

Stricter liability in Europe

May 2013

Each year, over 1.24 million die on the world's roads with over half of them killed whilst walking and cycling. For every person killed, there will be several more permanently disabled and some 40-100 more injured. Victims and their families will have to cope with the consequences of the crash, including physical suffering and loss of economic security, grief and bereavement.

In 2011, the UN launched a Decade of Action for Road Safety (2011-2020) to tackle the global epidemic of road deaths, with a goal of preventing 5 million road deaths. But the majority of road deaths and serious injuries will not be avoided. The financial impact on victims and the opportunities to reduce suffering should not be overlooked. Accordingly, the UN's Global Plan of Action for the Decade includes a pillar on the post-crash response which includes civil compensation related recommendations.

To commemorate the Second UN Road Safety Week, which is dedicated to pedestrian safety, RoadPeace and the European Federation of Road Traffic Victims (FEVR), surveyed the extent to which "Stricter liability" exists amongst FEVR member states. Stricter liability is the system which presumes injured pedestrians and cyclists qualify for civil compensation without having to prove fault on the part of the driver.

RoadPeace and FEVR have both long supported stricter liability. Vulnerable road users are doubly disadvantaged on our roads. Firstly, they are much more likely to be injured in collisions than are motor vehicle drivers/occupants. Secondly, this can affect their ability to give evidence or provide a defence. Stricter liability helps address this imbalance.

Responses were received from the 13 European jurisdictions shown below:

- Austria
- Belgium
- England and Wales
- France
- Ireland
- Italy
- Lithuania
- Luxemburg
- Poland

- Romania
- Scotland
- Slovenia
- Spain

Where do they have stricter liability?

Of those responding, seven reported having civil compensation systems that favoured those walking and cycling (Austria, Belgium, France, Italy, Lithuania, Luxemburg, and Spain). Six did not, or were having problems implementing the law (England and Wales, Scotland, Ireland, Poland, Slovenia and Romania).

In addition, stricter liability is known to operate in Denmark and Germany whilst in Sweden, all victims have the right to compensation. According to a 2011 Child Safety Alliance publication, other countries that do not have stricter liability include Malta, Portugal, and Latvia.

When was it introduced?

As shown below, stricter liability was introduced over seven decades ago in Italy..

- Austria 1959
- Belgium 1995
- France 1985
- Italy 1942
- Lithuania 2002
- Luxemburg 2012
- Spain 1962

Luxembourg's laws changed at the end of 2012.

How does the current legislation apply?

In France there is an unconditional entitlement to compensation for victims below the age of 16 and over 70; disabled individuals are also entitled to unconditional compensation. Thus no matter what their actions, these casualties qualify for compensation.

In Belgium all pedestrians, cyclists and passengers are entitled to compensation irrespective of age or disability. The only exception is where the victim, was over the age of 14 and deliberately caused the crash, e.g. suicide.

In Italy, motor vehicle drivers are presumed liable for compensation for pedestrians, cyclists and passengers, unless they can prove that they did everything possible to avoid the crash. In crashes involving two or more motor vehicles, each driver is deemed to have contributed equally to the crash unless the contrary is proven.

In Luxemburg, the laws on liability were revised at the end of 2012, after a decade of lobbying by the road victims charity. Full compensation is now provided to victims aged 12 years or under, 75 years or older or those with at least 80% disability. The only exceptions are if the victim was driving at the time of the crash or if the crash was intentional. AVR, the road victims' charity, had campaigned for the age limit to be increased to 14, which would be consistent with the national age of criminal responsibility. They also campaigned for

the minimum disability requirement to be reduced to 66%. Compensation is paid from the guarantee fund rather than by the drivers' motor insurance policy. This was the condition that the Insurance companies federation (ACA) agreed to in order to bring about this law. AVR will now closely follow how this law is applied by courts. The law (unlike the experience in France) was placed under the responsibility of the Minister of Finance (Minister of Justice Badinter garde des scéaux) who also has the insurance sector within his remit.

In Austria, children up to the age of 12 always qualify for compensation. This treatment is not extended to the elderly or those with disabilities as in other countries.

Spain has recently created a Committee of Experts to look into the feasibility of compensation reform. Campaigners are calling for children aged 16 or under and individuals over 75 years as well as the disabled and pedestrians to qualify for full compensation, regardless of their actions. They also want bereaved families to be considered as victims and be entitled to health care and checks on the psychological impact of the crash.

It also appears that Poland may have a law relating to the civil burden of proof following a crash but is having difficulty implementing the legislation. England and Wales, Scotland (separate legal jurisdictions), Ireland and Greece, requires that the crash and its causes are objectively assessed. If the cyclist/pedestrian is deemed to have been at fault any damages awarded will be reduced to reflect this.

What is this system called?

Respondents were asked for the term used to describe this system. In France, it is known as the Badinter Law, after its founder, whilst in Luxembourg, with its more restricted approach, it is referred to as a "Little Badinter" by the national road victim association.

When RoadPeace first began campaigning for liability reform in the 1990s, it referred to it as "strict liability", following common legal usage. RoadPeace later changed to "stricter liability" in an effort to avoid the inference that compensation was always owed. "Presumed liability" is an alternative term, growing in use, for this same reason.

The impact of the law on road traffic injuries and insurance premiums

Respondents were asked if they were aware of any impact on road traffic injuries or motor insurance premiums. None were aware of any effect on road traffic injuries. This is not surprising given the dates at which stricter liability was introduced.

Belgium appears to have seen some insurance companies raise premiums, while other experience was that the premiums were left as they were.

Is the law accepted by the public?

In France, there was reported to be public support for the law with a cultural change with it being common to accept that "pedestrians are always right". Austria also reported support for stricter liability.

In Italy and Romania the law appears not to be accepted by the public. In the former it is suggested that a new policy specifically relating to vulnerable road users (presumably children, disabled and the elderly) needs to be introduced to guarantee their protection and increase public support in the law.

In Romania, objections have been reported, due to recent court rulings and the damages awarded, and the increases in premiums that have resulted from these. Spain's response suggests that the issue is still in need of a wider public debate before any legislation is introduced.

In England and Wales and Scotland, whilst the system is still fault based, there are growing calls for stricter liability to be introduced. Cycling campaigners have long supported stricter liability but it is also supported by those representing pedestrians and campaigning for slower speed, sustainable transport and active travel campaigners.

Conclusions

With limited information from only 13 countries, this is a preliminary snapshot and more information is needed. But, with a rising tide of obesity, new thinking is essential if governments desire to see more people walking and cycling is to be realised. The justice sector has an important role in supporting and enabling active travel and sustainable transport. In addition to more effective traffic law enforcement, when a crash does occur and vulnerable road users are injured, the response of the civil compensation system should be both timely and fair. FEVR and RoadPeace will continue to campaign for stricter liability and will contact the European Commissioner for Justice, Fundamental Rights and Citizenship to seek a EU wide 'Badinter' law.

Survey Respondents

Thanks are owed to those who responded to our survey:

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RoadPeace is the national charity for road crash victims in England and Wales. Founded in 1992, it provides emotional and practical support to victims, campaigns for an improved response by the justice system and for road danger reduction policies which prioritise the vulnerable

www.roadpeace.org

FEVR, the European Federation of Road Traffic Victims, is working to protect the interests and rights of road crash victims and to reduce road danger. FEVR was founded in 1991 has members across Europe and the world.

www.fevr.org