

# Common Compendium

## E - Spain

Review date: 13/07/2022

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**Country Code:** E

**Organisation (s):** OFESAUTO and CONSORCIO DE COMPENSACIÓN DE SEGUROS

### 1. Basic Information (GCB/GF/CB)

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

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

**Green Card Bureau:** OFESAUTO

**Guarantee Fund:** CONSORCIO DE COMPENSACIÓN DE SEGUROS (herinafter CCS)

**Compensation Body:** OFESAUTO

**Information Centre:** CONSORCIO DE COMPENSACIÓN DE SEGUROS (herinafter CCS)

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

*Please answer in your capacity as Green Card Bureau:*

**Non-profit organisation**

**Association of legal entities**

**Limited liability company**

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

*Please answer in your capacity as Guarantee Fund:*

**Non-profit organisation**

**Association of legal entities**

**Limited liability company**

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

*Please answer in your capacity as Compensation Body:*

**Non-profit organisation**

**Association of legal entities**

**Limited liability company**

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

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

*Please answer in your capacity as Green Card Bureau:*

**Owned/controlled by all Members equally**

**Part of state government**

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

*Please answer in your capacity as Guarantee Fund:*

**Owned/controlled by all Members equally**

**Part of state government**

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

*Please answer in your capacity as Compensation Body:*

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- Owned/controlled by all Members equally
- Part of state government
- Other. Please specify. Click or tap here to enter text.

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

*Please answer in your capacity as Green Card Bureau:*

- Only insurance undertakings are Member to the organisation
- Mixed membership of insurance undertakings and other members
- Only Members participate in the governance
- Others may participate in the governance
- Other. Please specify. Click or tap here to enter text.

*Please answer in your capacity as Guarantee Fund:*

- Only insurance undertakings are Member to the organisation
- Mixed membership of insurance undertakings and other members
- Only Members participate in the governance
- Others may participate in the governance
- Other. Please specify. The CCS is a public entity attached to the Ministry of Economy and linked to the Spanish Insurance Supervisory Authority. The President of the CCS is the Head of the Insurance Supervisory Authority.

*Please answer in your capacity as Compensation Body:*

- Only insurance undertakings are Member to the organisation
- Mixed membership of insurance undertakings and other members
- Only Members participate in the governance
- Others may participate in the governance

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

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

*Please answer in your capacity as Green Card Bureau:*

**Yes**

**No**

**If answered yes to question 1.5., please indicate the VAT number: ES G28075240**

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

**Yes**

**No**

**In what instances is VAT refundable? Please specify.** Click or tap here to enter text.

*Please answer in your capacity as Guarantee Fund:*

**Yes**

**No**

**If answered yes to question 1.5., please indicate the VAT number: Q2826011E**

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

**Yes**

**No**

**In what instances is VAT refundable? Please specify.** Click or tap here to enter text.

*Please answer in your capacity as Compensation Body:*

**Yes**

**No**

**If answered yes to question 1.5., please indicate the VAT number: ES G280752 40**

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

Yes

No

**In what instances is VAT refundable? Please specify.** Click or tap here to enter text.

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

**GCB:** [www.ofesauto.es](http://www.ofesauto.es)

**GF:** [www.conorseguros.es](http://www.conorseguros.es)

**CB:** [www.ofesauto.es](http://www.ofesauto.es)

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

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

*Please answer in your capacity as Guarantee Fund:*

**Please provide the name and date of the law:** 1. Legal Statute of the Consorcio de Compensación de Seguros 29 October 2004 (Estatuto Legal del Consorcio de Compensación de Seguros, Real Decreto Legislativo 7/2004, 29 de octubre 2004) 2. Law governing liability and insurance derived from the use and circulation of motor vehicles 29 October 2004 (Ley sobre responsabilidad civil y seguro en la circulación de vehículos a motor, Real Decreto Legislativo 8/2004, de 29 de octubre) 3. Regulation governing compulsory motor third party liability insurance 12 September 2008 (Reglamento del seguro de responsabilidad civil en la circulación de vehículos a motor, Real Decreto 1507/2008, de 12 de septiembre).

*Please answer in your capacity as Compensation Body:*

**Please provide the name and date of the law:** Real Decreto Legislativo 8/2004, de 29 de octubre, por el que se aprueba el texto refundido de la Ley sobre responsabilidad civil y seguro en la circulación de vehículos a motor (chapter 4).

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

*Please answer in your capacity as Guarantee Fund:*

Yes

No

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

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

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Please answer in your capacity as Compensation Body:

Yes

No

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

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

## 2. Applicable law (GCB/GF/CB)

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

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

1. Law governing liability and insurance derived from the use and circulation of motor vehicles 29 October 2004 (Ley sobre responsabilidad civil y seguro en la circulación de vehículos a motor, Real Decreto Legislativo 8/2004, de 29 de octubre) .

2. Regulation governing compulsory motor third party liability insurance 12 September 2008 (Reglamento del seguro de responsabilidad civil en la circulación de vehículos a motor, Real Decreto 1507/2008, de 12 de septiembre).

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

Fault based liability

Strict liability

**Other. Please specify.** Fault based liability applies to material damage. Strict liability applies to personal injury and can only be exempted in the following cases: sole negligence of the victim, force majeure not related to driving or to the functioning of the vehicle. Both apply to the driver of the vehicle causing the accident.

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

**Country of residence. Please specify.** Click or tap here to enter text.

**Nationality. Please specify.** Click or tap here to enter text.

**Other. Please specify.** No restrictions apply based on country of residence and nationality.

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

Definition in article 1.1 of the Regulation governing compulsory motor third party liability insurance 12 September 2008 (Reglamento del seguro de responsabilidad civil en la circulación de vehículos a motor, Real Decreto 1507/2008, de 12 de septiembre).

All vehicles suitable for driving on the earth's surface propelled by an engine, including scooters, special vehicles, trailers and semitrailers for which administrative authorization is mandatory in order to be allowed to circulate in accordance with the legislation ruling road traffic.

**Are there any exemptions? Please specify.** There are 3 exemptions: 1) Trailers, semi-trailers and special trailed machines with a maximum authorised mass of less than 750 kg. 2) Permanently or temporarily deregistered vehicles. 3) Electric wheelchairs and toys.

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

Yes

No

**How do you define a private area according to your national law? Please specify.**

Garages, car parking and private urban or interurban areas, that are suitable for road traffic.

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

Type of vehicle	Personal injuries		Material damage	
	Per accident	Per victim	Per accident	Per victim
All	€70,000,000	N/A.	€15,000,000	N/A.
<b>Date of effect:</b> 01/01/2008				

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

**Accident caused by stolen vehicles:** They are compensated by the CCS as GF

**Accident caused by drunk driving:** Click or tap here to enter text.

**Accident caused with intent (for instance homicide, suicide):** Click or tap here to enter text.

**Accident caused by a terrorist attack:** Such attacks are not regarded as "use of a vehicle as a means of transport" according to the Spanish legal framework on MTPL insurance. Nevertheless, there is specific legislation in place related to terrorism (regardless of the means used) whereby, on the one hand, public aids are granted for victims and, on the other hand, as far as insurance is concerned, the Legal Statute of the CCS includes these terrorist acts in the CCS's cover of the so-called "extraordinary risks insurance" along with natural catastrophes. Besides its functions as GF and IC, the CCS is the insurer of natural catastrophes and terrorism in Spain

**Accident caused by a driver without a license:** Click or tap here to enter text.

**Other instances:** " 1) Sole negligence of the victim. 2) Force majeure outside the act of driving or the functioning of the vehicle.

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

**Yes**

**No**

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

## Is there any category of passenger excluded from this cover?

**Yes**

**No**

**Please specify.** The driver.

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

**Yes**

**No**

**If yes, what is the nature of the damages to which the time-limit applies?** Both bodily injury and material damage

**If yes, what is the specific time-limit?** Three months

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

One year

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

**In respect to material damage:** It begins one year from the date of the accident and it expires one year after.

**In respect to bodily injuries:** It begins one year from full recovery or stabilization of the injuries.

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

If the injured party has submitted an initial claim, the time limit is indefinitely interrupted until the insurer sends a reasoned offer or a reasoned reply (unless this is because the injuries cannot be quantified, usually because he is still undergoing treatment). The out-of-court complaint of the insured also interrupts the limitation period against the insurer.

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

No.

**Are there any differences for limitation period of liable party? No**

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

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

**Yes**

**No**

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

judicial review of the latter's decision or action to court directly

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

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

#### 3.1. Does your national law regulate trailers?

Yes

No

#### 3.2. Liability

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

There's an agreement between insurance companies to divide responsibility between the truck and the trailer, which establishes that 30% falls on the trailer and 70% on the truck.

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

Yes

No

**If yes, what are the conditions?** In any case.

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

Yes

No

**If yes, please specify the conditions:** Trailers, semi-trailers and special trailed machines with a maximum authorised mass of more than 750 kg

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

Yes

No

**Please specify.** It only bears the same registration plate when its maximum authorised mass is more than 750kg

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

- "normally based"

Yes

No

**Please specify.** According to the Spanish law, the plate is the element which determines the normally based status of each component of articulated lorries

- "originating from"

Yes

No

**Please specify.**

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

Yes

No

**If yes, please specify the conditions/exemptions:** Only when its maximum authorised mass is more than 750kg

**3.7. Do trailers need their own Green Card?**

Yes

No

**Please specify.** Only when its maximum authorised mass is more than 750kg

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

Yes

No

**Please specify.** In Spain, MTPL insurance is also compulsory for trailers.

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

Yes

No

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

**3.10.If there is a division of liability?**

Yes

No

**If yes, Please specify.**

- **the criteria (i.e. joint/several liability, percentage):** 30% falls on the trailers and 70% on the truck

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

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

Yes

No

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

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

The towing unit

The trailer

Other.

**Please specify.** The mixed vehicle (towing unit plus trailer) is considered as a single unit, a single vehicle. Therefore, the damage suffered by its component parts is considered as damage to the vehicle itself and not damage caused by a third party, meaning that it is not covered by the compulsory insurance of the tractor unit.

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

- The towing unit
- The trailer
- A third party, depending on the situation
- Other. Please specify. [Click or tap here to enter text.](#)

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

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

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

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

The owner of the vehicle is entitled to compensation for the cost of repairing it. This can be proved by means of the repair bill, a proforma invoice or a report from an expert.

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

The owner has the right to be compensated for the value of the vehicle at the moment of the accident according to its age, deducting the value of the remains (salvage). The Courts have also established a percentage over this amount as an affection value, which can vary in accordance with the specific circumstances of each case (between 20-50% extra). It is also general practice to compensate this extra value out of Court.

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

- Yes
- No

**If yes, Please specify.** [Click or tap here to enter text.](#)

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

- Yes
- No

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

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

Yes

No

If yes, please specify the criteria: When necessary to repair the vehicle

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

Yes

No

If yes, please specify the criteria: Eg: Public transport tickets. In the case of a vehicle used for business they can also claim the loss of income.

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

Yes

No

If yes, please specify the criteria: When it is the main means of transport for the victim

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

Yes

No

If yes, please specify the criteria: [Click or tap here to enter text.](#)

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

Yes

No

If yes, please specify the criteria: Click or tap here to enter text.

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

Yes

No

If yes, please specify the criteria: Click or tap here to enter text.

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

Yes

No

If yes, please specify the criteria: Click or tap here to enter text.

**4.11. Any other instances/cases which are covered?**

Yes

No

If yes, Please specify. Click or tap here to enter text.

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

**Please specify.** They must direct their claim to the Guarantee Fund

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

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

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

Yes.

No.

**Please specify.** Any person injured in a road traffic accident, provided he or she is not at fault, is entitled to compensation for the full amount of medical expenses incurred and necessary for the treatment of his or her injuries.

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

**Yes.**

**No.**

**Please specify.** The Spanish system provides for hospital assistant agreements between the insurance undertakings, the CCS as Guarantee Fund and public and private hospitals treating the victims of accidents. The injured person is free to go to a public or private health care facility. Thanks to these agreements, the invoicing of such hospital assistance costs is made directly between the insurer and the hospital, so that the injured party does not have to worry about paying the amount of the hospital bills.

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

**Yes.**

**No.**

**Please specify.**

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

**Yes.**

**No.**

**Please specify.** The claimant has right to compensation for loss of future earnings due to a partial, a total or an absolute disability

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

**Yes**

**No**

If answered yes, how is the amount of compensation assessed (fixed sum, tables, court)? Please specify. There is a scale included in the Law governing liability and insurance derived from the use and circulation of motor vehicles 29 October 2004

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

**Yes.**

**No.**

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

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

**Yes.**

**No.**

**Please specify.** The claimant has right to compensation of loss of future earnings if he/she is recognised as permanently disabled due to the accident.

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

**Yes.**

**No.**

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

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

**Yes.**

**No.**

**Please specify.**

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

**Yes.**

**No.**

**Please specify.** The Spanish system provides for compensation for loss of quality of life as a result of the sequelae, and establishes four levels depending on the degree of limitation in daily activities: mild,

moderate, severe and very severe. For the quantification of the damage there is a compensation bracket, which establishes a minimum and a maximum amount of money, and the parameters that must be taken into account to set this amount.

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

**Yes.**

**No.**

**Please specify.** The assessment of personal injuries is based on a legal scale that includes rules for the assessment of three types of damages: 1) Death, permanent injuries and temporary injuries. 2) Moral damages and pecuniary losses (expenses and loss of earnings). 3) Exceptional damages. The legal scale is compulsory for victims, insurers, Guarantee Fund and judges. It includes all kinds of damage and loss. It is a very successful tool for the purpose of settling claims very rapidly and on an amicable basis. This legal scale is a cornerstone of the Spanish MTPL insurance framework.

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

**Yes.**

**No.**

**Please specify.** Once compensation has been fixed, it can only be reviewed if there is a substantial change in the circumstances that led to the fixing of the compensation or if there is supervening damage. The close causal link between the accident and the new injuries must be demonstrable and not predictable.

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

**Yes.**

**No.**

**Please specify.** The moral damage for loss of quality of life of the relatives of seriously injured persons compensates for the substantial alteration caused in their lives by the provision of care and continuous attention to these injured persons when they have lost the personal autonomy to carry out almost all essential activities in the process of ordinary life

**5.12. Any other cases? Please specify.**

The Spanish legal scale also provides for compensation for exceptional damage when the consequences of the accident are not included in any of the concepts of the medical scale measured, according to criteria

analogous to those provided for therein. These are relevant damages, caused by unique circumstances and not covered by the rules and limits of the very detailed and comprehensive system. However, in order to avoid litigation, the legal scale also provides specific amounts of compensation for these exceptional circumstances. In other words, the legal scale includes every single item to be compensated and its associated maximum and minimum amount of compensation. To sum up: there is no compensation beyond the system. The aim of the system is to provide certainty to the settlement of claims due to bodily injuries, so that all parties that may intervene (victims, insurers, Guarantee Fund, judges, medical practitioners, lawyers etc.) are aware of the amount of compensation provided by the compulsory legal scale, thus making it a disincentive for litigation.

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

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

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

**Constat amiable (European Accident Statement)**

**Police report**

**Pictures**

**Witness statements**

**Medical statements**

**Other**

**Please specify in detail:** There are basically three types of evidence in traffic accidents: documents, witness statements and expert evidences.

### 6.2. Out of court settlement

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

The claim shall contain: 1) Identification and relevant details of the claimant; 2) a statement of the circumstances of the event; 3) identification of the vehicle and driver involved in the accident (if known).4) all the medical or expert medical information or any other type of information that you have and that allows the quantification of the damage. This procedure does not have to comply with any specific formality and can be carried out by any means, as long as the insurer receives the necessary information. Therefore, the basic and indispensable requirement of the prior claim is the provision of this necessary information, which will have a dual function for the insurer: on the one hand, it will enable the insurers or the Guarantee Fund of the vehicles involved in the accident to determine which is the vehicle or which are the vehicles

responsible for the accident. At the same time, the information should enable the determination of the share of each vehicle and of the victim itself in the output of the accident. Equally, it will enable the insurer or the Guarantee Fund to value the damage and determine the compensation, thus settling the claim on an amicable basis.

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

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

**Yes**

**No**

**Please specify.** Police report, constat amiable, photographs and witness statements

- **Proof of damage**

**Yes**

**No**

**Please specify.** Repair invoice, expert and medical reports

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

**Yes**

**No**

**Please specify.** Expert reports

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

**Yes**

**No**

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

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

Yes

No

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

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

There are no specific provisions in the MTPL insurance legal framework.

Regarding the issue of unidentified vehicles causing accidents, it should be highlighted how both the courts and the Guarantee Fund, in practice, require some kind of evidence, such as witnesses, a conclusive statement from the police, or from the medical services or ambulances that assist the victim, along with the immediacy and credibility of the victim's testimony. Nearly 50% of the claims submitted to the Guarantee Fund related to hit-and-run cases are refused and successfully defended in case of a lawsuit. The judicial power is in general terms fully aware that the CCS is a public entity with a pro victim approach and that while refusing fraudulent or blurry cases, the CCS pays compensation where there is some reasonable evidence about the involvement of an unidentified vehicle and the responsibility of said vehicle.

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

Yes

No

**If yes, please specify in detail.** [Click or tap here to enter text.](#)

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

Yes

No

**If yes, how are these fees assessed/calculated?** [Click or tap here to enter text.](#)

**6.3. Court settlements**

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

Most traffic accidents are heard in civil courts. They can only be processed in the criminal courts if at least one of the following conditions is met: 1) The person causing the accident was driving under the influence

of alcohol or drugs. 2) The victim's injuries are serious or lead to death. 3)The negligence of the alleged offender is of such magnitude that it can be classified as recklessness.

In order to make a legal claim for compensation for material and personal damages resulting from a traffic accident, it is first necessary to make an out-of-court claim to the insurance company of the person at fault. (or to the Guarantee Fund in the case of uninsured, unidentified or stolen vehicles and in the case of an insolvent insurer of the vehicle under winding-up procedures) .The preliminary claim and the insurance company's reasoned offer or reply shall be submitted together with the lawsuit. Nevertheless it should be stated that most accidents in Spain are settled on an amicable basis due to: 1) the legal scale for the assessment of bodily injuries and 2) the convention on the settlement of material damage caused to vehicles in traffic accidents that has been signed by the insurers and the Guarantee Fund, and that is also provided in MTPL law.

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

Click or tap here to enter text.

Appeal at first and second instance.

Appeal in cassation: Extraordinary challenge against final judgments of courts that have ruled on appeals, which is brought before the Supreme Court.

Appeals for review: A judicial decision is challenged when it has been handed down by fraudulent means, false evidence or under duress and violence. Also when evidence appears subsequent to the sentence.

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

**Out of court (arbitration/mediation, etc.):** Each party bears its own costs

**In court:** Each party bears its own costs

### **6.4. Any other procedure of settlement? Please specify.**

No.

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

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

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

1. Accidents occurred in Spain caused by unidentified vehicles: the CCS shall pay compensation for bodily injury. Damage to property can only be compensated if severe bodily injury resulted, considered to be severe personal injury: death, permanent incapacity or temporary incapacity which requires, at least, hospitalization for 7 days or more. There is a draft project in place whereby this 7-day requirement would be dropped to a 3-day threshold
2. When controversy arises between the CCS and the insurance undertaking as to whether the vehicle that caused the accident was insured or uninsured when the accident took place.
3. Accidents caused by an insured vehicle in Spain, when it has been stolen. Damages to the people or the property of the people who voluntarily occupied the vehicle that caused the loss knowing that the vehicle was stolen are excluded, as long as the CCS can prove that they were aware of such circumstances. Damages to persons and property caused in another Member State by an insured vehicle normally based in Spain which has been stolen shall be compensated by the CCS when the National Guarantee Fund of the Member State where the accident occurred does not assume functions of compensation for damages caused by stolen vehicles.
4. Accidents caused by uninsured vehicles
5. Accidents caused by an insured vehicle when its Spanish insurer has become insolvent and is undergoing winding-up proceedings or is being liquidated by the CCS itself. It includes business underwritten in Spain or abroad.
6. Reimbursement of the compensations paid to third parties by the corresponding Compensation Bodies, in the cases set out under the 4<sup>th</sup> MID.
7. Accidents caused by a vehicle imported into Spain from another Member State of the European Economic Area: damage to persons and property, as long as the vehicle is not insured and the accident has occurred within the period of 30 days from the date on which the purchaser has taken delivery of the vehicle.

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

The claim shall contain:

- Identification and relevant details of the claimant.
- A statement of the circumstances of the event.
- Identification of the vehicle and driver involved in the production of the accident (if known).
- All the medical or expert medical information or any other type of information that you have and that allows the quantification of the damage.

This procedure does not have to comply with any specific formality and can be carried out by any means, as long as the Guarantee Fund receives the necessary information. Therefore, the basic and indispensable requirement of the prior claim is the provision of this necessary information, which will have a dual function for the Guarantee Fund: on the one hand, it will allow the Guarantee Fund to determine the

responsibility in the occurrence of the claim and, on the other hand, it will enable the Guarantee Fund to value the damage and determine the compensation.

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

Yes

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

Unidentified vehicles: Property damage is only compensated if severe bodily injury resulted, considered to be severe personal injury: death, permanent incapacity or temporary incapacity which requires, at least, hospitalization for 7 days or more.

Uninsured and stolen vehicles: Passengers voluntarily entering an uninsured vehicle are not covered.

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

Yes

No

**If yes, Please specify.** It applies to the Guarantee Fund

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

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

The insurance undertaking is subject to bankruptcy proceedings

The insurance undertaking is subject to winding up proceedings

The insurance undertaking has had the authorisation withdrawn

After withdrawal of the authorisation

**Please specify.** In the case of withdrawal of the authorization to carry out business to an insurance undertaking by the Supervisory Authority, the winding-up procedure starts. The Supervisor then appoints the CCS as liquidator of the insolvent undertaking. The liquidation of insolvent insurance undertakings is one of the key tasks of the CCS, along with its functions as Nat Cat and terrorism insurer, and MTPL Guarantee Fund, amongst many others. Due to specific measures provided for in the Spanish legal framework, the CCS may liquidate the insurance undertaking very quickly and pay full or nearly full

compensation to the insureds (both pending claims and unearned premiums) and third parties (Liability insurance pending claims). The protection of the insureds and third parties by the CCS in the case of winding up proceedings due to insolvency is one of the key features of the Spanish insurance legal framework. The CCS pays compensation for the whole insurance activity of the insurer (both the activity carried out by the undertaking within Spain and abroad).

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

Yes

**8. Involvement of Green Card Bureaux (GCB)**

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

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

All requests and claims must be submitted through the specific portal included in the website: <https://www.ofesauto.es/tramites/declarar-un-siniestro/>

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

Yes

No

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

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

Click or tap here to enter text.