insurer must ensure that the victim is examined by an expert physician.

C. PRESENTATION OF THE OFFER

The mandated insurers is subject to two obligations for which failure to comply gives rise to penalties: obligation to comply with the time limits and obligation to present an adequate offer:

1. Obligation to comply with time limits

The aforementioned article 12 requires the insurer to make a compensation offer to the victim of bodily harm in the maximum time limit of 8 months from the date of the accident. When the insurer has not been informed of the degree of stabilisation within 3 months of the accident, its offer will be provisional in nature and it will have 5 months from the date it was informed of the stabilisation to make a final offer.

Furthermore, article L. 211-9 of the Insurance Code requires the insurer to make a reasoned reply or an offer to the victim within 3 months of his application, whatever the nature of the damage. This time limit of 3 months concerns cases where liability is not contested and where the damage has been entirely quantified.

Failure to meet this obligation is sanctioned in law: if the victim so requests, the insurer will be ordered to make interest payments at twice the official interest rate; however, the judge has
the option of reducing the amount if the causes of this delay were beyond its control. This penalty runs as from the offer expiry date to the date of the offer or final decision and is naturally paid to the victim.

However, to take account of the provisions of the fourth car directive, in cases where liability is not contested and where the damage has been fully quantified, the insurer covering third party liability for a landborne motorised vehicle is required to make a reasoned compensation offer to the victim within three months of the compensation request presented to it. When liability is rejected or not clearly established, or when the damage has not been entirely quantified, the insurer must, within the same time limit, provide a reasoned response to the elements indicated in the request.

Thus, a victim of bodily harm has a short time limit: eight months from the date of the accident or three months from his claim.

2. The content of the offer

The offer contains all the indemnifiable areas of loss on an item-by-item basis. Compensation is generally effected by transaction. Article 19 of the law of 5 July 1985 grants the victim the right to refuse the transaction in the two weeks following signature of the agreement.

Currently, over 95% of victims are compensated by means of out-of-court settlements, which enables faster resolution than through the courts and avoids the high legal costs the latter process entails. Moreover, legal action initiated by the victim does not relieve the insurer of its obligation to make an offer.

3. Obligation to present an adequate offer

The law of 5 July 1985 stipulates that the offer must not be patently inadequate but does not define this notion. In fact, this concerns an offer which is excessively low. Such a situation may arise from an inappropriate evaluation of the right to compensation (unjust sharing of liability enforced against a driver), compensation which is too low, or a medical under-estimate of the loss incurred.

An offer which is patently inadequate is sanctioned by payment to the Guarantee Fund of a penalty, which is at the most equal to 15% of the compensation that the judge will have defined, and by granting the victim damages.

D. COMPETENT JURISDICTIONS

Independently of the offer described above, the victim may ask the judge to fix the amount of damages. There are two options: civil courts and criminal courts.

1. Civil courts

Generally, the victim has no medical/legal elements regarding his loss available to him. He will then have recourse to a quick and easy procedure, the provisory settlement which enables
him to ask the judge, in most cases, to appoint an expert physician and allocate a provision as an advance on his final compensation.

Once the legal expert report has been submitted, if the victim does not accept the offer of an out-of-court settlement from the insurer, he has the option of bringing proceedings before a judge to obtain a legal ruling on his loss.

2. Criminal courts

The victim is informed by means of a notice to the complainant, that criminal proceedings have been taken against the perpetrator.

The victim therefore has the possibility of claiming damages in order to request the judge of the criminal court (police tribunal or magistrate's court) to order a medical/legal evaluation of his loss and to award him provisional compensation.

When the loss has been determined, this victim may once again make representations to the judge of the criminal court so that he rules on his final compensation by virtue of the rule enabling an out-of-court settlement at any time.

Naturally, the rulings handed down in the first instance may be the subject of the means of redress set forth in law.

E. SPECIFIC FEATURES OF FRENCH LAW

French insurance companies have signed a certain number of agreements between them as well as with certain external players in order to facilitate the management of files and, consequently, speed up compensation of victims while keeping overheads under control.

Among the principal agreements, there is one concerning all property losses (IRSA) which covers the most common bodily harm accidents as well as an agreement with the welfare bodies.

Moreover, with a view to improving road safety, a legislative provision has been taken which requires the insurer to offer to purchase the client’s vehicle when the amount of damages exceeds the value of the vehicle.

1. IRSA Agreement

This concerns the Agreement for the direct compensation of the insured and recourse between Car insurance firms.

Practically all the players on the French car insurance market have signed up to this agreement.

It requires the entity covering the insured's third party liability, known as the direct insurer, to compensate its own customer on behalf of the insurer of the liable party as per the provisions of common law. It then seeks recourse on the bases agreed between the insurance firms.

This agreement applies whatever the number of vehicles involved the accident, its typology and the amount of damages.

After compensating its customer, the direct insurer seeks recourse against the insurer of the liable party as per the following principles:

- Accidents between two vehicles, amount of damages of the insured below 6,500 euros: the recourse is effected on the basis of a fixed cost (1,204 euros) multiplied
by the share of liability of the insured as determined by a scale. Such recourse is presented by computer.

- Accidents between two vehicles, amount of damages above 6,500 euros: recourse effected on the basis of the actual costs multiplied by the share of liability of the insured as determined by a scale. A special rule is used when the damages exceed the threshold by three.
- Accident pile-ups: the insurer recovers from the insurer of the liable party, half of the damages paid to its customer, with the exception of the party at the front of the pile-up who can recover the full amount.
- 3 to 7 vehicle pile-ups. The insurer of the vehicle with the lowest mineralogical number is appointed as the playmaker. It is its role to establish a table apportioning the liability of each protagonist, its right to recourse and its debt. It effects financial exchanges between the insurers.
- Pile ups involving more than 7 vehicles: a timetable indicates the insurer who is on "permanent duty". It is its role to coordinate the action of the insurers and ensure that compensation takes place in optimum conditions. It should be noted that the direct insurer only initiates recourse to the extent that the damage he has compensated exceeds the sum of 80,000 euros.

2. Bodily harm agreement:

This is based on the same principles as the agreement related to property: the insurer of the third party liability compensates its customer and the occupants of his vehicle on behalf of the insurer of the liable party. It then seeks recourse at the actual agreed cost.

For minimal damages (≤ 5% of the permanent disability), the insurer has no recourse if he has compensated the victim above the minimum fixed by the agreement. However, he is liable for the difference if he pays more than the maximum.

3. Agreement protocol with the Welfare bodies

An agreement has been signed with most welfare bodies to speed up the reimbursement process. Scales have been established both for determining liabilities and the bases for recourse. The victim cannot be overridden and regulations which have been made effective by application of this agreement cannot be enforced against him. Any disputes are handled in the context of the procedure of escalation and arbitrage.

4. Seriously damaged vehicles (VGE procedure)

Article L-327-1 et seq of the French highway Code:  
www.securiteroutière.equipement.gouv.fr/experts/vga.htm

When the police forces note (most often during an accident) that the condition of a vehicle is dangerous for safety, they can decide to prohibit it from circulating on the road.

At the place of the accident, they take the owner's registration certificate and provide him with a notice of provisional withdrawal.
Two solutions are therefore possible but the decision to return the vehicle to circulation is only taken after the car has been inspected by a qualified expert.

either the owner does not get the vehicle repaired. He will compensated by the liable insurer on the basis of the value of the replacement vehicle less the value of the wreck. In addition, he must inform the prefecture of his decision.

or he gets the vehicle repaired. He must then provide an expert report drawn up by a VGA expert certifying that the owner can get his registration certificate back because the vehicle is compliant or that he should no longer circulate on the roads because it is dangerous. The return to circulation can only be agreed after the agreement of the expert who is obliged to provide a certificate attesting to the fact that repairs have been made as per the safety conditions required.

5. Vehicles beyond economic repair (VEI Procedure)
   art. L-327-1 et seq. of the French highway Code
   www.securiteroutière.equipement.gouv.fr/experts/vei.htm

   When a registered vehicle with a French serial number has incurred damage and the cost of the repairs is greater than its value at the moment of the loss, the insurer (damages or third party liability) must compensate the victim as per the procedure for a write-off.

   Moreover, the insurer is obliged to purchase the vehicle from the owner (without deducting the salvage value) and sell it to a breakers yard and then send the registration certification to the prefecture of the place of registration.

   Similarly, for the VGA procedure, the full process of compensation is based on the reasoned opinion of the expert and detailed in his report.

   Two situations arise in the two weeks following submission of the report:

   In these conditions, he can get his vehicle repaired but the liable insurer must inform the prefecture of the vehicle's place of registration. Any changes to the registration certification will then be impossible for the owner. To return his vehicle to circulation, the owner must produce an expert report establishing that his vehicle is of roadworthy condition under normal safety conditions.

6. Repair or replace: the owner's choice

   The aggrieved party has the choice not to have his vehicle repaired if he so wishes. In this case, he will obtain the amount of repairs fixed in the expert's report (see para below).

   Moreover, when the amount of the repairs is similar to the replacement value (approximately 80%), it is often the case that the expert suggests to the vehicle owner that his damaged vehicle should be sold to a breakers yard.

   In such a situation, when the amount of the repairs falls between the difference between the replacement value and the salvage value, the victim can sell his vehicle as is. The insurer of the liable party will pay him the replacement value minus the value of the wreck for which the breakers yard will make him a payment.
VI. APPENDICES

A. DEFINITIONS

1. Notice to the complainant

In the event of a criminal offence, the clerk of the court informs the party offended against of the date and place of the hearing. The document containing this information is either a notice to the complainant when the victim has instituted proceedings or a notice to the victim when he is only known to the court by means of police or gendarmerie documents.

2. Registration certificate

Administrative document serving as a receipt for the declaration concerning the placing in circulation of a landborne motorised vehicle (with the exception of mopeds). The declaration of circulation is made at the prefecture of the department where the declaring party normally resides. It does not constitute an entitlement or proof of the vehicle's ownership. However, its holder must be in possession of it so as to be able to present it to the police or gendarmerie, to inform the insurance agent with a view to drafting the insurance proposal or in the event of an accident with a view to filling out the joint declaration and then the declaration of a road traffic accident.

3. Green card

This concerns a document delivered by the car insurer to its insured and which, when abroad, is equivalent to a car third party liability insurance policy within the limit of the guarantees that it sets out. By the same token, foreigners driving in France in possession of this certificate are considered to have third party car insurance. In France, the Green Card only gives rise to a presumption of insurance.

4. Stabilisation

The process of compensating bodily harm comprises three stages: the date of the medical examination, the date of stabilisation fixed by the latter and the date of settlement or evaluation of the various losses. The date of stabilisation corresponds to the "moment when the injuries stabilise and become permanent, such that further treatment is not necessary except to avoid exacerbation and, where possible, assess a certain degree of permanent disability giving rise to a definitive loss".
B. LAW OF 5 JULY 1985 INTENDED TO IMPROVE THE SITUATION OF ROAD TRAFFIC ACCIDENT VICTIMS AND SPEED UP COMPENSATION PROCEDURES

EXTRACTS

With effect from 1 January 1986.

Chapter I - Compensation of victims of road traffic accidents

Article 1

The provisions of this chapter apply to victims of a road traffic accident in which a landborne motorised vehicle or its trailer or semi-trailer is involved, excluding trains and trams which run on their own tracks, as well as to victims carried pursuant to policy.

Section 1. Provisions concerning the right to compensation

Article 2

As against victims, including drivers, the defences of force majeure and act of third party are not available to the driver or custodian of a vehicle falling within art. 1.

Article 3

Full compensation is due to victims who suffer bodily harm, except drivers of landborne motorised vehicles, even if they themselves have been at fault, unless their fault was inexcusable and was the sole cause of the accident.

Victims falling within the previous paragraph who are under sixteen years of age or over seventy are entitled to full compensation in all cases; the same is true of those who, regardless of age, have, at the time of the accident, been certified as suffering from a permanent disability or incapacity of at least eighty per cent.

However, in the cases referred to in the two proceeding paragraphs, the victim will not be indemnified by the perpetrator of the accident for damage resulting from bodily harm if he has deliberately sought the damage which he has suffered.

Article 4

Fault on the part of the driver of a landborne motorised vehicle has the effect of limiting or excluding his claim for damages.

Article 5

Fault on the part of the victim has the effect of limiting or excluding the damages he may claim for damage to property, save that if medically prescribed items and apparatus are damaged, in which case the rules relating to bodily harm apply. As regards damage to the vehicle itself, when the driver of a landborne motorised vehicle is not the owner, the fault of the driver may be enforced against the claim by the owner, with the owner having recourse against the driver.

Article 6
Claims by third parties are subject to the limitations and exclusions which affect the claim for compensation by the primary victim of a road traffic accidents.

Section III: Compensation offer

Article 12 (allowing for the transposition project of the fourth directive)
Or article L 211-9 of the Insurance Code

Article L211-9 – Whatever the nature of the loss, in the event that the liability is not contested and the loss has been fully quantified, the insurer who covers third party liability as a result of an action by a motorised vehicle shall be bound to make a reasoned compensation offer to the victim who sustained bodily harm within three months of a request for compensation being made. Where liability is rejected or not clearly established or when the damage has not been entirely quantified, the insurer must, within the same time limit, give a reasoned response to the elements raised in the request.

A compensation offer must be made to the victim having suffered the bodily harm within the maximum time limit of eight months from the accident. In the event of the victim’s death, the offer shall be made to heirs and, where applicable, to his/her spouse. The offer shall include all indemnifiable items of the loss, including the items related to material damage, when they have not been the subject of prior settlement.

The offer may be made provisionally when the insurer has not, within three months of the accident, been informed of the stabilisation of the victim’s condition. The final compensation offer must then be made within five months following the date on which the insurer was informed of said stabilisation.

In any event, the time limit which is most favourable to the victim shall apply.

In the event that more than one vehicle is involved and if there are several insurers, the offer shall be made by the insurer acting on behalf of the other insurers.

Article 13 or article L211-10 of the Insurance Code

At the time of its first correspondence with the victim, the insurer, under pain of nullity of the settlement that may be made, must inform the victim that he may, upon simple request, be provided with a copy of the police report and remind him that he may be assisted by a lawyer and, in the event of a medical examination, a physician, which he shall be free to choose.

Subject to the same penalty, this correspondence shall inform the victim of the provisions of the fourth paragraph of Article 12 and those of article 15.

Article 14 or article L 211-11 of the Insurance Code

From the moment that the insurer, without any fault attributable to it, could not know that the third party payers referred to in Article 29 and 33 of the present law, had to make disbursements, said third party payers shall lose all right to repayment against it and against the person liable for the damage. However, the insurer may not plead such ignorance with regard to institutions paying social security benefits.

In any event, if third party payers fail to produce their claims within four months of the request made by the insurer, they shall forfeit their rights against the insurer and the person liable for the damage.

In the event that the claim made by the insurer fails to refer to the stabilisation of the victim’s condition, claims produced by the third party payers shall be provisional in nature.
Article 15 or article L 211-12 of the Insurance Code
When the third party payers have been unable on account of the victim to exercise their rights against the insurer, they shall have recourse against the victim within the limit of the compensation that he received from the insurer by way of the same grounds for damage and within the limits provided for in Article 31. They must act within two years as from the claim for payment of the benefits.

Article 16 or article L211-13 of the Insurance Code
When the offer has not been within the time limit prescribed by Article 12, the amount of the compensation offered by the insurer or awarded by the court to the victim shall bear interest ipso jure at double the legal interest rate as from the expiry of the time limit and until the date of the offer or the final judgement. This penalty can be reduced by the court for circumstances not attributable to the insurer.

Article 17 or article L211-14 of the Insurance Code
If the court that sets the amount of the compensation considers that the insurer’s offer was clearly inadequate, it shall order the insured, at its own instigation, to pay a sum equal at most to 15 per cent of the compensation awarded to the guarantee fund provided for under Article L421-1, without prejudice to damages owed to the victim on this account.

Article 18 or article L211-15 of the Insurance Code
The insurer must submit any planned settlement in respect of a minor or a person of full age placed under wardship, to the guardianship judge or board of guardians that is empowered, as the case may be, to authorise it. It must also give the guardianship judge at least two weeks' advance notice, without formality, of the payment of the first annuity instalment or of any sum to be paid as compensation to the legal representative of the protected person. Payment not preceded by the required notice or an unauthorised settlement may be cancelled at the request of any concerned party or the public prosecutor, with the exception of the insurer. Any clause whereby the legal representative vouches that the minor or a person of full age put under wardship will approve one of the instruments referred to in the first paragraph of this Article shall be null and void.

Article 19 or article L211-16 of the Insurance Code
The victim may, by registered letter with acknowledgement of receipt, terminate the settlement within two weeks of its conclusion. Any clause of the settlement whereby the victim waives his right of termination shall be null and void. The above provisions must be set forth in very clear print in the settlement offer and in the settlement, under the penalty of the latter’s revocation.

Article 20 or article L211-17 of the Insurance Code
Sums agreed must be paid within one month after the expiry of the period of termination set forth in Article 19. Failing this, sums not paid shall bear interest ipso jure at the official interest rate, which shall be increased by 50% during two months, then, upon expiry of the said two-month period, it shall be doubled.

Article 21 of article L211-18 of the Insurance Code
In the event of a conviction as a result of an enforceable court decision, even if provisionally enforceable, the rate of the official interest rate shall be increased by 50 per cent upon expiry of a two-month period and shall be doubled upon expiry of a four-month period, as from the date of the court decision when such was handed down after an adversarial procedure and, in all other cases, on the date of service of the decision.

Article 22 or article L211-19 of the Insurance Code
The victim may, within the time limit provided for in Article 2270-1 of the Civil Code, claim compensation for exacerbation of the damage that he sustained from the insurer who paid the compensation.

Article 23 or article L211-20 of the Insurance Code
When the insurer invokes an objection based on the legal or policyual cover, it shall be bound to comply with the requirements of Articles 12 to 20 on behalf of whom it may concern. The settlement may be contested before the court by the person on behalf of whom it was made, without the amount of the sums awarded to the victim or its successors being called into question.

Article 24 or Article L211-21 of the Insurance Code
For the application of Articles 12 to 20, the State and the public authorities, firms or institutions entitled to an exemption under Article L211-2 of the Insurance Code or granted a derogation from compulsory insurance under Article L211-3 of the same code shall be treated as an insurer.

Article 25 or article L211-22 of the Insurance Code
The provisions of Articles 12 and 13 and 16 to 22 shall apply to the guarantee fund in its relations with the victims or their successors. However, the time limit provided for in Article 12 shall run against the fund as from the date it receives evidence to justify its intervention. The application of Articles 16 and 17 shall not preclude the special provisions that govern legal actions against the fund. When the guarantee fund is liable for the interest provided for in Article 17, it shall be paid to the Public Treasury.

Article 26 or article L211-23 of the Insurance Code
Subject to the control of the authorities, a periodical publication shall review the indemnities awarded by judgements and settlements.

Article 27 or article L211-24 of the Insurance Code
A decree in Conseil d’Etat defines the measures required to apply this section. In particular, it determines the causes of suspension or extension of the time limit referred to in Article 12 as well as the information that the insurer, the victim and third party payers must give one another.

Chapter II. Recourses of third-party payers against persons held liable for damage resulting from bodily harm
Article 28
Whatever the nature of the event which causes bodily harm, the relations between third party payers and the parties liable for the injury are subject to the provisions of this chapter.
Article 29
Recourse against the party liable or his insurer is permitted only in respect of the benefits enumerated below:

1. Benefits paid by organisations, establishments and facilities under an obligatory social security scheme, and those listed in arts. 1106-9, 1234-8 and 1234-20 of the Rural Code;
2. Benefits enumerated in art. 1(II) of Order no. 59-76 of January 7th 1959 relating to civil liability actions brought by the State and certain other public corporations;
3. Reimbursement for the cost of medical treatment and rehabilitation;
4. Wages and associated sums which an employer has continued to pay during the period of inactivity following the event that caused the damage;
5. Daily illness allowances and disability benefits paid by a mutuality association governed by the Mutual Insurance Code, “provident schemes governed by the Social Security Code or the Rural Code and insurance companies governed by the Insurance Code.”

Article 30
Recourse under art. 29 is by way of subrogation.

Article 31
Subrogated recourse of third party payers is performed item by item, only for compensation repairing damage for which they assumed liability, excluding damage of a personal nature. In accordance with article 1252 of the civil code, subrogation cannot harm the subrogating victim, the creditor of the compensation, when he has only been compensated in part; in this case, he can exercise his rights against the party responsible, for the remainder owing to him, instead of from the third party payer from which he has only received partial compensation. However, if the third party payer establishes that he has effectively and beforehand paid to the victim a payment that indisputably compensates an item of personal damage, his recourse can be exercised on this damage item.

Article 32
An employer may bring a direct action against the party liable or his insurer to recoup social security charges paid to or in respect of the victim during the period of invalidity. This applies to the State notwithstanding art. 2 of the order no. 59-76 of 7 January 1959.

Article 33
Apart from the payments listed in art. 29 and 32, no claim lies against the party liable or his insurer in respect of any payment made to the victim by virtue of a legal, policyual or statutory obligation. Any term incompatible with the provisions of art 29 and 32 and this article is void, save in so far as it favours the victim. However, if the victim's insurer, pursuant to a term of the policy, makes an advance to the victim by reason of the accident, it is subrogated to his claim against the insurer of the party liable, up to the balance remaining after the sums specified in art. 29 have been paid. Such a claim is subject to the time-limits laid down for claims by third-party payers.
Article 34
In actions against the liable party or his insurer, and in cases of out-of-court settlement, the social security organisation responsible for reimbursement of medical costs shall represent all social security organisations responsible for coverage of other risks and for payment of family benefits.

The other articles are less directly concerned with the subject.

C. NOTICE AND TEXT RELATING TO PROCEDURES FOR COMPENSATING VICTIMS OF ROAD TRAFFIC ACCIDENTS INVOLVING A LANDBORNE MOTORISED VEHICLE

1. Notice
The notice relating to information for victims set forth in article R. 211-39 of the Insurance Code must include the indications shown in the specimen appended to the present article.
The aim of the following information is to explain the measures you should take and how you will be compensated.
We have endeavoured to cover the essential points. If you require further information, please consult:


The law of 5 July 1985 improved the situation for victims of road traffic accidents involving a landborne, motorised vehicle, as well as trailers or semi-trailers with the exception of railways and trams running on their own tracks:
- the cases of non-compensation are henceforth limited;
- a compensation offer must be made by the insurer within a time limit of eight months in the event of bodily harm.

Who qualifies for compensation?
For bodily harm:
passengers, pedestrians and cyclists, except when the victim has:

- deliberately sought the damage;
- committed an inexcusable error which is the sole cause of the accident. However, this error cannot be held against the victim if he is younger than sixteen or over seventy years of age or if he suffers from permanent disability or disability of at least 80%.

drivers of landborne motorised vehicles, except where they are responsible for the accident (the fault of the driver may limit or even exclude his right to compensation).

For property damage
all victims to the extent that they are not responsible for the accident.
Please note: Even if you are compensated for the damage incurred, you may have to compensate damage caused to third parties if you are liable.
How does the compensation process work?

- the insurer of the liable party contacts you;
- you furnish it with information;
- you undergo a medical examination;
- the insurer makes you a compensation offer;
- you accept the offer and the insurer compensates you;
- you refuse the offer and must then institute court proceedings to obtain compensation.

Who should you contact?

- in most cases, you should contact the insurer who covers the third party liability of the vehicle involved. If several vehicles are involved, a single insurer makes an offer on behalf of the others.
- the owner of the vehicle if he is exempt from the requirement to have recourse to an insurer (State, etc.);
- the Bureau central français, or its representative, if a foreign vehicle is concerned (address: &-&-1 rue Jules Lefebvre, 75009 Paris).
- if the perpetrator of the accident is unknown or not insured, it is up to you to apply to the Guarantee Fund (64, rue Defrance, 94307 Vincennes Cedex).
- The initial correspondence asks you to provide the information necessary for your compensation application to be considered.

You can:

assign a lawyer to the case;

obtain a copy of the police or gendarmerie report.

You must provide the insurer with:

1)-Your full name;
2)-Your place and date of birth;
3)-Your professional activity and the address of your employer(s);
4)-The amount of your professional earnings with supporting documents;
5)-The description of bodily harm accompanied with a copy of the initial medical certificate and other supporting documents in the event of stabilisation;
6)-The description of damage caused to your property;
7)-The full names and addresses of your dependents at the time of the accident;
8)-Your social security number and the address of the health insurance fund you come under;
9)-The list of third party payers required to pay you benefits, as well as their addresses;
10)-The address to which correspondence should be sent.

If the victim dies, the spouse and each heir must provide the insurer with the following:

1)-Full name and address;
2)-Place and date of birth;
3)-Full name, place and date of birth of the victim;
4)-Relations with the victim;
5)-Professional activity and the address of employer(s);
6)-The amount of earnings with supporting documents;
7)-Description of loss, all expenses incurred by the accident;
8)-Social security number and address of the health insurance fund he comes under;
9)-The list of third party payers required to pay him benefits, as well as their addresses;
10)-The address to which correspondence should be sent.
You should answer all these questions within a 6-week period. If you are late or if your response is incomplete, the compensation process will be delayed accordingly.

Your are asked to attend a medical examination.
At least two weeks before the medical examination, you are informed of:
• the date and place of the examination;
• the identity and qualifications of the physician;
• the purpose of the examination;
• the name of the insurer on whose behalf the examination is requested.

You will receive a copy of the report within twenty days.
You may:
• be accompanied by a physician of your choice;
• refuse to attend the medical examination if the information has not been forwarded to you within the time limits laid down;
• refuse to undergo examination by the physician chosen by the insurer; in this case, the insurer can propose another physician or ask the court to appoint one;
• ask the court to appoint an expert physician.

What does the compensation offer comprise?
If you have suffered bodily harm, the insurer must, in the eight months following the accident, present you with a compensation offer providing redress:

• for bodily harm;
• for property damage when it has not been the subject of prior settlement.

Depending on your state of health, this offer may be:
• final if your state of health has stabilised and the insurer has been informed in the three months following the accident
• provisional, if the contrary is true: the final offer will be presented to you five months after the insurer has been informed of your stabilisation.

The offer must cover all the elements of your loss, in other words:
In the event of injury:

• the costs incurred for your health care (hospitalisation, surgery, pharmaceuticals, rehabilitation, etc.);
• the salaries or earnings which you would normally have received had you not been involved in the accident; if you are not in paid employment, fixed-sum compensation payments may be granted;
• permanent partial disability determined by the physician charged with examining you;
• reimbursement of costs of third party(ies) whose assistance is required due to your state of health;
• compensation for suffering endured;
- other losses (disfiguration damage, loss of amenities, etc.);

**In the event of death:**
- reasonable funeral costs;
- moral harm;
- economic loss;
- other loss.

In all cases
- property damage ancillary to the bodily harm or property damage (clothes, prosthetic devices, etc.).

**Please note:** Where appropriate, the sums calculated are subject to reduction on the basis of:
- your liability;
- sums paid or to be paid by institutions participating in the compensation of your loss (welfare bodies, employers, payers of compensation advances, etc.); a copy of the detailed accounts of these bodies is appended to the offer.

**Who should receive the compensation offer?**
- the victim (general case);
- the heirs and the spouse (in the event of death);
- the legal representative and, depending on the case, the guardianship judge or the family council if the victim is a minor or person of full age but incapable.

**The subsequent stages**
**When you receive the offer, you may:**
- Accept.
- In the two weeks following your approval, you may withdraw it by means of registered letter with acknowledgement of receipt. If you are acting as the legal representative of a minor or person of full age but incapable, you will need the approval of the guardianship judge or the family council.
- Discuss.
- Refuse.

**You can.**
- contact the courts to obtain compensation;
- claim damages in the event of an offer which is patently inadequate.

In any event, inform your insurer who presented you with the compensation offer.

**Please note:** You must inform your health insurance fund of any transaction occurring with the insurer and any legal action.

**When are you compensated?**
**You are compensated:**
- at the latest forty-five days after the agreement signed between the insurer and yourself;
- in the event of legal proceedings, once they are terminated.

You can claim for interest in the case of a delay due to the insurer.
Practical advice

- You can entrust the defence of your interests to anyone of your choice; in the event of legal proceedings, a lawyer must represent you before the regional court.
- By sending a healthcare sheet to your social security office, indicating that it concerns an accident and its date.
- Compile your file by keeping the original, or at the very least a copy, of all medical documents, the detailed accounts from social security, receipts for expenses incurred, as well as a copy of any correspondence.
- You should send supporting documents regarding the loss you have suffered to the insurer.
- You can take the advice of insurance specialists, agents or brokers, a lawyer, legal advisor, physician, etc. However, the costs and fees for such remain payable by yourself unless you qualify for legal protection coverage or legal aid in the event of legal proceedings.
- Keep a close eye on time limits in order to ensure that your case is settled as speedily as possible. In particular, if one month after the accident you have received no news from the insurer, make contact immediately.

Comments
The system established by law is intended to reduce the number of legal proceedings and speed up compensation of victims. However, you have the option at any moment of:

- making an application before an urgent application judge (emergency procedure to obtain an advance on the compensation), particularly in the case of persistent inaction on the part of the liable party's insurer;
- involving the judge in the case of persistent discord on:
  the level of liability,
  the inexcusable nature of an error,
  the amount of the compensation offer;

  to take civil proceedings or to launch legal proceedings against the perpetrators of the accident whom you consider liable.

2. Text of the Insurance Code

Articles R.211-29 to R.211-44 of the Insurance Code, incorporated into the code by art. 2-2° of the order no. 88-261 of 18 March 1988 (official bulletin of 20 March 1988), originating from art 1 to 14, 16 and 17 of the order no. 86-15 of 6 January 1986 (official bulletin of 7 January 1986). They have been incorporated in application of article L. 211-24 of the Insurance Code.

Article R. 211-29
Suspension of the deadline for the compensation offer – Non-declaration of the claim

When the insurer which covers the third party liability of a landborne motorised vehicle has not been notified of the road traffic accident within a month of the accident, the time limit set forth in article L. 211-9 for making an compensation offer is suspended at the expiry of the time limit of one month until the insurer has received such notification.
Article R.211-30
Extension of the time limit – Death of the victim
When the victim of a road traffic accident dies more than one month after the accident, the time limit set forth in article L. 211-9 for making an compensation offer to the heirs and, if applicable, to the spouse of the victim is extended to allow for the time passed between the date of the accident and the date of the death minus one month.

Article R. 211-31
Suspension of the time limit – Delayed or incomplete response from the victim
If, in a period of six weeks as of the date of the presentation of the correspondence which is set forth in the first paragraph of article L. 211-10 and by which the insurer requests the information which must be addressed to it in accordance with articles R. 211-37 or R.211-38, the insurer has received no reply or an incomplete one, the time limit set forth in the first paragraph of article L. 211-9 is suspended as from the expiry of the time limit of six weeks and up until receipt of the letter containing the information requested.

Article R. 211-32
Suspension of the time limit – Offer of indemnity after stabilisation
If the insurer has received no reply or an incomplete one within six weeks of the presentation of the correspondence by means of which, informed of the stabilisation of the victim's condition, the latter has been asked to provided information mentioned in article R.211-37 which are necessary to present the compensation offer, the time limit set forth in the fourth paragraph of article L. 211-9 is suspended as from the expiry of the time limit of six weeks and up until receipt of the letter containing the information requested.

Article R. 211-33
Suspension of the time limit – Further request for information
When the victim, the heirs or the spouse only provide a portion of the information requested by the insurer in its correspondence and when the response does not allow the compensation offer to be established due to the absence of adequate information, the insurer has two weeks from the receipt of the full response to present to the interested party a further request in which it indicates the missing information. In the case where the insurer has not respected this time limit, the suspension of time limits provided for in articles R.211-31 and R.211-32 ceases at the expiry of a time limit of two weeks as from receipt of the incomplete response, when this has arrived after the six week time limit mentioned in the same articles, when the incomplete response has arrived within the six week time limit mentioned in articles R.211-31 and R. 211-32 and when the insurer has not requested the necessary information, within two weeks of receipt, there is no suspension of time limits as provided for in article L.211-9.

Article R. 211-34
Extension of the time limit – Medical examination – Urgent application judge
When the victim does not undergo a medical examination as mentioned in article R.211-43 or when he contests the choice of physician without an agreement being reached with the insurer, the appointment, at the request of the insurer, of an expert physician by the urgent application judge extends the time limit for the insurer to make its compensation offer by one month.
Article R.211-35
Extension of the time limit – Victim or third party payers domiciled outside of metropolitan France

When the victim resides overseas or abroad, the time limits which are accorded by virtue of articles R. 211-31 and R.211-32 are extended by one month. The time limit accorded to the insurer to make his compensation offer is extended by the same period.

When a third party payer resides overseas or abroad, the time limits set forth in article L. 211-9 are extended by one month.

Article R. 211-36
Calculating time limits

Time limits mentioned in the present section are calculated as per articles 641 and 642 of the new code of civil procedure.

Article R.211-37
Information provided by the victim

The victim is required, upon the request of the insurer, to provide the following information:

1. His full name;
2. His place and date of birth;
3. His professional activity and the address of his employer(s);
4. The amount of his professional earnings with supporting documents;
5. The description of bodily harm accompanied by a copy of the initial medical certificate and other supporting documents in the event of stabilisation;
6. The description of damage caused to his property;
7. The full names and addresses of his dependents at the time of the accident;
8. His social security number and the address of the health insurance fund he comes under;
9. The list of third party payers required to pay him benefits, as well as their addresses;
10. The address to which correspondence should be sent.

Article R.211-38
Information provided by successors

When the compensation offer has to be made to the victim's heirs, his spouse or those mentioned in the second paragraph of article L. 211-9, each of these persons is required, at the request of the insurer, to provide it with the following information:

1. His full name;
2. His place and date of birth;
3. His professional activity and the address of his employer(s);
4. The amount of his professional earnings with supporting documents;
5. The description of bodily harm accompanied with a copy of the initial medical certificate and other supporting documents in the event of stabilisation;
6. The description of damage caused to his property;
7. The full names and addresses of his dependents at the time of the accident;
8. His social security number and the address of the health insurance fund he comes under;
9. The list of third party payers required to pay him benefits, as well as their addresses;
The address to which correspondence should be sent.

At the request of the insurer, these same persons are required to also provide the information mentioned in article R. 211-37 necessary to establishing the offer.

**Article R. 211-39**  
**Correspondence of the insurer – Content**
The correspondence addressed by the insurer in application of articles R. 211-37 and R. 211-38 mention, in addition to the information provided for in article L. 211-10, the name of the person charged with monitoring the accident file. It reminds the party concerned of the consequences of a failure to respond or an incomplete response. It indicates that the copy of the police or gendarmerie report which he can request by virtue of article L. 211-10 will be sent to him free of charge.  
This correspondence is accompanied by a notice relating to the compensation of victims of road traffic accidents for which the model is fixed by a joint order of the minister of justice, the minister in charge of insurance and the minister responsible for social security.

**Article R. 211-40**  
**Compensation offer – Statutory text**
The compensation offer must indicate, in addition to the statutory text required by article L. 211-16, the evaluation of each area of loss, the debts of each third party payer and the sums which are due to the beneficiary. It is accompanied by the copy of the detailed accounts produced by the third party payers.  
The precise offer, where required, the limitations or exclusions of compensation chosen by the insurer, as well as their reasons. In the event of exclusion of compensation, the insurer is not required, in his notification, to provide the indications and documents provided for in the first paragraph.

**Article R. 211-41**  
**Request from the insurer to the third party payer – Statutory texts**
The request addressed by the insurer to a third party payer with a view to the production of its claims indicates the surnames, first names, address of the victim, his professional activity and the address of his employer(s). It clearly refers to the provisions of articles L.211-11 and L.211-12. Failing these indications, the time limit for expiry set forth in the second paragraph of article L. 211-11 does not apply.

**Article R.211-42**  
**Production of the third party payer – Statutory texts**
The third party payer indicates to the insurer, regarding each sum for which he requests reimbursement, the legislative, regulatory or convention-based provision by virtue of which this sum is due to the victim.  
In the case provided for in the third paragraph of article L. 211-11, the claims are only of a provisional nature if the third party payer expressly so requests.
Article R.211-43
Medical examination – Information for the victim

In the event of the medical examination performed with a view to making the compensation offer referred to in article L. 21169, the insurer or his agent informs the victim, at least two weeks prior to the examination, of the identity and qualifications of the physician charged with carrying it out, purpose, date and place of the examination, as well as the name of the insurer on behalf of whom it is being done. He also informs the victim that he can be assisted by a physician of his choice.

Article R. 211-44
Forwarding of the medical report

In a time limit of twenty days as from the medical examination, the physician sends a copy of his report to the insurer, the victim and, where appropriate, the physician who assisted the victim.

D. STANDARD MISSION

1. STANDARD COMMON LAW MISSION

This mission, accompanied by explanatory comments, is reserved for small and medium files, which represent almost 95% of bodily harm files (it should be recalled that in this context, 90% of cases are settled out of court).
Adopted by the entire profession, appended to Agreements between insurers, it is regularly referred to by the competent courts in the event of a court ordered appraisal.
This mission is intended to clarify and specify the requests made by administrators to physicians. It is not an expert appraisal model to be followed to the letter; however, all questions raised must give rise to a reasoned response in the expert appraisal report.

A. Preparation for appraisal and examination

Point 1
Contact with the victim
In accordance with the texts in force, within a minimum time limit of 15 days, inform by post Mr. (Mrs.) X, the victim of an accident on the … of the date of the medical examination at which he (she) must present himself (herself).

Point 2
Medical file
Have sent by the victim or his legal representative all medical documents relating to the accident, in particular the initial medical certificate, the hospitalisation report(s), the imaging folder, etc.
Point 3  
**Personal and professional situation**  
Learn the identity of the victim; supply the maximum information on his lifestyle, his professional employment conditions, his exact status; if the victim is a child, a pupil or student undergoing professional training, specify his academic standard, the nature of his qualifications or training; if a job applicant, specify his status and/or his training.

Point 4  
**Reminder of facts**  
Based on the statements of the victim (or of his associates if necessary) and the medical documents supplied:

4.1. State the circumstances of the accident.

4.2. Describe in detail the initial lesions, the immediate consequences and their evolution.

4.3. Describe, if the victim has experienced particular difficulties, the conditions in which his independence was restored, and when he had recourse to temporary help (human or material), specify the nature and duration.

Point 5  
**Care before healing**  
Describe all the medical and paramedical care applied up to healing, specifying its imputability, nature, and duration and indicating the exact dates of hospitalisation with, for each period, the nature and name of the establishment, and the department(s) concerned.

Point 6  
**Initial lesions and evolution**  
In the chapter on comments and/or that on the documents presented, re-transcribe the initial medical certificate in its entirety, specify its date and source and reproduce totally or partially the various medical documents giving details of the initial lesions and the main stages of their evolution.

Point 7  
**Complementary examinations**  
Find out about any complementary examinations undertaken and interpret them.

Point 8  
**Grievances**  
Collect and re-transcribe in their entirety the grievances expressed by the victim (or by his associates if necessary), making him (them) specify in particular the conditions, the date of appearance and magnitude of the pain and the functional difficulty, as well as their consequences for everyday life.
Point 9
**History and pre-existing conditions**
In accordance with the law of medical ethics, question the victim on his medical history and only report or discuss them if they constitute a pre-existing condition likely to have an effect on the lesions, their evolution and the after-effects presented.

Point 10
**Clinical examination**
Conduct a detailed clinical examination depending on the initial lesions and the grievances expressed by the victim. Re-transcribe these findings in the report.

**B. Analysis and evaluation**

Point 11
**Discussion**
11.1 Analyse in a precise, synthetic discussion the imputability of the initial lesions to the accident, their evolution and the after-effects taking particular account of the victim’s grievances and the clinical examination data; give a decision on the direct, determinate nature of this imputability and indicate any impact of a pre-existing condition.
11.2 Then answer the following points.

Point 12
**Temporary difficulties representing a “temporary functional deficit”**
Whether the victim practises a professional activity or not:

- Take into consideration all the temporary difficulties suffered by the victim in the exercise of his usual activities after the accident; specify their nature, necessity and duration (particularly hospitality, obligation for care, difficulties in carrying out household tasks).

- Discuss their imputability to the accident on the basis of the lesions and their evolution and specify their direct, determinate nature.
Point 13
Temporary halt in professional activities
If there is a temporary halt in professional activities, specify their duration and the conditions for resumption. Discuss their imputability to the accident on the basis of the lesions and their evolution in relation to the activity practised.

Point 14
Healing
Establish the date of healing, which is defined as “the time when the lesions have stabilised and taken on a permanent character so that treatment is no longer necessary except to avoid any aggravation, and that it becomes possible to assess the possible existence of permanent damage to physical and psychic integrity”.

Point 15
AIPP
Permanent damage to physical and psychic integrity [Atteinte permanente à l'Intégrité Physique et Psychique, or AIPP]
Describe the imputable after-effects, and determine with reference to the latest edition of the “Barème indicatif d'évaluation des taux d'incapacité en droit commun » [indicative scale for assessing incapacity in common law], published by the Concours Médical [medical council], the resulting extent of one or more cases of permanent damage to physical and psychic integrity (AIPP) that persist(s) at the time of healing, and represent(s) a permanent functional deficit [déficit fonctionnel permanent, or DFP].
AIPP is defined as “the definitive reduction of the physical, psycho-sensorial or intellectual potential as a result of damage to the anatamo-physiological integrity:
- that can be established medically and can therefore be assessed by an appropriate clinical examination, supplemented by the study of complementary examinations performed;
- to which are added pain phenomena and psychological repercussions normally associated with damage from the after-effects as described, as well as the consequences usually and objectively associated with this damage in everyday life.”

Point 16
Suffering endured
Describe the physical, psychic or moral suffering associated with the accident, from the date of the latter to the healing date.

It is represented by “the physical pain resulting from the seriousness of the injuries, their evolution, the nature, duration and number of hospitalisations, the intensity and demanding nature of the care, to which are added the psychic and moral suffering represented by the emotional troubles and phenomena deriving from the
Point 17
Aesthetic damage
Give an opinion on the existence, nature and importance of aesthetic damage imputable to the accident. Assess it according to the usual scale of 7 degrees, independently of any physiological damage already taken into account under permanent damage to physical and psychic integrity.

Point 18
Repercussions of after-effects

- Professional activities:
  When the victim mentions repercussions in the performance of his professional activities or a change in the training planned or its abandonment (if the victim is a school pupil or student undergoing professional training), issue a reasoned opinion, discussing its imputability to the accident, to the lesions and the after-effects determined. Give a decision on their direct, determinate nature and their definitive result.

- Pleasure activities:
  When the victim mentions repercussions in the performance of his specific sporting or leisure activities that were effectively practised prior to the accident, issue a reasoned opinion discussing their imputability to the accident, the lesions and after-effects determined. Give a decision on their direct, determinate nature and their definitive result.

- Sex life:
  When the victim mentions repercussions in his sex life, issue a reasoned opinion discussing their imputability to the accident, the lesions and after-effects determined. Give a decision on their direct, determinate nature and their definitive result.

Point 19
Medical care after healing / future costs
Give a decision on the need for medical or paramedical care and for equipment or prostheses, needed after healing to avoid aggravation of the consequent condition, prove the imputability of the care to the accident in question, specifying whether it
is a matter of occasional costs, i.e. limited in time, or costs for life, i.e. involved throughout the victim’s life.

Point 20
Conclusions
Conclude by recalling the date of the accident, the date and location of the examination, the healing date and the medico-legal assessment determined for points 12 to 19.

D. RECOMMENDATION FOR THE PAYMENT OF THE “IMMOBILISATION” AND “RENTAL COSTS” DAMAGE ITEMS IN COMMON LAW

1. Purpose of the recommendation

This recommendation concerns the payment of the “immobilisation” and “rental costs” damage items following automobile traffic accidents occurring in France between French nationals and foreigners, whether they are victims or responsible parties.

We are therefore exclusively in the context of common law, outside any contractual provision.

The aim of the approach is to establish a code of good conduct in order to facilitate the payment of the vast majority of the most common cases. The recommendation only concerns accidents involving individuals’ landborne motorised vehicles (including motorbikes and sidecars) or campers.

In fact it has seemed necessary to harmonise the calculations for compensation owing for repair for these two items with a view to promote the just, rapid and like treatment of all injured persons.

Special cases must be handled as such (cf. below)

2. Recommendation

a) Reminder of the basic principle of the Compensation Guide

These two damage items are paid “if they show a link of causality, if they are proportionate to the consequences of the accident and to the tariffs in use, and if they are not the consequence of the negligence of the owner”.

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b) **Flat-rate compensation proposed for immobilisation, whatever the context (public liability or legal recourse/protection)**

<table>
<thead>
<tr>
<th>Category of vehicle</th>
<th>Flat-rate compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landborne motorised vehicle &lt; 3.5T including motorbikes and side cars</td>
<td>10 €/day</td>
</tr>
<tr>
<td>Campers</td>
<td>20 €/day</td>
</tr>
</tbody>
</table>

NB: These amounts represent flat “day” rates on the basis of the theoretical duration of immobilisation forecast by the appraiser.

- The duration of immobilisation to take into account under this recommendation for irreparable vehicles is 10 days in all cases.

- Compensation for immobilisation does not prevent consideration of other individual instances of damage if they are characterised (for example: loss of profits, financial losses, spoiled holidays, etc.).

c) **Rental costs:**

It seems difficult for this specific item of damage, to think in terms of a flat amount.

The problem managers are faced with is essentially the question of the need to rent a replacement vehicle and the duration of its hire.

➢ **Reminder of the principles of the “Compensation Guide”:**

- “When the replacement vehicle is granted, it must be of the same type as the vehicle damaged in the accident, or of an inferior type.

- Duration of rental: it is granted during the effective period of the vehicle being immobilised, provided that the injured party has not inadvertently or deliberately prolonged it.

- If the vehicle is replaced, the length of the rental period that can be granted is 10 days starting from the submission of an appraisal report recommending wrecking, to which is added the period elapsed between the date of the accident and that of the submission of the appraisal report (excluding negligence on the part of the injured party).”

Therefore it is recommended to take note of the following principles:
- There is no distinction between the professional or non-professional use of the vehicle.

- It is necessary to take into account rental invoices corresponding to the effective duration of the vehicle’s restoration and/or immobilisation, unless they demonstrate a situation of abuse in terms of either duration or costs.

- It is not appropriate to deduct a flat percentage for "unreported costs".

d) **Special cases: examples**

- Daily flat rates for immobilisation cannot be accumulated with rental costs, except in specific cases (in the case of the immobilisation of the vehicle, if the rental has not begun immediately, etc.)

- Rental durations deemed exceptional for their cost and/or their duration, in relation to the circumstances, must be treated on a case-by-case basis.