

BELGIUM

1. Actions to take immediately after road traffic accidents

If death or injury occurs in a road accident, the police must be alerted, tel. 101. All parties involved must remain at the scene of the accident until the police arrive. If the police do not respond, the accident must be reported within 24 hours at the police station closest to the scene of the accident or at the police station where you live. All the necessary information pertaining to the parties involved in the accident must be submitted at that time. In Belgium, it is compulsory for everyone over the age of 15 to carry identification.

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.

2. Legal procedure

Article 1382 of the Belgian Civil Code and the articles following apply to road traffic accidents. Belgium has no separate traffic legislation. Liability for traffic accidents is based on fault. Different rules apply to pedestrians, cyclists and motor vehicle passengers (excluding the driver). All personal injury and damages incurred by the death of victims are compensated, regardless of who was at fault, pursuant to article 29bis of the Motor Vehicle Insurance Code (*WAM*). The obligation to pay compensation lies with the insurer or the guarantee fund (*waarborgfonds*).

Criminal proceedings

When the person responsible for the accident is prosecuted, the victim can submit a claim for damages in the same proceedings: a plaintiff claiming damage (Constitution de partie civile). The motor vehicle insurer may be involved in the claim.

Such cases are dealt with in the police court and the injured party is given the opportunity to submit a petition for action for damages. The injured party is informed of the time and place of the hearing and this notification can be considered the equivalent of a summons. The injured party and other plaintiffs may choose to be represented by legal counsel. The person responsible for the accident also has this option. However, he must appear in person at the hearing if he is being prosecuted for causing accidental death or if the accident resulted in death or injury, and if he is accused of fleeing the scene of a crime, and/or driving under the influence of alcohol or illegal substances.

Any judicial inquiry conducted is confidential. The parties involved do not have access to the police reports and witness statements until the inquiry has been concluded. In some instances, access is given to certain documents in the file. The victim has the option of requesting that an inquiry be conducted into adventitious acts (e.g. expertise).

Civil proceedings

The injured party can also submit a civil action in the police court. However, the court is bound by any sentence imposed on the defendant in criminal proceedings. The motor vehicle insurer may be involved in the civil action.

If the parties involved are both residents of Belgium, and are both insured with Belgian insurers, the claim will probably be settled on the basis of an agreement between the insurers concerned. Such agreements do not apply to foreigners. The agreements between the insurers are only binding on the insurance companies themselves and do not apply to the insured.

3. Compensation for damages/time limits

The period of limitations for claims arising from traffic accidents is 5 years from the date of the accident. The general period of limitations is 30 years, and this also applies when the judgement of the court includes a reserve for damages that may be incurred later and therefore could have an impact on the amount of the claim and the pay out.

4. Damages to be compensated

Claims may be submitted for material damage, personal injury and for damages for pain and suffering. Loss of capacity to work is considered material damage. Such a loss is determined on the basis of the degree of permanent impairment regardless of the negative impact on income. If this negative impact can be proven, compensation will be paid for this as well. If the injured party was a vulnerable road user – cyclist, pedestrian or car passenger – the loss of capacity to work and loss of income will be considered to be personal injury in respect of the automatic entitlement to compensation.

A large circle of people qualifies for compensation for damages arising from the death of or injury to the victim. Any person who can prove his loss, for example the employer for loss of work, is entitled to submit a claim.

Compensation is paid for funeral expenses. No compensation applies to legal aid nor to the costs of experts unless they are appointed by the court. The losing party is obliged to pay such costs. The courts do however have the tendency to pay compensation for amicable expert costs.

In Belgium, a list has been drawn up by the courts stating amounts for compensation for claims arising from traffic accidents. This list is, however, only intended as a guideline for claims that are difficult to estimate.

Surviving dependents are entitled to damages for pain and suffering. In accordance with Belgian law, the term 'surviving dependents' encompasses not only the spouse, children and parents of the victim, but also further-removed relatives: grandparents, grandchildren, brothers and sisters, fiancé(e)s, and, in special cases, the life partner of the victim (to whom the victim was not married).

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: 101 or 112, ambulance: 100 or 112, fire brigade: 100 or 112.

FEVR member organisations:

Association de parents pour la protection des enfants sur la route (APPER)
rue de Jollain 15b B - 7620 Hollain
Tel et Fax: +32 69 344 518 e-mail: jacques.duhayon@skynet.be

APPER Régions wallones
rue de Vercheval 40 B-4040 Herstal
Tel et Fax: +32 42 642 537

Parents d'Enfants Victimes de la Route (PEVR)
rue des Epicéas 8 B-1170 Bruxelles
Tel: +322 7782211 Fax: +322 7782517 koen.vanwonderghem@pevr.be

TCB Touring Club Belgium, Rue de la Loi 44, B – 1040
Brussels; www.touring.be

Information centre for insurance data:

Fonds Commun de Garantie Automobile
Rue de la Charité 33 Bte 1 - B 1210 Bruxelles, tel 00 32 2 287 18 11, fax 00 32 2 287 18 00, email informationcenter@fcga-gmwf.be

(This is also the address for claims for damages caused by an unknown, stolen or uninsured motor vehicle)