

ITALY

1. Actions to take immediately after road traffic accidents

In the case of a serious accident, for example an accident where people are injured, the police can be informed using the European emergency number 112; the number for calling an ambulance is 118.

After an accident, the names and addresses of all the parties involved in the accident and those of any witnesses must be taken down. The insurance details of the parties involved must also be taken down. These details can be found on a sticker placed on the inside of the car's windscreen. Take a photograph or make a sketch of the scene of the accident.

If the police have been informed of the accident they will draw up an official report. The aforementioned details will be included in the report. The police will investigate the facts of the accident. If you are asked to sign the official report, you should read the report very carefully before signing it. If the accident involves material damage only, you can request a copy of the official report from the authorities dealing with the accident. If anybody has been injured in the accident, the official report will only be issued once the preliminary investigation has been carried out.

If the police are not called to the site of the accident, for example, when the accident involves material damage only, you are strongly advised to use the European Claim Form which can be obtained from your insurance company. It is important that both parties involved in the accident sign the form because the form is normally used as evidence. It is also important to take down the names and addresses of any witnesses as well as to give information on the facts of the accident. It is also advisable to take a photograph of the scene of the accident.

NB: Do not sign the European Claim Form if you do not understand the content! The same applies to other statements on who is to blame for the accident. You should not sign the form if there are differences of opinion on the facts of the accident. In such a case it is advisable to contact the police, even if the accident only involves damage to property.

If the authorities have determined that a traffic violation was committed, the accused will be charged with the offence. The authorities are entitled to seize the vehicles in order to draw up further reports (for example on the suspicion of drunk driving or driving under the influence of drugs). You may be asked to undergo a compulsory medical examination. If people have died or were seriously injured, your driver's licence may be suspended. The Prefect or the Criminal Judge will determine for how long.

In the case of a fatal accident, the next of kin must identify the body. A judicial investigation into the cause of the death may be started and an autopsy may be requested. The next of kin may designate a medical counsellor to be present at the examination.

In Italy, medical assistance is provided free of charge (to citizens of the European Union) by the National Health Service (SSN) via general practitioners and specialists who have signed the tariff agreement and by the *Azienda Sanitaria Locale* (ASL) in hospitals. Many private clinics have concluded a tariff agreement with the SSN. Large hospitals and the ASL can

also provide psychological assistance. In the case of disputes, you can seek help from the “Court for Patients’ Rights”.

2. Legal procedure

Compensation is determined on the basis of fault liability, but in the case of traffic accidents, suspicion of guilt is used as the point of departure. This means that the driver of the motor vehicle is held liable for the damage caused as a result of the use of the vehicle, unless he can prove that he did everything possible to avoid the damage. It is only in the case of *force majeure* that the driver is not liable.

If more than one vehicle is involved in the accident, it is assumed that each driver is equally at fault in causing the damage. This does not apply, however, if it can be shown that one or more of the drivers cannot be blamed for the damage. If the question of who is at fault cannot be answered, then each of the drivers involved in the accident must pay compensation to the injured party for a proportional part of the damage.

It is recommended that you seek assistance from a lawyer in the case of civil proceedings. The lawyer’s fee depends on the degree of difficulty and duration of the proceedings. If you have no income or a very low income, you may be eligible for the services of a legal aid lawyer. If you have legal assistance insurance, you may use this.

Criminal proceedings

If, after a traffic accident, criminal proceedings are instituted – this is compulsory in the case of a fatal accident – the victim or the relevant claimants may join the proceedings as the plaintiff(s) claiming damages. The criminal court will then decide on the compensation.

At the request of the injured party, the court may award an advance on the compensation for that part of the damage that can be proven. For a final allocation of the damages, the matter will be referred to the civil court. This is also the case if the extent of the damage cannot be determined during the criminal proceedings. In practice, the criminal court will indeed order the accused to pay damages, but will leave determining the extent of the damage to the civil court.

The accused can, either before or during the hearing, reach an agreement with the Public Prosecutions Department on the appropriate punishment. This agreement is then submitted for approval to the court. If the court agrees with the proposed punishment, the criminal proceedings will end and the victim will have to take his claim for compensation to the civil court. This is also the case if the accused is acquitted.

Civil proceedings

If the victim does not join the criminal proceedings as a plaintiff claiming damages, if the criminal case is dismissed or if it ends by means of an agreement, the victim may go to the civil court. If the claim does not exceed € 16,000 the proceedings will be brought before the Justice of the Peace (*Giudice Conciliatori*). If the claim is in excess of this amount, the proceedings will be brought before the district court (*Tribunale*).

3. Compensation for damages/time limits

The victim can submit his claim directly to the other party’s insurer. It is best to do this in writing and by registered post.

Reports/assessor's reports proving the existence and extent of the damage to the insurer must accompany the claim. In the case of bodily injuries, medical certificates in respect of the hospital stay and medical treatment, as well as invoices etc. must also accompany the claim. The insurance of the liable party may require the victim to undergo a medical examination by the insurer's medical consultant. In such a case, the victim may ask that a medical counsellor be present.

Compensation will be paid in respect of the damage in proportion to the degree of blame assigned to the liable party.

If the person responsible for the damage has not been identified or is not insured, the victim can claim damages from the 'Guarantee Fund for Road Victims' (*Fondo di Garanzia per le Vittime della Strada*). If the person responsible for the damage has not been identified, only compensation for bodily injury will be paid, provided that the injury lasted for at least 90 days or the victim is permanently disabled to a degree of 20% or more. If the person responsible for the damage is uninsured, an excess of € 500 must be paid.

Time limits

Criminal proceedings

In the case of criminal proceedings the time limit is 2 years.

Civil proceedings

The time limit in the case of an unlawful act is 5 years. Traffic accidents have a time limit of 2 years. The time limit starts from the date on which the unlawful act was committed or the traffic accident took place.

If the unlawful act is based on an offence – also in the case of traffic accidents – the time limit pursuant to civil law will only start when the right to prosecution has become statute-barred. This means that, where fault can be assigned for bodily injury, the time limit pursuant to civil law will be 5 years.

Where the criminal action is dismissed or where the criminal action has been definitively concluded, the time limit pursuant to civil law will start on the day on which the criminal action was dismissed or the judgement became final and conclusive.

4. Damages to be compensated

The costs of medical treatment will qualify for compensation in full in so far as these costs do not fall under the victim's own health insurance. Should the victim die following medical treatment, the medical costs incurred up to the time of death will qualify for compensation.

Loss as a result of death or temporary or permanent occupational disability qualifies for compensation.

In the case of minor injuries resulting in no more than 9% temporary disability, a fixed daily amount will be paid out. Temporary occupational disability must be substantiated by means of a doctor's certificate and/or a statement issued by the hospital. In the case of prolonged occupational disability, more detailed reports, stating among other things the degree of occupational disability, must be submitted. Italian reports are preferred. Factors influencing

the amount of the income lost as a result of occupational disability are the degree of disability, the net annual income and a capitalization rate based on the victim's age.

A victim who has sustained injuries as a result of the accident is entitled to damages for pain and suffering. The pain suffered, the detriment to health and welfare, any disfigurement and the extent to which the victim is prevented from participating in social life are all taken into account when determining the amount of the damages for pain and suffering. The court uses tables to determine the amount of damages for pain and suffering. These tables differ from court to court. If the victim dies, his next of kin who lived with him will be entitled to compensation for living expenses. They will also receive compensation for the funeral expenses.

Where the victim dies or is injured, the next of kin will also be entitled to compensation for emotional injury suffered as a result of the death or injury of the victim. This amount is often paid out together with the damages for pain and suffering.

5. Accidents abroad

With effect from 20 January 2003, the 4th Motor Insurance Directive has been in force regarding traffic accidents outside your own country. Victims of traffic accidents can now claim compensation in a simple manner from the insurer of the party at fault. Such claims are submitted to the representative of the foreign insurer in the country of the victim: the claims representative. Addresses of claims representatives are available from the Information Centre. The centre can also provide information on the compensation body that will make payment if the insurer fails to designate a claims representative or does not respond to a victim's claim.

You can find additional information on this procedure at this website.

6. Useful addresses

National telephone numbers are generally free and do not have a dialling code. Government institutions with a national number will normally also have a local number which can be found in the telephone directory and which must be dialled together with a dialling code.

- Municipal police: look up under: *Municipio - Polizia municipale*
- *Carabinieri* (emergency calls): national number 112
- Fire brigade: national number 115
- Ambulance service: national number 118
- Police: national number 113
- ACI road service: national number 116
- Public first-aid service: national number 113
- Hospital (first aid): look up under: *USL - Aziende sanitarie*
- Clinic: look up in the directory under: *Casa di cura ou Clinica*
- Lawyers: look up in the directory under: *Consiglio Ordine Avvocati*
- Guarantee Fund for Road Victims: Largo Tartini 4, 00198 Rome
- Patients' court: look up under: *Tribunale dei diritti del malato*. National number: 06-367181
- Centro di informazione: c/o ISVAP, Via del Quirinale 21 - I 00198 Roma tel 00 39 06 42 331
- Organisations FEVR:

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