

## Indemnity law in Germany and Italy



# AGENDA

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**Basis of liability in Germany and Italy**

**Compensation of material damage in Germany and Italy**

**Compensation of personal injury in Germany and Italy**

**Provisions regarding out of court claims settlement**

**Private international law**


**Practical aspects in international claims settlement**

# Bases of liability

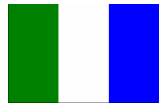
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➤  Germany:

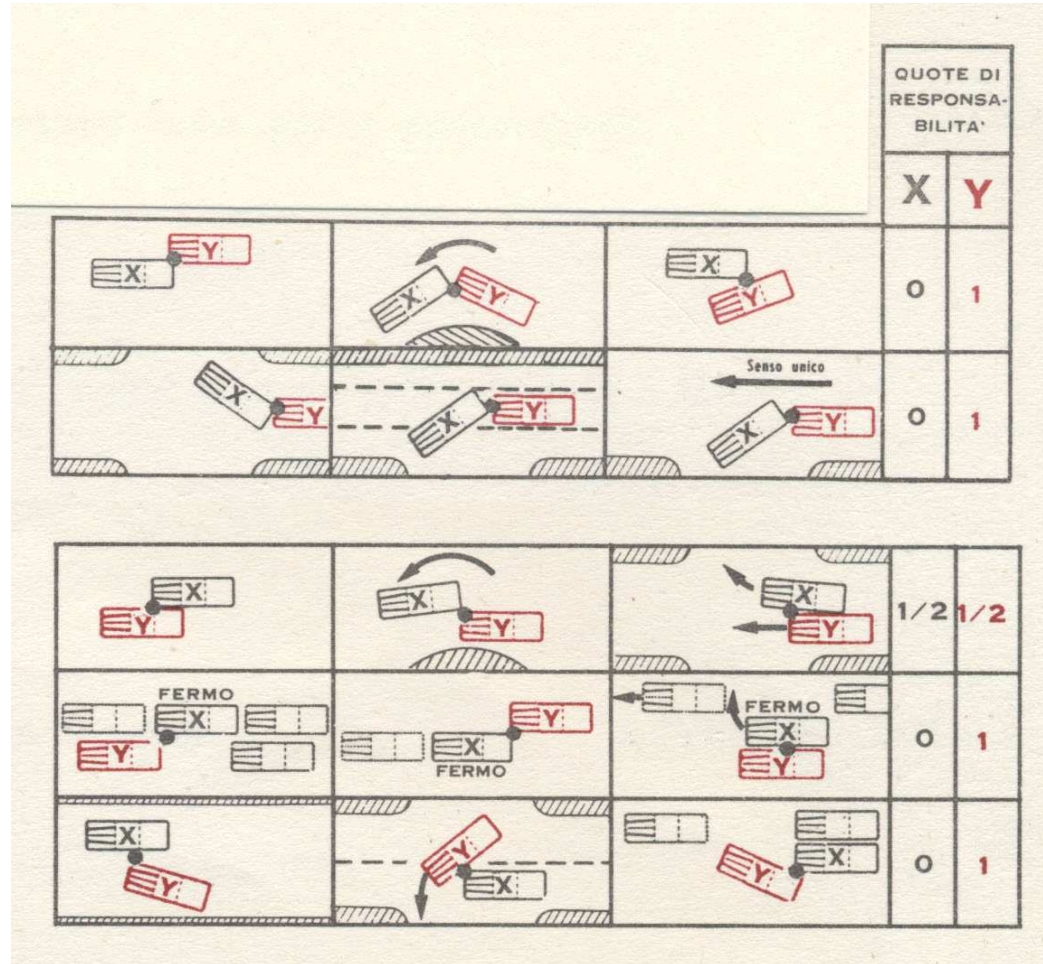
Tortious liability (§ 823 German Civil Code) and strict liability (§§ 7, 18 German Road Traffic Act)

➤  Italy:

Tortious liability (Art. 2043 Codice Civile) and presumption of contributory fault (Art. 2054 Codice Civile)



# Claims handling practice becomes law



# Compensation of material damage

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- Repair costs, compensation for total loss
- Expert costs
- Loss of value
- Towing costs
- Expenses flat rate
- Rental car costs
- Loss of use



## Compensation of material damage

- Constructive total loss in Germany:
  
- Definition: Actual repair assessed by an expert would cost more than reselling the property minus salvage value (replacement cost).
  
- Options:
  - claim the vehicle's replacement value minus salvage value
  
  - Repair under the condition repair costs do not exceed 130 % of the replacement value



## Compensation of material damage



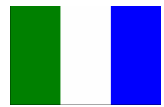
- Depreciation in Germany:
- Mercantile depreciation: vehicle has suffered damage by way of the accident and despite proper repair generally sells for less than without accident.
- Obligation to inform the buyer about possible accidents with the car and the consequent damages.



## Compensation of material damage



- Rental car costs and loss of use in Germany:
- Rental car costs: “accident replacement rate”
- Loss of use: tables providing a daily rate for each vehicle type and model - “Group A” (e. g. DACIA Logan; daily rate €27) to “Group L” (e. g.: Mercedes-Benz S-Class; daily rate €99,--).

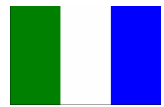


# Compensation of material damage

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- Repair costs and constructive total loss in Italy:
- Importance of the invoice for repair costs.
- Total loss: no option to repair if costs exceed replacement value.



## Compensation of material damage



- Depreciation, rental car, loss of use in Italy:
- No mercantile depreciation
- Rental car costs only if the claimant can prove that he needs the vehicle to carry on his profession or that it is essential to avert a further major financial loss (loss of income).
- Loss of use: not always an automatic consequential loss; in practice daily rates up to € 30.



## Germany

- Compensation for Pecuniary losses (consequence of personal injury)
- Compensation for pain and suffering:  
§ 253 BGB: "...for an injury to the body or health, ..., a reasonable compensation in money may be demanded for any damage that is not financial damage".



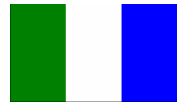
## Germany / Compensation for pain and suffering:

- Broken arm: € 1.000 – 12.500
- Broken leg: € 2.500 – 12.500
- Paraplegia: € 12,000 and over, including pension
- Example: Paraplegia C1 cervical, infant three years and six months, permanent care required (Kiel Regional Court)
  - € 500,000 and monthly pension of € 500

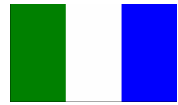
# Compensation of personal injury

- Amounts of damages for pain and suffering / countries without table system:

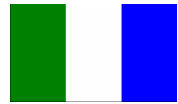
	A	D	NL	P
Whiplash	1,000 € - 3,000 €	100 € – 3,000 €	1,000 € - 5,000 €	500 €
Rib contusion	1,000 € - 2,000 €	300 €– 1,000 €	400 €	500 €
Broken arm	3,500 € - 5,000 €	1,000 € – 2,500 €	800 €	1,200 €
Paraplegia	150,000 €	250,000 €	125,000 €	50,000 €
Maximum	220,000 €	500,000 €	150,000 €	100,000 €



- **Compensation for Pecuniary losses**
- **Danno Biologico:** Sum of all losses of a person's physical and/or mental integrity that go beyond typical financial losses and spontaneous pain, that can be ascertained by way of a forensic medical assessment, and that can thus be indemnified irrespective of their effects on the claimant's earning capacity.
- **Danno Morale:** “pretium doloris” as compensation for the pain suffered as a result of the injury, in the sense of both physical pain and mental suffering.
- **Danno Esistenziale:** Loss or harm to other constitutionally protected values than body and health.



- **Danno Biologico / temporary disability:**
  - EUR 40.16 per day for the duration of temporary complete disability (100 %)
  
- **Danno Biologico / Permanent disability:**
  - EUR 688.28 is awarded for each dis-ability point (or percentage point) of permanent disability.



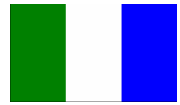
## Danno Biologico: Medical table

<b>Cervical vertebral column (whiplash)</b>	
After-effects of small external bone fractures with moderate impairment of extreme motions	2 to 6
<b>Effects with only subjective pain symptoms</b>	< or = 2
<b>Effects substantiated by objective medical findings with subjective pain symptoms, impairment of extreme motions</b>	< or = 4



# Danno Biologico / Micropermanenti

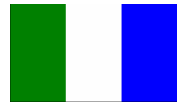
<i>Percentage / Euro</i>	1	2	3	4	5	6	7	8	9
<b>AGE</b>									
10	674,78	1484,52	2429,21	350,86	5060,85	6882,76	8974,57	11336,30	13967,95
35	590,43	1298,95	2125,56	3070,25	4428,24	6022,41	7852,75	9919,27	12221,95
40	573,56	1261,84	2064,83	2982,53	4301,72	5850,34	7628,39	9635,86	11872,75
60	506,09	1113,39	1821,91	2631,64	3795,64	5162,07	6730,93	8502,23	10475,96
65	489,22	1076,27	1761,18	2543,92	3669,12	4990,00	6506,57	8218,82	10126,76



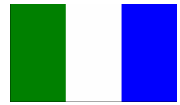
# Out of Court Claims Settlement



- Registering claim by registered letter
- 60 day term to make offer (90 days for personal damages; 30 days for material damages + European accident report)
- 60-days term before taking claim before court (spazium deliberandi).
- Payment of indemnity within 15 days
- appeal does not suspend immediate enforceability of judgements



- **Green Card correspondent's cover enquiries:**
- Italian supervisory authority has set the Italian GC Bureau a deadline of 90 days to obtain cover
- Italian GC Bureau has stated that the representatives of foreign insurance companies must decide on the cover issue within 60 days. If there is any delay in admitting (or reject-ing) cover, the GC Bureau will resume processing directly.

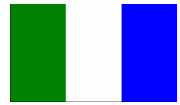


## Green Card claims handling

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- **Minimum insurance limits:**
- € 750,000 per claim
- If the foreign insurer offers higher contractual limits of indemnity, he is required to pay damages up to those higher limits.



- Art. 141 Private Insurance Code /  
"transported third parties":
- losses sustained by "transported third parties"  
must be compensated by the motor liability  
insurer of the vehicle in which they were  
passengers at the time of the accident,  
regardless of the liability issue.



## Out of Court Claims Settlement

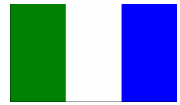


- Regulation terms according to the 5. th motor insurance directive
- Efficient court procedures
- Detailed jurisprudence of the German High Court (BGH)
- Lower courts generally follow
- Many claimants defended by lawyers whose fees are being paid by Legal Protection insurance



## Introductory Law to the German Civil Code (Germany)

- Lex loci delicti commissi principle Art. 40 paragraph 1  
Tort liability is based on the law of the country where the liable person has committed the harmful event“. „ The injured party may require the application of the law of the country where the harmful event resulted in damage.
- Art. 40 paragraph 2 – common habitual residence  
„If the liable person and the injured party at the time the event occurred had their habitual residence in the same State, the law of such State shall apply“.



- Art. 62 Law 218/1995
- Lex loci delicti comissi
- Exception: Liable person and injured party with residence in the same State and same nationality

## Hague Convention on the Law applicable to Traffic Accidents of 1971

### ➤ Signatories:

- Belgium, France, Yugoslavia, Croatia, Luxembourg, The Netherlands,
- Austria, Switzerland, Slovakia, Slovenia, Spain,
- Czech Republic

### ➤ Principle: *lex loci delicti commissi* (Art. 3)

### ➤ Art. 4 – 6 law of the country of registration or where the vehicle is normally based

- Involvement of a vehicle (claims of passengers)
- Several vehicles (all registered in the same State)
- Involvement of persons outside the vehicle (all persons with habitual residence in the country of registration)

## **Requirements for Green Card correspondents:**

- Knowledge of the own legal system
- Knowledge of international law
- knowledge of the law in the country of the mandating insurer
- Language skills
- Efficient organisation or operational processes
- Modern technology
- Networked international organisation
- Financial background

# Thank you for your attention!

