

Luxemburg

1. Actions to take immediately after road traffic accidents

The police must be notified if people have died or been injured in an accident (phone 113). To call an ambulance, dial 112. In such a case, the police must record the details of the accident (names and addresses of those people involved in the accident, witnesses and the facts of the accident) in an official report. If, after the accident, it is established that some people have been injured, the police must take down the details of the accident. In the case of accidents involving damage to property only, the police are not obliged to draw up a report and you are required to take down the details of the accident. It is important to get the names and addresses of any witnesses and to write down the facts of the accident. It is also advisable to photograph the scene of the accident. 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.

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.

2. Legal procedure

Criminal proceedings

If the judicial authorities institute proceedings against the person who caused the accident, the victim may join the proceedings as a plaintiff claiming damages: this is called an Intervention. The victim can be a plaintiff during the entire proceedings up to the time at which the case goes to appeal. Where a victim has joined the proceedings as a plaintiff claiming damages, he must be assisted by a lawyer. As soon as the victim has received a copy of the dossier, he can ask the insurer:

- to pay full compensation;
- to extend funds to cover preliminary costs;
- to arrange for an extrajudicial appraisal of the estimated costs.

On the basis of article 182 of the *Code d'Instruction Criminelle*, the victim may, if the Public Prosecutions Department does not institute proceedings, institute proceedings directly before the Correctional Chamber: this is called an Action. Such proceedings can, however, be refused if the criminal proceedings were dismissed.

The advantages of joining criminal proceedings as a plaintiff claiming damages as against instituting civil proceedings are that the former is a faster and cheaper procedure and it is easier to give evidence. The victim can give evidence – as witness - before joining the proceedings as a plaintiff claiming damages.

The disadvantage is that the victim cannot appeal against the ruling of the criminal judge if he has joined the criminal proceedings as a plaintiff claiming damages.

Civil proceedings

Luxemburg does not have a special law to regulate liability in the case of traffic accidents.

Claims for compensation are based on articles 1382, 1383 and 1384 of the Civil Code (*Code Civil*). A person who has caused damage or injury to another as a result of a mistake or negligence (a wrongful act) is obliged to pay compensation for this. The driver of a motor vehicle is always presumed to be at fault. This means that the driver is liable for the damage which he has caused, unless he can prove that the damage was due to *force majeure*. The claim can be submitted against:

- the person who caused the damage;
- the next of kin of the person who caused the damage, if the latter died as a result of the accident;
- other persons who are liable in the place of the person who caused the damage, for example his parents (if the accident was caused by a minor), the person in possession of the car or the owner of the car;
- the insurer of the person who caused the damage.

The victim must prove that he has suffered damage as a result of the accident (physical injury or material and/or immaterial damage). He must also prove that the accident was due to the fault or negligence of the person who caused the accident and that there was a causal link between the accident and the damage.

If criminal proceedings have been instituted against the person who caused the damage, the civil court judge cannot give his judgement before a judgement has been given in the criminal proceedings. The criminal court judge decides whether the person who caused the damage is liable; the civil court judge rules on the causal link, on whether or not any damage was sustained and, if so, on the amount of the damage.

The Justice of the Peace (*Tribunal de Paix*) has jurisdiction over cases where the claim for compensation is less than € 10,000. The civil case is conducted by means of oral proceedings and a lawyer need not assist. The District Court (*Tribunal d'Arrondissement*) has jurisdiction over cases where the claim for compensation is in excess of this amount. The case is dealt with in writing and the assistance of a lawyer is compulsory. The defendant must appoint a lawyer within 8 days.

Once the civil court judge has given his ruling, the victim or the person liable for the damage can lodge an appeal.

3. Compensation for damages/time limits

There are no statutory provisions with regard to the settlement of claims. The claim of the victim is normally adjusted by the insurer of the person who caused the damage. Claims for compensation can be submitted directly to the insurer of the other party. Unlike in some countries, there is no special claims settlement procedure in Luxemburg in respect of damage sustained during a traffic accident.

If the insurer's offer of compensation is insufficient, the victim will have to institute legal proceedings.

If the vehicle is uninsured or the perpetrator has not been identified, the claim can be submitted to the Guarantee Fund (*Fonds Commun de Garantie Automobile*). This must take place within 6 months of the date of the accident. The Guarantee Fund pays compensation in

respect of loss resulting from an injury and damage to property. Compensation will only be paid in respect of damage to property if the vehicle was uninsured. The victim must pay an excess of € 500.

Time limits

Criminal proceedings

The time limit for minor traffic offences is 1 year and for serious traffic offences 3 years.

Civil proceedings

The claim must be submitted to the insurer within 3 years of the accident. The period starts on the date of the accident in this case too. This does not mean that the claim cannot be submitted to the person who caused the damage after the 3 year period has expired.

Claims for compensation have a time limit of 30 years. The time limit starts on the date of the accident.

4. Damages to be compensated

Medical costs qualify for compensation in so far as these are not covered by a health insurance policy. Travel expenses incurred to undergo examinations by a doctor also qualify for compensation if the court or experts deem such examinations necessary. In the case of serious injuries, the costs incurred in respect of visits to the victim by members of the victim's family will also qualify for compensation.

If the victim becomes occupationally disabled as a result of the accident, he will receive compensation for income lost because of the accident. The duration of the occupational disability must be proven by means of a doctor's certificate and the amount of the lost income by means of tax returns, pay slips or statements by the employer. The amount of compensation depends on the degree of occupational disability. The net income forms the point of departure. The costs of alternative domestic help where a wife/mother is injured or dies qualify for compensation. If no alternative help is obtained, the compensation will be significantly less.

The victim is entitled to compensation for non-material damage. The amount of the damages for pain and suffering depends on the nature and severity of the injury, the duration of the medical treatment and the degree of the disability. Next of kin are also entitled to damages for pain and suffering if the victim dies.

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

Police: Tel 113

Ambulance: Tel 112

Information centre:

Fonds Commun de Garantie Automobile

75, Rue de Mamer - L 8081 Bertrange

Tel 00 352 45 88 36; fax 00 352 26 31 01 54; e-mail: fgalux@pt.lu; website: www.fga.lu

(Claims must be submitted to this address when the person who caused the damage is uninsured or has not been identified.)

Organisation FEVR:

Association nationale des Victimes de la Route (AVR)

354 rue de Neudorf; L-2222 Luxembourg

Tel 00 352 26432121; fax 00 352 26432243; e-mail: avr@pt.lu

website: www.avr.lu