

BELGIAN GUARANTEE FUND (FCGB-BGWF)- COMPENSATION MISSIONS

The conditions whereby the Fund may intervene are regulated by articles 19 bis -11 and next of the Law dated 21 November 1989 concerning the compulsory motor insurance, and by the Law dated 13 November 2011 concerning the compensation of victims of major technological accidents.

A. Mission of compensation of damages concerning road accidents

A. 1 Cases whereby the Fund may intervene

insolvency of the insurance company

The Belgian Guarantee Fund will compensate damages caused by a motorized vehicle when compensation is owed by an insurance company having the right to offer vehicle liability coverage in Belgium that is bankrupt or that is unable to fulfill its obligations after having its authorization revoked or after having renounced to its authorization.

The accident must have occurred in Belgium

Fortuitous case

The Belgian Guarantee Fund will compensate damages caused by a motorized vehicle if the insurance undertaking cannot be compelled to compensate, in the case of a fortuitous event annihilating the drivers liability.

The accident must have occurred in Belgium

Theft

The Belgian Guarantee Fund will compensate damages caused by a motorized vehicle when the driver acquired the vehicle by theft, violence or fencing.

The accident must have occurred in Belgium

The MTPL insurer or his claims representative did not give a reasoned reply to a compensation demand.

The Belgian Guarantee Fund will compensate damages caused by a motorized vehicle when the insurer or his claims representative has not given a reasoned reply within three months of the victim's claim for compensation. The victim may not however have taken legal action against the insurance undertaking.

The Fund will take action two months after the presentation by the victim of a claim for compensation but will cease its action if the insurer gives a reasoned reply within these two months.

The Fund must inform the insurer or his representative, the Compensation Body of the State of the insurance undertaking's establishment which issued the policy and the person having caused the accident (if he/she is known) as to the fact that it has received a claim for compensation and will answer this claim in two months.

The accident must have occurred in one of the EEA member states (including Belgium) or in a state having adopted the Green Card System if the vehicle is normally based in one of the EEA member states.

No claims representative has been appointed by the insurance undertaking

The Belgian Guarantee Fund will compensate damages caused by a motorized vehicle when the foreign insurance company has not appointed a claims representative in Belgium. The Fund's action is subject to the same conditions as the previous case. This action is however not applicable to victims with residence in Belgium if the accident occurred in Belgium.

Unidentified vehicle

The Belgian Guarantee Fund will compensate damages resulting from bodily harm caused by a motorized vehicle when this vehicle is not identified. If the absence of identification concerns the driver but not the vehicle in itself the Guarantee fund will not act since the MTPL insurer remains at risk towards the injured person .

The accident must have occurred on Belgian territory or the territory of a Member State of the EEA.

Uninsured vehicle

The Belgian Guarantee Fund will compensate damages caused by a motorized vehicle when no MTPL insurer is compelled to compensate due to the fact that the obligation of insurance has not been respected.

The injured party may apply for compensation if within two months following the accident it has not been possible to identify the insurance undertaking.

The accident must have occurred in one of the EEA member states (including Belgium).

A. 2 Compensation

- of bodily harm (wounds or death)
- of material damage in some specific cases .

A.3. Characteristics

- The Fund compensates victims who suffered damage falling within the scope of the rules of civil liability.

- May also benefit from the Fund's intervention :

* Social security bodies entitled by law to take action for compensation.

* Private insurers who are subrogated to the injured party in his claims.

- In the event of litigation between the Guaranty Fund and an insurance company as to who must compensate the injured person, the Fund will compensate the victim initially. If it is finally decided that the responsibility is incumbent on upon the insurance company, the insurance company reimburses the Fund the amount of the paid allowance plus legal interests. Interests start running from the moment the Fund compensates the victim.

A. 4 Reimbursement to The Guarantee Fund

The Fund is subrogated to the rights of the victim against the person responsible for the accident (and possibly against its insurer) insofar as it compensated the damage.

This reimbursement extends to the total amount of payments made.

When the Fund intervenes instead of an insurance company having the right to offer vehicle liability coverage in Belgium that is bankrupt or that is unable to fulfill its obligation after having had its authorization revoked or after having renounced its authorization, reimbursement by the insured possible only within the legal and contractual limits of the original insurer.

When the Fund intervenes because the insurer or his claims representative did not give a reasoned reply to a demand for compensation, or because no representative has been appointed by the insurer, the Fund is entitled to claim reimbursement from the compensation body in the member state of the insurance undertaking's establishment which issued the policy.

When the Fund intervenes because the accident took place in an EEA State and the liable vehicle is unidentified, it has a claim against the Guarantee Fund of the country in which the accident took place.

When the Fund intervenes because the liable vehicle is uninsured, it has a claim in the following manner :

If the accident occurred in an EEA member state and the liable vehicle is normally based in that state:, the claim will be directed against this member state's Guarantee Fund.

If the accident occurred in an EEA member state and the uninsured vehicle is normally based in another EEA member state, the claim will be directed against this member state's Guarantee Fund.

If the accident occurred in an EEA member state and the uninsured vehicle is normally based a third party country, the claim will be directed against the GuaranteeFund of the member state where the accident occurred.

A.5.Conditions of intervention of the Fund

Nature of the accident

The accident must be caused by a motorized vehicle as stated by the law of the 21 November 1989. It must concern a vehicle that is meant to ride on the ground and that is propelled by mechanical force and is not linked to a rail system. Also, everything that is attached to the vehicle is considered as part of it. A trailer that is attached is considered part of the Vehicle.

The intervention of the Fund is therefore not possible if a cyclist causes the damage.

Quality of the victim at the time of the accident

When the accident occurs in Belgium no proof of nationality or residency is required of the victim.

When the accident occurs outside of Belgium, the victim must prove residency in Belgium.

Victims excluded from the intervention

Insurer's bankruptcy

The Fund having the same obligations as the insurance company can exercise the same exclusions as the latter.

Fortuitous case

The owner of the vehicle having caused the accident.

The driver who refers to a fortuitous event in order to have his liability annihilated.

The vulnerable person as far as bodily harm is concerned. The latter will be compensated directly by the insurance company covering the vehicle implicated in the accident. The fortuitous case is not opposable to the victim (art. 29bis of the law dated 21.11.1989)

Theft

The person responsible for the accident unless he/she is considered a vulnerable person (art. 29bis of the law dated 21.11.1989)

The thief or person having acquired the vehicle with violence

The vehicle's fence

The co-author or accomplice in the theft, violence or fencing.

The insurer or his claims representative did not give a reasoned reply to a compensation demand

If the accident occurs in Belgium :

The person responsible for the accident unless he/she is considered a vulnerable person (art. 29bis of the law dated 21.11.1989)

Persons excluded from compensation as stated by the law concerning vehicle liability insurance.

If the accident occurs outside of Belgium

The person responsible for the accident.

Persons excluded from compensation as stated by the law concerning vehicle liability insurance in the country of occurrence of the accident.

Claims representative not appointed by MTPL insurer

If the accident occurred in Belgium :

The person responsible for the accident unless he/she is considered a vulnerable person (art. 29bis of the law dated 21.11.1989)

Persons excluded from compensation as stated by the law concerning vehicle liability insurance.

If the accident occurred outside of Belgium

The person responsible for the accident.

Persons excluded from compensation as stated by the law concerning vehicle liability insurance in the country of occurrence of the accident.

Unidentified vehicle

If the accident occurred in Belgium :

The person responsible for the accident unless he/she is considered a vulnerable person (art. 29bis of the law dated 21.11.1989)

The victim having suffered material damage only (the other victims are compensated for bodily harm only)

If the accident occurred outside of Belgium (cfr supra p.4) :

The person responsible for the accident.

Persons excluded from compensation as stated by the law that determines the intervention of the Guarantee Fund in the country of occurrence of the accident.

Uninsured vehicle

If the accident occurred in Belgium :

The person responsible for the accident unless he/she is considered a vulnerable person (art. 29bis of the law dated 21.11.1989)

the owner of the non-insured vehicle

the policyholder

The driver and the holder of the uninsured vehicle if they had knowledge that the compulsory vehicle insurance law was not respected.

If the owner or holder of the uninsured car is not a person, the administrators, managers or associates.

When no insurance company has been identified within two months following the accident :persons excluded from compensation as stated by the law concerning vehicle liability insurance in the country of occurrence of the accident.

If the accident occurred outside of Belgium :

The person responsible for the accident.

Persons excluded from compensation as stated by the law concerning vehicle liability insurance in the country of occurrence of the accident.

Power of proof

To obtain the intervention of the Fund, the victim having the quality of motorized user (driver) must prove the responsibility of the driver of the unidentified, uninsured or stolen vehicle or prove the fortuitous event that annihilates liability of the vehicle having caused the accident.

If the victim is considered a vulnerable person, he/she must only prove that an unidentified, uninsured or stolen vehicle was involved in the accident.

Time limit

The victim must address a claim to the Fund within five-years of the accident. Past this period the Fund may refuse to intervene. When it is duly established by a court that the accident is due to a fortuitous event, the five-year period begins the day following the day the victim was informed of this ruling.

If the insurer is bankrupted, the five-year period begins the day the bankruptcy notice is published in the "Moniteur Belge".

If the insurance company has had its authorization revoked or has renounced its authorization, the five-year period begins the day the victim sends a registered letter (mise en demeure) to the company that must compensate.

Basis for compensation

Bodily harm: no limit

Material damage : for accidents occurred before the 19 January 2003, a 247,89 € threshold was applied. Intervention limited to €100.000.000. per accident

If the accident is caused by an unidentified vehicle, material damage is not compensated unless the Fund has to intervene for at least one victim with important bodily injury

Procedure for compensation

A claim may be addressed the Fund directly by the victims or those who are of right or by any person that represents them (insurer, broker, lawyer).

Obligations of the victim

Provide the Fund with all information it requests (for example : medical certificates, personal details, information concerning the opposing party),

By request of the Fund, to act against the person responsible for the accident.

In order for the Guarantee Fund to intervene in the case of bodily harm, an official police report must be made within thirty days of the accident.

Exception : if a case of "force majeure" prevents the victim from making a deposit within this timeframe.

Compensation by the Guarantee Fund

The law relative to the intervention of the Fund does not detail any procedure other than the fact that the declaration must be sent by registered letter within a specific timeframe.

In theory, action against the Fund is of a civil resort ,thus the applicant must prove that he or she fulfills the proper requirements to obtain intervention.

With regards to the standard applicant (a private individual), the Fund must assume an active role and not simply receive and transmit information provided by the applicant. The Fund will investigate refusals made by insurance companies and will examine all possibilities that may lead to the intervention of an insurance company.

The professional applicant (company or broker) is required to transmit a complete file and provide all information to allow the Fund to make a considered decision.

The Fund designates its own experts and will have recourse to formal or legal surveys depending on the cases that are submitted.

These decisions may be subject to legal censorship.

The Guarantee Fund may appear voluntarily in court procedures involving accidents that may lead to its intervention. The victim may demand a forced intervention of the Fund before courts and tribunals.

There are no distinct normative rules relative to any legal procedure.

List of supporting documents to be transmitted with the request.

There is no normative rule on this subject.

However, the Fund can only open a procedure if all of the following are provided :

date and place of occurrence of the accident

identity of the victim and the person presumed responsible

Unless the following documents are provided at first, the Fund will request copies of:

The contradicting accident report if there is one,

The accident claim made by the victim to his/her insurance company.,

Medical certificates concerning suffered bodily harm

The official survey report relative to material damage and the VAT notice.

a declaration of insurance or not with regards to a cover by an insurance undertaking different from TPL.

The Fund will also require that the victim fills in a form with information that may help it establish the possible compensation.

B. Mission of compensation of damages in case of major technological accident

Only when the accident occurs in Belgium, and MTPL accidents for instance are excluded.

Only when a Committee of “wise man” acknowledges , upon request of the Minister of Justice, that the event is indeed the result of a technological failure as defined by the Law,

Only compensation of bodily injury is allowed and the action of the Fund is entirely subsidiary