Compensation for permanent damage resulting from work-related injuries

Conference of the European Forum of insurances against accidents at work and occupational diseases

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Welcome to this conference, organised by the French Presidency of the European Forum of Insurances against Accidents at Work and Occupational Diseases.

The European Forum was founded in 1992, at a time when Europe was beginning to show concern for social issues. Its creation sought to meet a twofold objective: firstly, to set up a platform of exchanges between the national organisations responsible for insurances against accidents at work and occupational diseases to allow them to compare their practices, organisation and so on and, if possible, to foster a certain convergence of national systems. Through the Forum, the founding members also wanted to show how worthwhile insurance against occupational risks is for both victims and companies, particularly with its prevention, rehabilitation and reintegration missions.

Founded in 1992 by 11 members, the European Forum has since expanded, now welcoming 21 organisations from 18 countries. 15 belong to the European Union: Germany, Austria, Belgium, Denmark, Spain, Finland, France, Greece, Italy, Latvia, Luxembourg, Poland, Portugal, Sweden and Romania, and also Switzerland, Norway and the Russian Federation are members.

According to the statutes the Forum has a rotating presidency: each year a different organisation is in charge of this function which involves organising the members’ General Assembly and a conference on a topical theme of common interest in the organising country.

Since January 2009, the French National Health Insurance Fund (Cnamts) has been President of the Forum, and this conference has been organised in this regard with the help of Eurogip.

Stéphane Seiller, Director of Occupational Risks at the Cnamts and consequently Forum President, will explain to us why the 2009 conference focuses on the compensation of permanent damage resulting from work-related injuries.
Stéphane Seiller, Director of Occupational Risks, Cnamts

Why have we chosen this theme, which is after all rather technical?

The French compensation system for permanent disability is not altogether satisfactory. The social partners made this observation in the Guidelines text they adopted with a view to drawing up the Convention on aims and management signed between the Cnamts and the State for 2009-2012. And an action programme within this agreement is devoted to this subject.

The purpose is to improve our system, making it more efficient by more clearly distinguishing compensation of occupational loss from compensation of the victim’s permanent physiological damages. It is this distinction that interests us today, since compensation in France - as well as in other European countries - is currently global, and we are unsure of the best way to set these two types of loss apart. We very much want to change the system, but with caution, as the issues at stake are of consequence, in terms of both the equity of compensation schemes and financial aspects.

To consider the best possible changes, we sought to gather as much information as possible on what other European countries are doing in this regard, and the European Forum seemed to us to be the most relevant venue for sharing views on the subject.

I am therefore most grateful to all the countries that answered the two questionnaires sent out and brought us an initial series of information on specific aspects of the subject: who estimates the different types of loss/which types of loss are entitled to compensation/how are the benefits calculated/for how long are the benefits paid/is this compensation subject to social contributions or tax, etc.

In some countries, particularly Italy, the compensation system has changed in recent years and a fairly radical reform is under way in Luxembourg. We are very interested in the reasons that have led to these changes - recent or future-, as well as in the initial outcome of the Italian reform.

Marie-Chantal Blandin has put together today’s conference, for which I would like to thank her as I am sure that, at its close, we will all have a better idea of the different aspects of this complicated subject. I also reiterate my thanks to you for having made time to take part in this meeting on an admittedly tough but socially important theme: how to compensate people who, in addition to suffering permanent handicap, may also encounter serious difficulties in their occupational life? And how to be sure that the compensation paid out will be commensurate to the occupational loss sustained?
Presentation of the findings of the survey carried out among European Forum members

Marie-Chantal Blandin

In February 2009, an initial questionnaire was sent out to European Forum members with a view to gathering information about what happens in the countries: who assesses losses and on what basis? Who calculates the amount of compensation? Can the victim contest the determined disability rate? Is this rate revised during the victim’s lifetime and, if so, based on what factors? We received a lot of answers through this first questionnaire and asked Eurogip to analyse them. Raphaël Haeflinger will present us with a summary of the answers.

Raphaël Haeflinger, Director, EUROGIP, France

I am going to try and present the findings from this survey as faithfully as possible. Eleven countries completed it: Germany, Austria, Belgium, Denmark, Sweden, Finland, Italy, France, Switzerland, Latvia and Luxembourg.

The questions addressed eight themes: permanent injury entitled to compensation, those involved in assessing loss, the methods for assessing permanent disability, how benefits are calculated, the form that the benefit takes and the periodicity of payment, the possibilities of contesting the compensation decision, the revisable nature of the benefits paid and whether or not these benefits are subject to social contributions and income tax. The last question concerned the recent changes made to each country’s legislation and the debates under way.

It is first important to point out that the survey dealt strictly with permanent injury. Some organisations may pay benefits that are secondary to compensation of this injury, particularly for third party assistance. The survey did not go into the question of these additional benefits, focusing exclusively on compensation for the permanent injury in the strict sense.

1. Which types of loss are entitled to compensation?

All of the countries compensate the professional prejudice and the physiological prejudice, with the exception of Sweden and Latvia which only compensate for the “loss of earning capacity” in the strict sense, even though additional organisations are called on in Sweden to compensate the physiological prejudice.

The countries can be split into two groups: those that grant global compensation (Germany, Austria, Belgium, France and Luxembourg) for all losses and those that compensate for the loss of earning capacity (or professional prejudice) and the physiological prejudice separately (Denmark, Finland and Italy since 2000 and Switzerland since 1984).

This separation into two groups is essentially based on the practical procedures for assessing and compensating prejudices; it does not mean that those countries offering global compensation only take a given prejudice into account. In these countries, with the exception of Sweden and Latvia, assessment firstly focuses on the victim’s physiological capacities – without overlooking the professional prejudice, which is considered in the assessment.

The different types of compensation are not distinct, however.
2. Who assesses losses?

A doctor is always involved in the assessment irrespective of the country. In Italy, Finland, France and Luxembourg, the assessment is mainly the responsibility of the doctor from the insurance organisation. In other countries, the doctor works more in partnership with an administrative team - a partnership that can take various forms, for example either the administrative team takes over once the doctor has finished, or they work together (in Switzerland). A “case manager” may be involved in some cases and call on the competencies - including medical - he or she needs, depending on the case (in Denmark) or a multidisciplinary commission may carry out the assessment (in Austria).

3. How are losses assessed?

In countries offering global compensation (Germany, Austria, Belgium, France and Luxembourg), assessment is based on indicative medical tables specific to accidents at work and occupational diseases. On this basis, a variable correction depending on the country may be applied to take account of the victim’s socio-economic characteristics (profession, education, etc.): there is thus a tendency to personalise compensation, which nevertheless remains global.

In the second group of countries, those who distinguish between types of prejudices, an assessment is performed in the strict sense and in concreto of the loss of earning capacity, i.e. the consequences of the event on the victim’s work situation. The example of Switzerland is particularly “meaningful” in this regard. To assess the loss of earning capacity in concreto, the SUVA compares two hypothetical earnings: that to which the victim may still lay claim with the sequelae of the accident and that which s/he would have received had the accident not occurred. This assessment is theoretical: carried out on the basis of job descriptions and official salary statistics. The loss associated with the loss of earning capacity in the strict sense can be determined by comparing the two amounts obtained.

Furthermore, the separate assessment of the physiological prejudice (whether this be functional, psychological or aesthetic for example) is based on medical tables that strictly connect a rate to an injury.

4. How are benefits calculated?

In countries where compensation is global, the calculation method is virtually identical: the salary paid at the time of the accident is multiplied by the medical rate (calculated according to the table and adjusted based on the assessment of the professional prejudice) and multiplied by a constant, i.e. a rate that varies between countries. Some countries, such as Germany, use fixed rates (66.6%). In France, the constant varies depending on the rate - this is known as “useful rate”. In all cases, the formula is identical in all the countries: the benefit equals the salary multiplied by the adjusted rate and multiplied by a constant.

Other countries apply the same formula for the benefit compensating the loss of earning capacity: salary received by the victim at the time of the accident multiplied by the loss of earnings expressed as a rate and multiplied by a constant.

Moreover, the physiological prejudice is compensated separately, on the basis of scales, but independently of the salary received by the victim.
The diagram below illustrates these answers:

5. How are the benefits paid?

The general rule for compensating for loss of earning capacity is a monthly pension. Some countries pay a quarterly pension (France and Belgium as regards occupational diseases) or annual pension (Belgium as regards accidents at work) for disabilities below a certain percentage.

In several countries, the benefits are paid as capital below a certain limit of work disability - this is the case in Italy when the disability linked to biological damage is less than 15%, and in Luxembourg and France for disabilities under 10%.

Countries that compensate for the physiological prejudices separately from loss of earning capacity always pay this compensation as capital - with the exception of Italy however, where benefits compensate both for the biological damage and the loss of earning capacity. That said, discussions are currently being held in Italy to look into the possibility of compensating for “slight” disabilities in the form of capital.

6. Is it possible to contest the compensation decision?

Most countries allow for the compensation assessment decision to be contested internally - this then results in administrative revision or automatic right of appeal.

All countries without exception allow for the decision to be contested before courts outside the organisation. In some, the dispute will be brought before administrative courts (such as Sweden or Latvia), social courts (such as Germany or Luxembourg), or even specific courts (insurance courts, particularly in Finland).

The victim and, in some cases, other people/organisations, may be led to bring the case before the courts in question - in Italy and Luxembourg for example, trade unions may do this.
7. Can the benefits paid to the victim be revised?

In all of the countries that answered the questionnaire, it is possible to increase the benefits should the victim’s situation change. The benefits may sometimes be reduced through a legal procedure, although the analysis of the questionnaire did not reveal the criteria for such a revision. It nevertheless seems that reducing benefits is uncommon, particularly for technical questions.

8. What deductions are compensation benefits subject to?

In most countries, the benefits paid to victims are not subject to social contributions or tax.

Some countries nevertheless subject pensions to tax - for example Belgium, except for disabilities under 20%, Finland, Switzerland and Denmark (for pensions compensating for the loss of earning capacity).

In Latvia and Belgium, all pensions are subject to social contributions.

9. Has the legislation in your country changed recently? Which aspects?

Even if this now dates back somewhat, let’s remember that in 1984, Switzerland changed from a global system for compensating permanent work disability to a system distinguishing between the loss of earning capacity and the physiological prejudice.

More recently, a significant reform was implemented in Italy in 2000; compensation of biological damage suffered by the victim has become the cornerstone of the compensation system, in which the professional prejudice is considered to be a consequence of the biological damage. In other words, it is only once the biological damage reaches a certain level that claims for loss of earning capacity compensation may be made.

In Denmark, the level of compensation paid for accidents at work and occupational diseases was harmonised in 2004 with that of ordinary law. This has resulted in an overall increase in benefits. A legal provision was also laid down in spring 2009 for compensating acts of terrorism in the same way as work-related injuries from now on.

In Austria, an additional benefit has been created for victims of severe permanent disability (between 70 and 100%) and a temporary taxation of pensions was applied (from 2001 to 2003).

In Belgium, the principle of non-taxation of pensions for work disabilities below a certain level has been laid down by the law of 17 July 2000 amending articles 34, Para. 1, and 39 of the Income Tax Code.

Lastly, a reform is in the pipeline in Luxembourg which could have come into force in early 2010 concerning the approximation of compensation for work-related injuries with that of ordinary law. Compensation for losses suffered, which has been global until now, will henceforth distinguish between the different types of loss and will be differentiated. However, it would appear that the parliamentary debates on this issue are on hold for the time being, preventing the expected date for enforcement of the law from being kept.
10. **Are discussions currently being held on these matters?**

Since the early 2000s, France has been considering changing from fixed-rate compensation to full compensation. Such a change in the legislation was examined from a conceptual and technical point of view a few years ago, but little progress has been made on the issue since.

In 2006, Germany launched a major reform of AW/OD insurance, but although the aspects on the way this insurance is organised have been implemented successfully, no consensus was reached on those concerning the methods for compensating victims and they have therefore been adjourned.

In Finland, a legislative draft reform concerns a redefinition of the annual salary to take as the basis for calculating pensions, the level of pensions and the compensation ceiling.

The Italian law of 2000 may be revised to provide for a reassessment (automatic indexing on the cost of living) of the benefits paid for biological damage as well as a reduction in the rate below which the compensation for biological damage is paid as capital.

In Switzerland, a parliamentary debate has been held on the possibility of reducing the amount of the disability pension in some cases once the beneficiary reaches retirement age.
Panel discussion:
Assessment and compensation in countries that provide global compensation

Marie-Chantal Blandin

To go into the comparison of national systems in more detail, we recommended that our colleagues work on two case studies.

The first one concerns Mr Dubois. Aged 30, Mr Dubois is a carpenter. He earns 1,700 Euros a month (and therefore 20,400 Euros a year). While cutting a piece of wood with a band saw at his workplace, the last phalanx of his right index finger is accidentally amputated (he is right-handed). After a 20-day leave, he is able to resume his former job at the same workstation and with the same functions.

The second one concerns Mrs Dupont, a 52 year-old commercial attaché whose income is based on two elements: a fixed monthly salary of 2,000 Euros and bonus averaging around 2,000 Euros per month (totalling annual earnings of 48,000 Euros). Mrs Dupont had a traffic accident while driving to see a customer; she suffered from a broken pelvis with a rupture of the uretha. After a 12 month leave while she underwent physical therapy, she is considered medically consolidated. At that point, her condition is such that she suffers from chronic pelvic pain, she has a slight limp (because one of her legs is now shorter than the other) and trouble urinating. This condition makes it undesiable for her to maintain a sitting position for long periods of time and to drive a car regularly. As a result, Mrs Dupont, who could not be reclassified to another function by her employer, was dismissed for unfitness as she could not be found another position within her company. During her unemployment period (with benefits received), she followed a training course that allowed her to find a new sedentary administrative job (with a new employer). She now earns a monthly salary of 2,500 Euros (30,000 Euros a year).

We asked each country to explain to us how the permanent disability of Mr Dubois and Mrs Dupont would be assessed and what benefits they would receive to compensate their injuries.

This first panel discussion brings together colleagues from four countries in which the compensation is global:

- Jacqueline de Baets, general administrator of the Fund for Accidents at Work (FAT) in Belgium
- Bernhard Pabst, legal expert on insurance issues at the DGUV, Germany
- Michael Janotka, deputy director of the AUVA Benefits Department, Austria
- Ellen Cadi, medical advisor at the CNAMTS, who has recently retired and is very familiar with the French compensation system.

Let’s start with Mr Dubois. How would he be compensated in Germany?
I thank our French colleagues for deciding to broach this important issue. In Germany, we are currently deep in discussion about our compensation system, and this debate is therefore of immense interest to us. The principle in our country is to do everything possible to ensure that the victim or patient gets back to work after the accident or disease; rehabilitation is therefore a key issue. This means that medical and rehabilitation benefits take up a large chunk of the DGUV’s expenses.

So let’s talk about Mr Dubois’ case. What benefits would he be entitled to receive in Germany? The answer is simple: he would be entitled to all rehabilitation benefits but no to a handicap pension.

This is because German law lays down two conditions for granting a pension: the reduction in work capability must be by at least 20% over a 26-week period.

The levels of disability are very specific in many countries, but not in Germany: our scale breaks down in increments of 10%.

26 weeks is a fairly long spell, which has recently been extended (from 13 weeks) with a view to limiting the number of pensions. After 26 weeks, the victim may receive a pension. The criterion considered is the permanent loss in earning capacity over the whole labour market - and therefore not necessarily in the profession practised to date by the victim. Accordingly, someone who has lost a phalanx may find another job fairly easily. The loss of a phalanx will not prevent Mr Dubois from working, since he has kept his job, and the physical disability is therefore not serious enough to entitle him to pension.

Marie-Chantal Blandin

How would it have been if Mr Dubois had been a pianist and not a carpenter?

Bernhard Pabst, Germany

The law stipulates that, when the sequela prevents the victim or patient from continuing work, this must be factored in by increasing the level of disability from 10% to 20%. Accordingly, if Mr Dubois had been a pianist, he would have benefited from more advantageous conditions in terms of pension, as his piano career would have been over.

Marie-Chantal Blandin

And where would Mr Dubois stand in Belgium?

Jacqueline de Baets, FAT, Belgium

Before talking about Mr Dubois’ case, I would like to go briefly over the Belgian insurance system, and more specifically the Fund for Accidents at Work (FAT).

In Belgium, accidents at work and occupational diseases are managed by separate organisations. Private insurance companies are in charge of compensating victims of accidents at work.
The FAT’s role is to inspect these insurance companies from different angles: the existence of insurance, reporting the accident and compensation. As soon as an insurance company offers compensation to the victim, this proposal, with the victim’s consent, is sent to the FAT, which decides whether or not to approve the agreement drawn up between the parties. The FAT’s checks take several aspects into account: the calculation of the basic remuneration, assessment of the permanent partial disability (PPD) and, possibly, third party assistance if the victim’s condition requires it.

If we estimate that the fixed level of disability is insufficient or the third party assistance rate is insufficient, the FAT contacts the insurance company to see if it will accept to revise its proposal. If the company refuses, the FAT does not approve the agreement, without an alternative proposal being made, but the most diligent party brings the case before the labour court. The court then settles the dispute between the victim and the insurance company. The FAT may be called on in this case.

Let’s get back to Mr Dubois’ case.

Having resumed his old job, he hasn’t lost anything in terms of earnings. The FAT would therefore suggest that his permanent disability be put at 3%. We take the general labour market into consideration for assessing permanent disability - and not such employment-related events as the economic crisis. We assess the repercussions of the disability on the victim’s competitiveness on the general labour market, based on his age, vocational training, possibilities to adapt, convert and so on.

Mr Dubois would therefore receive benefits equivalent to 3% of his annual income, i.e. 612 Euros, which he receives on top of his salary. He would get this sum for three years as an allowance and then as a life annuity. However, because of budgetary measures concerning slight disabilities, Mr Dubois would only get 50% of the 612 Euros, or 306 Euros, in a single annual payment not indexed on the cost of living.

What’s more, for all disabilities up to and not including 20%, capitals representing these regular payments are transferred to the FAT, which would carry out the payments instead of the insurance company. The PPD level is revisable. The insurance company may ask for this to be reduced. In the event of life annuities, it is also possible to increase the level after three years.

Marie-Chantal Blandin

The benefit is a life annuity; is it therefore paid throughout the victim’s lifetime?

Jacqueline de Baets, Belgium

Yes, although upon retirement, the rate will become fixed. This is a general measure that applies to all forms of regular payment, whatever their rate.

Marie-Chantal Blandin

Is this annuity subject to social contributions and tax?
Jacqueline de Baets, Belgium

Yes, regular payments are subject to social contributions and also to tax, except for disabilities under 20%.

Stéphane Seiller, Cnamts

You mentioned that assessment of the PPD took account of the general state of the labour market. Who carries out this assessment? A doctor? Administrative departments? And on what basis is the decision made? Are there criteria or references?

Jacqueline de Baets, Belgium

The assessment is carried out by medical advisors working for the insurance companies. The FAT’s proposals are based on disability tables that, though considered to be general references, are not compulsory. Each insurance company draws up a policy on this matter.

The notion of general labour market encompasses everything that the employee is still capable of doing.

Another important point to highlight is that, in our example, Mr Dubois resumed his old job, but supposing his employer was obliged to make him redundant, he would then receive his regular payment as well as unemployment benefits.

Question from the floor

Why was Mr Dubois’ regular payment cut by 50%?

Jacqueline de Baets, Belgium

A few years ago, the subject of compensating slight disabilities was much debated - and the outcome was not to introduce a threshold below which there would be no compensation. We are still providing compensation from 1% as a result, but regular payments of less than 5% are cut by 50% and those of 5% to less than 10% are cut by 25%. For payments from 10% to 16%, indexing on the cost of living is no longer performed. From 16% to less than 20%, indexing is still carried out, but the possibility of obtaining a third of the payment value as capital is no longer possible. It is only from 20% that all of the victim’s previous rights are restored, i.e. the possibility of receiving a monthly payment indexed on the cost of living and of obtaining a third of the payment value as capital once the three-year revision deadline has expired.

Marie-Chantal Blandin

After Belgium, let’s see how Mr Dubois’ case would be handled in Austria.
Michael Janotka, AUVA, Austria

The Austrian insurance system is fairly similar to the German system in terms of its history and principles. That said, here, Mr Dubois would receive global compensation through payment of capital; a provisional regular payment may be made over the first two years following the claim, but in order to keep red tape to a minimum we pay these provisional payments as capital in a lump-sum.

Our head doctor would grant Mr Dubois nine months of regular payment, which would entitle him to a sum of capital that would lie somewhere between 1942.86 and 2137.15 Euros. Why such a range? In Austria, there are two pay checks on top of the 12 monthly salaries: at Christmas and for the summer holidays. This rule is valid for regular payments and pensions too. Our benefits are therefore paid out 14 times over the year - and the question is whether the nine monthly payments due to Mr Dubois must include one or even two special pay checks.

How did we obtain this sum? We base our calculation on the salary for the year preceding the claim, which in Mr Dubois’ case was 30,000 Euros. To calculate the regular payment amount, we deduct a third of the annual salary since, in Austria, with the exception of a few rare attempts, regular payments are not subject to tax; hence why only two-thirds of the salary is taken into account. When questioned about this, the Austrian Constitutional Court was not convinced of this argument, but did not give another one to justify the reduction of a third. It merely considered that a third should be deducted. Personally speaking, I think that if the regular payment calculation took account of the whole salary, this would lead to too much compensation being paid: the victim might receive more after his accident than before. If disability was 100%, the maximum payment the victim could receive per year would therefore be 20,000 Euros.

To illustrate the calculation method, I have drawn up a diagram:

Austria has a disability scale just as Germany does; on the diagram we have depicted a foot or hand injury. I mentioned that the insurance company doctor would entitle Mr Dubois to nine months of regular payments. For 20% disability, the annual pension would be 4,000 Euros (20% of 20,000 Euros), or a monthly pension of 285.71 Euros.
Between 2001 and 2003, the government wanted to tax pensions for accidents, to bring Austria into line with the Maastricht criteria in terms of budget deficit. It then retracted this unpopular move. At the time, a victim with a higher level of disability than 50% received an extra pension of 50% (instead of 20% today), such that with a 100% level of disability, he received a regular pension corresponding to his previous annual salary, i.e. 30,000 Euros. Now, a victim with a level of disability in the range of 50% and 70% gets an extra pension of 20%. From 70% disability, the extra pension goes up to 50%. And if the victim has dependent children, an increase of 10% may be granted.

Marie-Chantal Blandin

You have explained that, for a 30,000 Euro salary, the maximum pension would be calculated on the basis of 20,000 Euros - while someone with a 100% level of disability would receive an annual benefit of 30,000 Euros. First of all, why did you specify that only two-thirds of the salary is taken into account, when the victim with a 100% level of disability would receive an annual benefit of exactly the same amount as his salary? Can you go over this point again please?

Michael Janotka, Austria

Of course. This stems from the fact that the methods for calculating pensions depend on the level of disability - as shown in the graph below.

For pensions compensating a level of disability in the range of 20% and 50%, there are no additional benefits; two-thirds of the annual salary will be taken into account. In the 1960s, an additional allowance was introduced when the level of disability ranged between 50 and 100%. Today, for a level of disability between 50 and 70%, the additional allowance is 20% and 50% for a level exceeding 70%. This means that people suffering a 100% level of disability receive a 100% pension.
Marie-Chantal Blandin

The last country in the group of those that grant global compensation is France. Dr Ellen Cadi will explain how Mr Dubois’ case will be analysed in France. She used to be a medical advisor in the Parisian region and then at the Cnamts and, although she retired a few months, she agreed to share her expertise with us about assessing losses for victims of work-related injuries for this conference.

Ellen Cadi, Cnamts, France

My response will only address the general scheme for industrial, commercial and tertiary employees - which nevertheless account for a large section of the population. This is because there are other schemes in France, particularly for civil servants, the self-employed and agricultural workers.

For accidents at work, the Primary Health Insurance Fund manages the victim’s case. He or she will take the necessary sick leave and receive daily benefits. At some point, his or her medical condition will cease to change - it will then be considered stable. There is no set rule in this regard: the medical advisor and the victim’s doctor will determine when exactly the victim’s condition is considered stable together. From this date onwards, the victim will no longer receive daily benefits but, depending on any sequelae from the accident, he or she may be entitled to permanent disability benefits. The medical advisor refers to an indicative disability table to determine the level of physical disability. As its name suggests, this table is not binding, but the medical advisor must have a good reason for not following it. In general, medical advisors keep fairly closely to it. For loss of the distal phalanx of the index finger on the dominant hand, the table indicates a physiological level of 7%. It states that the disability must be assessed according to a series of factors including the patient’s general condition, age, physical and mental capacities, professional qualifications and aptitudes. If we’re honest, it’s not always clear what exactly that means, and each medical advisor may vary the level in one way or another depending on these factors. Given that Mr Dubois did not lose his job, I think the medical advisor would keep to the 7% level.

When the permanent disability is less than 10%, compensation comes in the form of indemnity paid as capital, the amount of which is fixed, i.e. unrelated to the victim’s salary. The amounts are revised annually; since 1 April 2009, for a 7% PPD, this indemnity is 2,742 Euros. Mr Dubois will receive this money once and in full and final settlement. Of course, if his condition were to deteriorate, Mr Dubois could ask for this level to be revised, and he would then be re-examined by the medical advisor who may decide to change the PPD level. The Fund would then do a calculation - quite a complicated one - to pay an extra amount.

It’s worth knowing that, if Mr Dubois could ever prove that the accident occurred because of an inexcusable fault on the part of his employer, he could obtain additional compensation through a separate procedure.

Question from the floor

In the German and Austrian systems, is there a fund or administrative authority like in Belgium that becomes involved in dealings with victims?

Marie-Chantal Blandin

The situation in Belgium is unique, since accidents at work are managed by private insurance companies there. In the eyes of the law, the role of the Fund for Accidents at Work is to
ensure that these companies are applying the right rules and accurately assessing disability. In Germany and Austria, however, insurance is managed by public organisations and the question therefore does not arise.

Now we’re going to examine the answers given by each country for Mrs Dupont’s case.

**Bernhard Pabst, Germany**

In Germany, we examine claims on a case-by-case basis. The doctors assessing these claims need a great deal of details. So in Mrs Dupont’s case, we need to know to what extent her leg is now shorter, the extent of her urinary difficulties and muscle loss. In-depth medical examinations would therefore need to be carried out to find out these details.

We have assumed that the insurance company submits the claim to a consultant, generally a hospital-based consultant. The question of the choice of doctor has been debated and the law has been amended. It is now the victim who chooses which doctor will carry out the examinations: the insurance organisation must give him/her a choice of three doctors, but he/she may also refuse all of these and choose another. In 90% of cases, the victim does not voice an opinion, and so the first doctor on the list is chosen.

The chief expert determines a work capability reduction rate from his/her examination - this is no easy task, as it’s not simply a matter of adding together the different disorders. The victim’s general condition is taken into account, as well as the impact of the reduction in work capability from the 26th week of illness. This rate proposal is submitted to the insurance company; a committee with equal representation on both sides: employers and works committees makes the decision. The members of this committee are professionals, experts who clearly identify any problems that may arise: if further information is required or if there are major deviations compared with other similar cases for example. On this basis, Mrs Dupont will be assigned a loss in earning capacity of 40%, regardless of any other questions that may be raised in our system. After a year this disability rate will be revised at 30% as required by law, for it has been observed that disabled people learn to live with their handicap and are therefore able to better manage their professional and private life.

**Marie-Chantal Blandin**

How much compensation would Mrs Dupont be entitled to?

**Bernhard Pabst, Germany**

The calculation is based on the annual gross salary, i.e. the total salary over the year preceding the accident. The question as to what needs taking into account as part of the annual gross salary is fairly technical. This is because Mrs Dupont has a basic salary as well as bonuses depending on her performance. We can imagine that she earns a good wage from one year to the next, but in variable amounts, such that it may be difficult to assess a salary that fluctuates. As in Austria, we take two-thirds of the annual salary in our calculation of the pension amount - in this case, 32,000 Euros since Mrs Dupont’s overall salary amounted to 48,000 Euros. During the first year, we consider a working disability of 40%, from which we end up with an annual compensation of 12,800 Euros, paid over 12 months. Accordingly, the first year Mrs Dupont will receive a monthly pension of 1,066 Euros, which will drop to 800 Euros the following year. Note that she will receive these 800 Euros for the rest of her life, so beyond the age of 65, the retirement age. Her pension will then be reduced, however.
Stéphane Seiller, Cnamts

From what I understand, the assessment is global, and it doesn’t seem to take account of the need for the victim to switch to a new job, to do training programmes and so on. Apart from financial compensation, does your system assist victims in training for a new profession?

Bernhard Pabst, Germany

Mrs Dupont would obviously be informed of all possible options for rehabilitation, for training for a new profession - for example a more sedentary one. It would also be possible to grant financial aid to her new employer for fitting out her work station properly.

Stéphane Seiller, Cnamts

Who bears the costs of these training programmes or work station adjustments?

Bernhard Pabst, Germany

Professional associations (called BGs in Germany), i.e. insurance companies against work-related risks, are responsible for getting people back into work. They also pay social reintegration benefits to victims, money which helps them to resume everyday activities again like learning to drive a car with one hand, for example.

I mentioned that our system was similar to the current one in Austria - there is, however, a difference in size. We do not pay additional allowances from a 50 or 70% level of disability for example, instead we concentrate our efforts on the most serious cases.

Bernard Salengro, France

I represent executive managers. If I’ve understood correctly, in Germany and Austria the salaries on the basis of which benefits are calculated do not have a ceiling: you start by taking the entire annual income into consideration and you then determine two-thirds of this given the non-taxation of pensions, to which you apply a rate dependent on the medico-social rate fixed by the doctor. If I earned 150,000 Euros a year, would the same rules apply?

Bernhard Pabst, Germany

The answer is no. In Germany, each insurance company - there used to be around 20, although since 1 January 2010 this has been reduced to 13 - may set a maximum earnings ceiling to be consider when calculating benefits. This ceiling varies depending on the industrial sector - for example, it is slightly higher in the chemistry sector. There are indeed ceilings per professional branch as a result, the amount for which is set by the BG.

Michael Janotka, Austria

In Austria, the legislator sets the ceiling each year in the framework of a text on insurance.
This year, the ceiling is 56,280 Euros, including all additional payments. This is the maximum amount that may be paid.

Marie-Chantal Blandin

How would Mrs Dupont’s case be assessed in Belgium?

Jacqueline de Baets, Belgium

Our medical inspector was somewhat puzzled when reading the case, given the information provided concerning the sequelae. He considered some of this information, particularly the level of incontinence, to be insufficient for determining Mrs Dupont’s level of disability with any accuracy.

Marie-Chantal Blandin

We did not indicate that she had incontinence, merely difficulties.

Jacqueline de Baets, Belgium

Our medical inspector first set the permanent disability level at 10%, before reducing it to 5%. As regards the basic remuneration, we also have a ceiling - amounting to 36,809.73 Euros as at 1 January 2009; this means that Mrs Dupont would receive compensation on the basis of this ceiling. In view of her level of disability, her annual pension would therefore equal 1,380 Euros (for a 5% level) or 3,681 Euros (for a 10% level).

As in Mr Dubois’ case, this annual pension would not be indexed on the cost of living, but would be paid as a life annuity by the FAT and possibly become a fixed sum when Mrs Dupont retires.

The fact that Mrs Dupont receives unemployment benefits makes no difference to her situation: it is perfectly possible to receive different benefits at the same time, up to 66%. The life annuity would also be paid on top of Mrs Dupont’s new salary, which is more than her fixed pay as a sales representative.

Regarding rehabilitation and professional conversion expenses, these would be reimbursed, but not by the same organisations, depending on whether they are called on before or after a victim’s condition becomes stable. If rehabilitation and retraining take place before, in principle their costs would be covered by the insurance company. Any expenses incurred after, for example rehabilitation, adaptation of work stations or more complex adjustments in the home, may be borne by local authority bodies and not by insurance companies. Moreover, if the victim’s condition required vehicle alterations - although this probably isn’t the case here - or other prostheses or home equipment (mono-lift, ramp, etc.), the insurance company would have to meet these costs if the relationship with the accident at work were established.

Marie-Chantal Blandin

How would Mrs Dupont’s case be handled in Austria?
Michael Janotka, Austria

I will start by presenting the Austrian answer before explaining it to you. By the start of the 27th week following the claim, and perhaps sooner (this depends on the period during which the victim receives daily indemnities as she cannot receive these and a regular pension at the same time), Mrs Dupont would receive an annual pension of 9599.84 Euros, given the loss of earning capacity put at 30%. She would receive this payment for two years, after which time it would be reduced to 5420.55 Euros given the fact that the level of disability would also have been reduced to 20%.

So how did we reach this conclusion? The basis for calculation is the same as in Mr Dubois’ case. We take the salary received over the year preceding the claim and the loss of earning capacity is assessed in reference to the labour market in general - like in Germany, we don’t just look at the employee’s profession. Admittedly, some may consider our system to be rather tough, but it must be viewed in the light of the Austrian context in general: remember we pay for prostheses, rehabilitation, all secondary means and all the social benefits necessary. If the victim can no longer practise her profession, we look at what other jobs she could be trained in.

In Austria, the victim can’t choose the medical expert who will determine his/her disability rate yet. If he/she is dissatisfied, he/she must turn to the social courts, which won’t cost anything and, in 90% of cases, the outcome is the same, incidentally. We grant the pension based on the medical advisor’s proposal. The pension amount is provisional for two years - which means that it may be revised monthly. At the end of these two years following the claim, it is only possible to revise the amount once a year. The pension is paid as long as the disability rate is at least 20%. The victim will receive it on top of his/her work salary and also after he/she retires.

Marie-Chantal Blandin

Let’s see what the French say now.

Ellen Cadi, France

In France, the Health Insurance System medical advisor monitors the victim throughout her sick leave - as in Mr Dubois’ case, the date at which her condition becomes stable is determined in agreement with her usual doctor.

To determine the level of disability, the medical advisor usually has quite a lot of information: he/she has met the victim a number of times and may have obtained medical documents during the treatment period, especially if the victim was hospitalized. To determine when the condition is stable, the medical advisor will examine the victim again, who may bring the results of additional tests and possibly a letter from his/her usual doctor. In specific cases - I’m thinking in particular of eye conditions or some other specific disorders - he/she may consult external doctors of his/her choice, whose role is limited to providing medical clarifications on the victim’s case, for example, indicating the level of visual acuity. As you can see, by the time the medical advisor examines the victim, he/she will have a lot of information at his/her disposal.

I have also examined Mrs Dupont’s case. Her file mentions a limp due to one of her legs being shorter. The level given in the disability table depends on the extent of this shortening - which has not been specified here. We know that there is no limping if the leg is less than 4cm shorter, for this can easily be compensated by shoe soles. This implies that Mrs Dupont’s leg is at least 4cm shorter. I have therefore decided, arbitrarily, that her leg is 4cm shorter, in which case the table indicates a PPD of 9%. Concerning her dysuria, or difficulties urinating, I considered this to be slight incontinence only, which corresponds to a PPD of 10% in the table. For Mrs Dupont’s
chronic pelvic pain, the table does not give a particular level. That said, I considered it not unjustified to compare this to a mild chronic lumbago, for which the table gives a PPD of 5%. Since all of her injuries were caused by the same accident, we add together these different levels (9%, 10% and 5%) to get 24%.

Regarding professional loss, her case specifies that she retrained during her period of unemployment (during which she received benefits). This implies that, at the time her condition was considered stable, Mrs Dupont still had not retrained. Like in the other countries, the social security Fund in France reimburses all of the healthcare expenses, with the victim not having to bear any of them. Any functional rehabilitation will also be fully reimbursed, as well vocational retraining if Mrs Dupont has to undertake further training for example. Note that ongoing health care is also reimbursed fully, even once her condition has stabilised.

There is no specific system for assessing professional loss in France - the medical advisor will determine this by taking account of the redeployment possibilities. Since there is no set table, medical advisors are often uncomfortable saying whether or not someone can easily be redeployed or find a new job. This is why the Fund, who actually attributes the rate, can depart from the one proposed by the doctor.

On what elements will the doctor base his decision? Truthfully I don’t know, insofar as there is no official text on this matter. The Fund is authorised to set a higher rate, although nothing states by how much. However, as this problem has been around for over 50 years, practices have taken root, both local and regarding jurisprudence: for example, if a victim is dissatisfied with the rate attributed to him/her, he/she may bring the case before the court. The question of assessing professional loss is discussed on a regular basis, particularly in order that all Funds proceed in the same way despite there being no specific regulations.

To assess Mrs Dupont’s professional loss, I therefore drew from the situation with which I am familiar, which applies in the Parisian region and for which, in an identical case, a professional coefficient of 2 to 5% would be fixed. This would increase the physiological level given the incapability of returning to her former job. I put Mrs Dupont’s professional coefficient at 4%, which results in a final level of disability of 28%.

Marie-Chantal Blandin

So what allowances would Mrs Dupont receive?

Ellen Cadi, France

For disability rates below 50%, the “useful” rate, i.e. the one used to calculate the amount of pension, is half the rate: in other words, for a 28% disability rate, the “useful” rate is 14% and for 50%, the “useful” rate is 25%.

When the disability rate is over 50%, the amount exceeding the 50% is multiplied by 1.5, which means that for a 70% disability rate, the “useful” rate is 55%, obtained as follows: 25% for the amount below 50% and 30% for the amount above 50% (i.e. 20 X 1.5). If you work it out, you’ll realise that a 100% disability rate matches a “useful” rate of 100% (25% + 75%); which means that someone suffering from a 100% disability will receive a pension calculated on a 100% rate.

Mrs Dupont’s salary the year before the accident amounted to 48,000 Euros. Her compensation will be calculated on part of this salary only for, as we have already seen, a ceiling is applicable. Every year, the government determines the minimum salary considered for calculating compensation amounts - this year, the minimum salary is about 17,000 Euros. The salary amount equal to twice the minimum salary will be taken into account in its entirety (therefore up
to 34,000 Euros). Only a third of any amount twice exceeding the minimum salary, up to 8
times this salary, will be taken into account. Any amount over 8 times the minimum salary is
discounted. In Mrs Dupont’s case, a third of the fraction between 34,000 Euros and 136,000
Euros (which is 8 times the minimum salary) will be taken into account. The useful salary that
will be taken for calculating the pension is thus 38,718 Euros.

A 14% level will be applied to this basis (i.e. half of 28%); which gives us an annual amount of
compensation of 5,420 Euros. The pension will be revised every year. Because this pension is
less than 50%, it will be paid out every quarter. Pensions over 50% are paid every month.

If the level of disability had been determined after retraining, which is relatively rare in France,
Mrs Dupont would still be entitled to a professional coefficient, since she suffered a loss of
earnings overall. This coefficient would be somewhat less though, i.e. 2% instead of 4 or 5%. This
wouldn’t affect her pension amount much however, since with 4% professional coefficient, she
would have received 5,400 Euros a year, and only 5,033 Euros with a 2% professional coefficient.

This problem surrounding the professional coefficient is yet to be resolved. Sometimes the
courts attribute percentages of professional loss over 4%, with some setting it to 10% or 15%.
But note that, in France, in view of the jurisprudence, the rate attributed to a victim is global
and the professional coefficient is definitive. It may only be revised downwards if the victim’s
clinical physical condition improves. If it stays the same, but Mrs Dupont retrains and earns
more than she did previously - which is quite possible -the level cannot be reduced for this
reason alone. This is why Funds take great care when attributing professional coefficients,
particularly for young people.

Bernard Salengro, France

In our country, an agreement between the social partners determines the sharing of risk. In the
initial agreement, half of the loss was presumed to be linked to a fault of the employee and the
other half to the employer: this explains why only half the loss is compensated. This is specific
to France.

Ellen Cadi, France

I can see why you might view things that way, but it seems rather surprising; the explanation
is completely different as far as I’m concerned. On the one hand, the determination of the
permanent disability is based on a scale, which is the result of discussions and practices, and on
the other, there is the calculation of the compensation. In some countries, the victim doesn’t
get anything below 20% of PPD. In other words, I see calculating the compensation as a separate
problem to the one regarding setting the PPD level. As a result, not paying any compensation
when there is no loss of earnings would not be absurd in philosophical terms. In France, for a
long time all victims received pensions, but the value of the pension decreased over time. In
1986, it was decided to compensate any PPD under 10% as capital, and until quite recently,
the amount of this capital wasn’t revised. These are all non-medical considerations, but that
said, it’s simply not the case that levels below 50% are divided by two, as you say, for victims
generally can continue to work, and over 50% the levels are multiplied by 1.5%, for the victims
in this case can no longer work. Your explanation simply doesn’t work.

Bernard Salengro, France

Compensation paid out by for work-related injuries isn’t as advantageous as you describe, for
how do you explain that the French Pneumology Society has advised its members not to declare
Ella Cadi, France

Under the disability scheme, lung cancer entitles policyholders to second category disability benefits. Disability benefits are calculated in a very different way to benefits paid for work-related injuries.

For someone earning less than the basic salary – i.e. less than 17,000 Euros – the secondary category disability benefits, which correspond to 50% of the salary, are more or less equivalent to work-related injuries compensation calculated on the basis of a 67% level of disability.

Regarding lung cancer, depending on its severity, the level of disability is 67 to 100%, which means that compensation for occupational diseases will often be higher than disability benefits.

For people who earn more than the basic salary, disability benefits are, in any case, limited to 50% of the basic salary, while occupational diseases compensation - of which the ceiling is calculated in a completely different way, will be much higher.

As a result, there is no advantage in not declaring lung cancer as an occupational disease. I would add that disability benefits are subject to tax, unlike work-related injuries compensation. What’s more, if the victim dies, his or her dependents may receive benefits, which isn’t the case for disability. The pneumologists you mentioned should perhaps check their facts.

Question from the floor

What are the relations between the doctors who assess loss and the courts in the event of a dispute?

Jacqueline de Baets, Belgium

If the level which the insurance company has proposed is not accepted by the victim, or the Fund for Accidents at Work does not agree, the case is immediately brought before the labour court, which may appoint an expert. The insurance company delegates its representative and the victim appoints the doctor who will represent him or her. The court may call on the FAT, although this isn’t an obligation.

Bernhard Pabst, Germany

The response regarding Germany is difficult to present because of our limit system in increments of 10. Moreover, the statistics reveal that those situations in which the level is revised following a dispute are quite rare. If there is a dispute, a twofold expert examination is required. An economic incentive is necessary for victims to feel the need to come before the court. It generally doesn’t cost anything in financial terms to lodge a complaint in Germany, but it does demand a great deal of strength and energy on the part of the victim, who is already disabled.
Michael Janotka, Austria

In Austria, should the victim contest the decision taken by the insurance company, legal proceedings are launched, thereby suspending the initial decision, to ensure that this is not in breach of the law. The court, to which the victim has submitted his or her claim, calls for expert examinations by the insurer’s doctors. The court expert performs its own assessment of this examination and may carry out a separate medical assessment.

It will soon be possible to set up electronic work flow - in the future, all documents related to the medical assessment will be accessible in an electronic file.

Bernhard Pabst, Germany

I should point out a current trend in Germany which involves no longer performing expert examination in very typical cases, rather, simply basing the assessment on the statistics and experience of similar cases to the one under dispute. Additional expert examinations are only carried out in the event of dispute.
Panel discussion: 
Assessment and compensation in countries that compensate on a loss-by-loss basis

Marie-Chantal BLANDIN

We are now going to see how the case of Mr DUBOIS and that of Mme DUPONT are dealt with in four countries which practise loss-by-loss compensation. Present at this second round table are:

- Helle OLESEN, Assistant Head of the Benefits Division at ASK, Denmark
- Philippe CALATAYUD, sector Head in the Insurance Benefits Division at SUVA, Switzerland
- Mika MANTTARI, lawyer at the Federation of Accident Insurance Institutions, Finland
- Monica SVANHOLM, Senior Insurance Manager at the Swedish Social Insurance Agency, Sweden
- Per WINBERG, Training Manager at AFA Insurance, Sweden.

We shall begin with the case of Mr DUBOIS.

To what benefits would he be entitled in Denmark?

Helle OLESEN, ASK, Denmark

In Denmark, we distinguish between two types of benefits: the first one concerns compensation for loss of earning capacity; the second one compensation of non-financial damages due to a permanent handicap.

Since Mr DUBOIS returned to his job after the accident and received the same salary, he is not entitled to loss of earning capacity benefits. Of course, he will receive daily financial compensation to cover the period when he had to stop work, and all medical expenses will be covered by the insurance company.

However, because the accident left a lasting effect (the loss of a phalanx), Mr DUBOIS will receive a permanent handicap benefit in compensation for the everyday trouble associated with this impairment. A medical consultant from ASK will assess the permanent damage suffered by Mr DUBOIS according to an indicator scale; this provides for a 5% rate for the loss of a phalanx of the second finger (the fact that Mr DUBOIS is right-handed does not affect the rate). On this basis, and considering that, on 1 January 2009, the sum paid for a 100% handicap rate is 97,093 Euros, the benefit will amount to 4,854.70 Euros. As a general rule, the sum may be reduced by taking into account the age of the victim, but since Mr DUBOIS was under 40 years of age at the time of the accident, there will be no reduction. The amount paid is not liable to income tax or to social contributions.
Marie-Chantal Blandin

And how will the case of Mr DUBOIS be dealt with in Switzerland?

Philippe CALATAYUD, SUVA, Switzerland

We also distinguish between compensation for professional loss (that is to say, the consequences of the accident on capacity to earning) and compensation for a damage to physical or mental harm.

The disability pension paid when capacity to work, respective to earnings, is impaired, is calculated on the economic disability rate (which results from a comparison between the earnings without the accident and those despite the accident). Since Mr DUBOIS returns to his place of work and receives the same employment earnings after the accident, he will not be entitled to such a benefit.

Concerning the physical harm, the rate is evaluated by a doctor from indicative tables laid down by the legislator. The loss of a single phalanx of a finger, it makes no odds in this respect, whether the injured hand is dominant or not, is estimated at 2.5%. Unlike Denmark, Switzerland has a floor start rate on payment of a so called integrity compensation. This rate is 5% (below which the damage is not considered “substantial”); Mr DUBOIS will thus not receive any compensation.

Marie-Chantal BLANDIN

Let us now look at the Finnish response to Mr DUBOIS’ case.

Mika MANTTARI, FAII, Finland

The situation is the same as in Denmark and Switzerland: we have different benefits, the first one for compensation of the economic loss caused by a reduction in the working capacity, another one for the handicap resulting from an accident or occupational disease.

In Finland, Mr DUBOIS would receive nothing for loss of earnings given that his ability to work was not diminished by the accident. Of course, during the period of temporary incapacity, he would receive daily compensation and all of his medical expenses would be reimbursed.

With regard to the damage to his physical integrity – the “permanent handicap” as we call it in Finland – the case of Mr DUBOIS figures below the minimal class (1/20) required for payment of the benefit provided for; Mr DUBOIS would therefore not be entitled for compensation.

Finally, in Finland, Mr DUBOIS’ case would be treated as in Switzerland: no compensation would be paid.

Marie-Chantal BLANDIN

The last country to compensate on a loss-by-loss basis is Sweden, which has a rather special system in the sense that two separate bodies are responsible for assessment and compensation of damages resulting from work-related injuries.
Monica SVANHOLM, SSIA, Sweden

I represent the Swedish public social insurance Agency. During his leave of absence from work, Mr DUBOIS will receive a temporary incapacity benefit as provided by law, but since, at the end of this period, as Mr DUBOIS will return to his job and receive his salary, he will not receive any Swedish social security benefits.

Per WINBERG, AFA, Sweden

As it has been mentioned, two complementary systems of compensation coexist in Sweden: that of the Social Security Agency, which essentially provides compensation for the financial consequences of an accident, and a complementary insurance —TFA within the AFA— which essentially comes into play with regard to medical and other consequences. This complementary insurance covers approximately 90% of the workforce; created on the basis of a framework agreement among employers’ organisations and workers’ unions, it assumes responsibility for non-financial losses suffered by victims of work-related accidents and of work-related diseases. All in all, the Swedish system closely resembles the current Danish one, with the slight difference that in Sweden compensation involves two distinct organisations.

Since his ability to work was not diminished, Mr DUBOIS will receive no compensation from the Social Security Agency, but the TFA will take charge of compensating his other permanent losses. Mr DUBOIS will first of all be paid a lump sum of 173 Euros for the pain and suffering undergone during his period of recuperation; this benefit is calculated on the basis on the time needed for recovery (time needed for his medical condition to become stable). In addition, Mr DUBOIS will receive payment to compensate for his work-related mutilation. This sum is calculated by a “claims settler” after consultation with one or several doctors and on the basis of a compensation table on which the social partners have agreed. Based on the medical incapacity rate (4%) established by a TFA doctor and taking into account that Mr DUBOIS is still relatively young, the compensation will amount to 4,022 Euros.

The two lump sum benefits paid by TFA are not subject to taxation or to social contributions.

Marie-Chantal BLANDIN

In Mr DUBOIS’ case, the responses given by the four countries are quite varied; will it be the same in Mrs DUPONT’s case?

Helle OLESEN, Denmark

This is a far more complex case than the previous one. For Mrs DUPONT, the main question will be that of a loss of earnings: she was able to make money before her accident, and although she will still be able to work, she will now earn less. Comparing her salary before the accident with her new salary, one notices a decrease of 37.5% (which will be rounded off to 40% as our calculation table is based on a scale in increments of 5); the conditions required to qualify for benefits for loss of earning ability (a loss of at least 15%) have been met. On this basis, and considering that compensation applies only 4/5ths of the loss of earning ability, Mrs DUPONT should receive an annual benefit of 15,882.24 Euros. Since the loss of earning ability is less than 50%, the benefit will be paid in the form of a lump sum, calculated by multiplying the annual benefit by a coefficient which depends on several factors, such as age, sex, etc. As Mrs DUPONT was 53 years and 8 months old at the time compensation was decided, the coefficient will be 6,154; this gives a cash sum of 97,740 Euros, payable in a single instalment and not subject to taxation.
From the moment that the damage is noted, and until such time as the benefit can be paid, she will receive a monthly sum of 1,324 Euros.

She has lost the ability to make money and, in order to assess the loss, we must assess all criteria. Even though her salary has decreased by 40%, we could decide not to pay her the sum corresponding to such loss. All parameters must be taken into account. Her age, for example, is important: one might consider, if she is still young, that she can still learn another trade and make the same salary again. One can see that deciding the manner in which benefits are paid is subject to case-by-case assessment.

Furthermore Mrs DUPONT is entitled to compensation for permanent injury. According to the permanent-injury rating list a moderate urinary incontinence gives a permanent injury rate of 8 per cent and a moderate daily pain with asymmetry after a pelvis fracture gives a 12 per cent rating. Therefore the permanent injury rate will be of 20 per cent. On this basis Mrs DUPONT will receive a lump sum calculated in the same way as the one paid to Mr DUBOIS: 20% of 97,093 Euros. But as Mrs DUPONT is 52 years old on the date of the accident, the compensation will be reduced by 13 per cent (the reduction is of 1% for each year that the injured person is older than 39). At the end the compensation paid to Mrs DUPONT will be of 16,895 Euros. This lump sum is not subject to income tax or to social contributions.

Marie-Chantal BLANDIN

And what about Switzerland?

Philippe CALATAYUD, Switzerland

What we have here is a person who can no longer perform her earlier job; SUVA will therefore pay her the benefit provided for cases of reduced earning capacity, insofar as that one is at least 10% (the legal floor compensation degree).

The first step to take shall be assessment of Mrs DUPONT’s conceivable ability to earning in the job market depending on her occupational handicap. It shall be, of course, to a doctor to indicate how far and in what duties and/or activities she is hampered or these one she is not able to perform. On the basis of this medical liability, when consolidation comes—that is to say, when the medical treatment can no longer ensure any substantial improvement in the worker’s health status— we will estimate the activities that the victim can still perform in the “balanced labour market” and what her earnings may be obtained.

To determine this, SUVA, the leading Swiss insurers against occupational risks, has developed a special tool: a database of over 8000 physical descriptions of tangible workplaces, from a minimum of 25 of which we select 5 suitable workplaces; this allows us to calculate the average earnings to which a victim might aspire. To determine the degree of incapacity, we compare this determinate income —estimated here at 26,950 Euros annually— and the presumed earnings if there had been no accident —assessed at 49,000 Euros per annum in view of the fact that a year has passed between the date of the accident and the date at which the injuries have “consolidated”. Under these conditions, the disability rate shall be 45%.

Now, how about the calculation of pension itself? We base it on the annual insured earnings—that is to say, the gross salary (subject to social contributions) made during the 365 days prior to the accident— in this instance, 48,000 Euros; these are the earnings which will serve as the basis for assessment to calculate the amount of pension. Since compensation in Switzerland for total disability (100%) amounts to 80%, the maximum compensatory earnings come to 38,400 Euros (80% of 48,000). Accordingly the 45% disability rate, the monthly pension paid to Mrs DUPONT will amount to 1,440 Euros.
Either upon request or of administrative own motion, pension may be revised either upwards or downwards according to any substantial change (to within more or less of 5% as an absolute value) of the disability degree, linked either to a perceptible modification in the health status or to a significant change in the economic situation of the person, irrespective of the health status (for instance taking up of a job). Thus, after receiving professional training, Mrs DUPONT will find new employment which will assure her an income of 30,000 Euros; at this time, her presumable earnings without disability would amount to 50,000 Euros. The disability rate will therefore be only 40%, which shall bring monthly pension payments down to 1,280 Euros.

Furthermore, the amount of such payment is valuated regularly according to the consumer price index, on average every two years, in order to take fluctuations in the cost of living into account.

Marie-Chantal BLANDIN

And what benefits may Mrs DUPONT claim as compensation for other losses suffered?

Philippe CALATAYUD, Switzerland

Mrs DUPONT will draw compensation for a damage on her physical integrity. About this one’s amount, it is difficult to give you a clear and definitive answer as far as we are not confronted with a “standard” loss corresponding to an harm that figures on our scale, but rather with a number of harms whose description is incidentally somewhat imprecise.

Anyway, a doctor from the SUVA medical department will assess each damage per se; by adding up these different damages, we could reach a global rate of 40%. I must, however, emphasise the egalitarian nature of integrity compensation; this explains why the global rate should possibly still be weighted by comparison with other known and fixed-rate damages. On this basis, the doctor could say, for example, that the overall disorder is no more serious than an amputation below the knee (35%) but is more serious than a paralysis of the sciatic nerve (30%), etc. Thus the rate will be reduced (or increased) to guarantee such objective equality of treatment for each people insured. In a case such as Mrs DUPONT’s, it seems to me from my experience that the final rate should be around 35%. The maximum insured capital now amounts to 86,000 Euros (the amount is the same for all victims, irrespective of their real income); Mrs DUPONT’s paid-in capital would therefore be 25,800 Euros (if 30%), 30,100 Euros (if 35%) or 34,400 Euros (if 40%).

Marie-Chantal BLANDIN

The amount received by the victim is not subject to taxation in Denmark. Is this the same in Switzerland, and what about disability payment?

Philippe CALATAYUD, Switzerland

Compensation for a damage on physical integrity, like disability pension, is not subject to social contributions, but pension only is liable to tax on income.
Helle OLESEN, Denmark

In Denmark, monthly disability pensions are considered as salary and are therefore subject to taxation. It is only when payment is made in the form of capital that it is not subject to income tax.

Marie-Chantal BLANDIN

In Switzerland is pension received for life?

Philippe CALATAYUD, Switzerland

Yes, pension is awarded throughout a victim’s lifetime, even after retirement.

However, the amount could be adjusted (the “non-overcompensation” principle) to take into account other social benefits awarded, especially at the time of official retirement. Lastly, it must be noted that after retirement (currently at age 65 for men and, for some time to come, at age 64 for women) a revision of pension is no longer possible.

Marie-Chantal BLANDIN

And in Denmark?

Helle OLESEN, Denmark

In Denmark, pension stops when retirement begins, retirement age being 65 for both men and women.

Marie-Chantal BLANDIN

Let’s now look at how Mrs DUPONT's case would be treated in Finland.

Mika MANTTARI, Finland

In Finland, loss of earning capacity will entail compensation in two phases. During her period of unemployment, Mrs DUPONT will receive a benefit corresponding to 85% of her salary, which is to say a monthly pension of 3,400 Euros. When she finds other employment, the pension will be reduced to take into account loss of real earnings, which are calculated by comparing the annual salary before the accident (or 50,800 Euros) with the new annual salary (or 30,000 Euros). In the case of Mrs DUPONT, loss in earnings stands at around 40%; the annual pension comes to 16,320 Euros, as loss of earnings is compensated at 85%. This corresponds to a monthly pension of 1,360 Euros. This sum will be paid as long as the percentage of lost income remains the same. If income received by Mrs DUPONT increases, the amount of the pension will be lowered; however, the day when loss of income falls to under 10%, pension will cease. On the other hand, if Mrs DUPONT's income decreases, the pension will not increase unless she can prove that such decrease is linked to a worsening of her health status due to the accident.
In addition, Mrs DUPONT will receive a handicap benefit. The level of disability is not easy to assess in the sense that, in this particular case, the information available is insufficiently detailed. It is a lump-sum payment, made in the form of capital; Mrs DUPONT will receive a sum of approximately 11,157 Euros.

Marie-Chantal BLANDIN

Is pension subject to social contributions and income tax? And how long will it be paid?

Mika MANTTARI, Finland

Neither pension nor handicap benefits are subject to social contributions, but pension is subject to income tax. It is paid for life, but the amount will be reduced on the recipient’s 65th birthday.

Jacqueline de BAETS, Belgium

Is payment made during the period of unemployment concurrent with unemployment benefits?

Mika MANTTARI, Finland

No, there is no concurrence, seeing as how unemployment is the result of the accident. All Mrs DUPONT’s income will be accident-related: a monthly sum of 3,400 Euros.

Question from the floor

How is a disability benefit calculated? And is there provision in Finland for a maximum amount for a 100% disability?

Mika MANTTARI, Finland

The amount for a handicap benefit is determined on the basis of medical criteria and in relation to the classification set by the Ministry of Health and Social Affairs, which allows for 20 different categories. Considering the consequences of her accident, Mrs DUPONT’s case will be placed in category 6 and assessed at exactly 6.45%. This percentage is then multiplied by a coefficient (15.9241) which takes into account actuarial data (life expectancy in particular), and then by the fixed minimum salary (10,350 Euros). One thereby arrives at the sum of 10,603.53 euros, reassessed at 11,157.66 Euros to take into account the wage index for 2009, the year during which the payment will be made.

Marie-Chantal BLANDIN

What benefits could Mrs DUPONT receive in Sweden?
Monica SVANHOLM, Sweden

Because her accident diminished her ability to work, Mrs DUPONT will receive a loss of income benefit from the Social Security Agency; the amount of which is calculated by comparing the last annual earnings with her new earning capacity (either a fictional salary estimated on the basis of her ability to work during the period of unemployment or an actual new salary). In principle, we must provide 100% compensation for the loss of income, which would entail payment to Mrs DUPONT of an annual pension of 18,000 Euros. But there is a ceiling set at 32,100 Euros - for salary before the accident; as Mrs DUPONT’S pre-accident remuneration exceeds this ceiling, calculation of pension will be based on a percentage of the loss of earning capacity (that is, 37.5%) applied to the ceiling. This amounts to a pension of 12,037 Euros (=32,100 X 0.375). This pension will be paid to Mrs DUPONT until she reaches retirement age (65 in Sweden), at which point she will be eligible for retirement insurance. Moreover, Mrs DUPONT will pay tax on this pension.

Per WINBERG, Sweden

Until she finds other employment, Mrs DUPONT will receive an annual pension from TFA of 23,430 Euros, a sum which corresponds to the difference between her pre-accident salary and the allowance paid by the Social Security Agency; this allowance is subject to taxation. Mrs DUPONT will also receive a capital of 2,920 Euros for pain and suffering; this sum is calculated according to the same rules as those explained in the case of Mr DUBOIS.

Furthermore, when she finds new employment, Mrs DUPONT will receive an annual pension of 5,963 Euros for loss of income; this pension is subject to taxation and to social contributions. It will be paid until retirement age and then be decreased by half. It is concurrent with the other benefits paid to Mrs DUPONT, in particular with the pension from the Social Security Agency.

Finally, Mrs DUPONT will receive 9,845 Euros as compensation for mutilation; this sum is calculated on the basis of 10% medical disability and age (53), and is not subject to taxation.

Helle OLESEN, Denmark

An important point which I neglected to make is that we monitor the medical condition of accident victims; thus we review his or her case whenever the condition worsens. In addition, we can provide financial assistance towards the acquisition of individually adjusted aids as a means of helping the victims in their daily life.

Question from the room

In the Danish model, how does one determine the rate for the loss of earning capacity?

Helle OLESEN, Denmark

Determining this rate can be very complicated. We take into consideration the person’s age, work capacity, training, professional background, etc. We have numerous guidelines to help us make the assessment. The essential thing is that the whole person is considered. Of course, we first consult a doctor to learn what the person can or cannot do owing to his or her handicap. The decision taken is the fairest one possible in relation to the characteristics of each case.
Question from the floor

Can the accident victim take the driver who caused his/her accident to court? And if so, must he/she make a separate request?

Mika MANTTARI, Finland

In Finland, taking the driver who is responsible for an accident to court is possible, but this is a procedure distinct from that followed in dealing with the company which manages “occupational risk” insurance.

Per WINBERG, Sweden

In Sweden, Mrs DUPONT’s accident will involve three different types of insurance: social Security, TFA and automobile. In practice, TFA and automobile insurance coordinate their benefits because the policies of these two types of insurance are based on the same law.

Philippe CALATAYUD, Switzerland

In Switzerland, from the moment at which the damaging event occurs, the accident insurer is entering into the rights of both the victim and his/her surviving relatives against all responsible third parties to the extent of legal benefits. SUVA therefore systematically pursues the insurance company of the driver responsible for the accident in order to obtain reimbursement of benefits paid. The victim can also call the driver’s “civil liability” insurance to obtain “uncovered loss” compensation (for example, 20% of uncompensated loss of earning capacity, real wages superior to the top statutory insured income, psychic damage not been counted by integrity compensation, etc.).

Question from the floor

Don’t the systems presented to us here all result in full compensation?

Philippe CALATAYUD, Switzerland

With regard to Switzerland, the answer is no. The insured wages being counted in calculation (base) of the invalidity pension are ceiled by the Federal Council (the Swiss government). The top statutory insured salary is currently 126,000 Swiss francs (86,000 Euros). This amount is not laid down in an arbitrary way: federal law specifies that it must allow at least 92% but not more than 96% of salaried workers subject to the law to be covered for their entire salary. Anyone whose salary is less than or equal to 86,000 Euros will have their pension calculated on the basis of their total salary; thus all others should draw up on private supplementary insurance.

Furthermore, as I told you, to calculate the pension, the insured salary shall only be counted to a maximum of 80% (and not 100%). But, insofar as it concerns a gross wage (which also includes, for example, family allowances), we indeed rise to an amount which is not too farther from a net spendable earnings.

Looks like that is not a total compensation system, but it is not the duty of a social insurer to
compensate damages in a whole; this being so, the benefits paid are really at a very good level.

**Question from the floor**

Does the case manager play an important role in Sweden? If this is the case, can the case manager’s assessment be contested by a victim who disagrees with it?

**Monica SVANHOLM, Sweden**

Of course, if the victim of an accident doesn’t agree with the decision concerning his case, he/she can contest it before the committee’s administrative tribunal. The tribunal’s decision can also be appealed before the administrative appeals tribunal, and if you believe the appeal decision isn’t just, you can take your case to the supreme administrative tribunal, which only considers cases that deal with questions of principle.

**Stéphane SEILLER, CNAMTS**

The different systems which have just been presented to us all compensate, with the provision that there are ceilings, the difference between the salary before the accident and the new real salary (when the person has found employment) or theoretical salary (that which he could claim taking into account his/her handicap). How do you estimate this theoretical salary? In particular, could Mr Calatayud tell us more about the employment repertory which he’s mentioned?

**Philippe CALATAYUD, Switzerland**

This is a SUVA tool, on its own. Work station descriptions are updated every year. We check with the companies whether the jobs described still exist; if they don’t, we delete them from the list and, if they do still exist, we also check whether they correspond to the same terms, standards, etc.

Moreover, in those rare cases where we cannot refer to this database, and for any other insurers involved, Swiss earnings structure survey -available at the Federal Statistics Office, by field, occupation, part, county, etc.- enables the calculation of pension.

**Stéphane SEILLER, CNAMTS**

The creation of this system must have been a heavy investment... How many people in Switzerland are concerned? How many cases are treated each year?

**Philippe CALATAYUD, Switzerland**

Our tool today comprises more than 8,000 job descriptions; our goal is to document 10,000 of them in the overall territory in order to get a shining picture of the Swiss job market and long-term reliability.

SUVA allocates approximately 2000 to 2,500 new disability pensions each year and manages
somewhat more than 80,000 recipients throughout the world.

Question from the floor

What is the threshold from which compensation for loss of earning capacity is allocated in Finland?

Mika MANTTARI, Finland

Reduction in work capacity must be at least 10%.

Stéphane SEILLER, CNAMTS

You have all explained to us that the benefits paid are subject to review in relation to how a person’s situation, whether physical or professional, changes. How are you informed about changes in such a situation? Is it the person him/herself who lets you know that the professional or medical situation has worsened? Or is it that each of the insurance systems has its own procedures which lead to re-questioning people regularly and to updating what’s known about their situation? Is it “declarative”, in the sense that one waits for people to provide information about a change, or have you got regular monitoring systems which allow you to learn about such changes?

Philippe CALATAYUD, Switzerland

In Switzerland, the system is somehow mixed. According to a legal obligation each pension beneficiary should inform his/her insurer of a possible improvement in his/her health status and/or any change in his/her work situation. Announcements of any worsening in a condition are generally spontaneous. But this is not enough. There is an own motion review planning system, contingent on pensioner’s profile, his/her age and expectations to reintegrate or not, etc. In practice, a first review generally occurs 3 to 4 years after pension has been awarded, then one or two other reviews are often scheduled until the recipient attains age of retirement.

Helle OLESEN, Denmark

In Denmark, if his/her situation improves, a person can return to the job market and make a bit more money. We do not monitor in that sense; we hope that, if a person gets better, he/she will let us know. But what is paid is paid. It’s a rather delicate question, which is why we follow up on people closely, especially in case of disability.

Mika MANTTARI, Finland

In Finland, a person is obliged to inform us of any change in his/her situation of whatever sort. But there is no specific monitoring, even though it is possible to request information about a person’s income.
Per WINBERG, Sweden

In Sweden, as in Denmark, what is paid is paid. Mrs DUPONT knows that, if her situation worsens, she has the right to see us again and that her situation will be reassessed. We pay a lump sum in compensation for loss of income; if a person requests an annual pension, we can re-examine the situation.

Monica SVANHOLM, Sweden

Our system is the same as the Danish system.

Bernard SALENGRO, France

I would like to thank the organisers of this extremely interesting day. Switzerland has a system which doesn’t seem to me to be far removed from full compensation. Do you compensate for loss of amenity? For example, if a carpenter were also a pianist, would he have the right to compensation? And do you take into consideration aesthetic loss?

Philippe CALATAYUD, Switzerland

The answer is no: loss of amenity is not included in integrity compensation for the egalitarian feature of which I remind you. Each damage will entail an identical compensation, whoever the person is and whatever his/her profession, income, age, leisure interests, etc. From the point of view of an “assault on physical harm”, the index finger of a pianist has the same value as that one of a football player. However, we would differentiate at the level of compensation for loss of capacity to earning.

The egalitarian characteristic of integrity compensation exists on two levels: in the rate assessment, as we have seen, and also in the compensation itself, since the base calculation of the amount is the famous top earnings insured at the time of the accident (currently 86,000 Euros), which applies to everyone: the head of a company will thus receive the same amount as an employee at the bottom of the hierarchical ladder.
Presentation of the Quebec insurance system

Marie-Chantal Blandin

We are lucky to have Guillaume Baril here, an actuary for the work-related accident insurance organisation in Quebec. He has agreed to present his country’s system to us.

Guillaume Baril

Quebec is the only French-speaking province in Canada, and the second largest in terms of population (with about 7.5 million inhabitants) – although it’s the first in terms of surface area (1.5 million square kilometres, or three times the size of France). The 10 Canadian provinces each have their own accidents at work insurance system, although these different systems are actually fairly similar to each other compared to the diversity that is found in Europe. My presentation will only focus on the current system in Quebec, however.

The Occupational Health & Safety Commission (Commission de la santé et de la sécurité du travail-CSST) is in charge of the management of the insurance system; it is a public insurance company funded by employers’ contributions which covers virtually all employees.

With regard to today’s subject matter, I would say that our insurance system is quite similar to the one in force in Switzerland, in that it mainly compensates for the loss of earnings associated with the accident or occupational disease and grants a compensation payment - separately from the victim’s salary - and always pays this as capital, based on the level of the physiological prejudice, which we call physical injury.

The loss of earnings benefits correspond to 90% of the net salary after tax: it is not taxed, but the salary taken into consideration is limited (the ceiling is revised every year). These benefits will be paid throughout the period in which the victim cannot carry out his or her job.

Quebec law also provides for a right to return to work, of which employees generally avail within two years of the accident occurring. Accordingly, if a worker suffers an occupational injury and subsequently makes a full recovery within two years, his or her employer will be obliged to offer exactly the same job as before.

Should the employee suffer permanent disability, preventing him or her from resuming his or her former responsibilities, the CSST, together with the employer and employee, will define what we call a “suitable job” (i.e. that the victim will be able to carry out despite his or her occupational injuries).

The earnings that the worker will be paid from this suitable job will then be deducted from the loss of earnings benefits.

The worker’s capacities and qualifications after sustaining occupational injuries must be taken into account when defining the suitable job. As must the economic context insofar as the worker is reasonably able to return to work. Lastly, the new job must not pose any health or safety problems for the employee.

To define this suitable job, we adopt what is known as the concentric approach. We are first going to look for the most similar job to what he or she did previously - this may imply that
the employer must adapt the work station. If this isn’t possible, we try to see if the employer can offer another position. If this isn’t possible either, we look for a suitable job with another employer. There is a whole social and vocational rehabilitation system in this regard, which provides for reimbursement of training programmes, since the new job may require very different skills to the victim’s position before the accident. For example, the CSST may pay for the expenses of retraining a construction worker who has had an accident preventing him from resuming his job. The salary he would earn from his new job would be deducted from the loss of earnings benefits.

The other compensation payment, which compensates for the physiological prejudice is a fixed amount, based on a medical scale to which the CSST’s medical teams refer - although the patient’s doctor may also use it. The assessment does not take account of the worker’s salary or sex, but age.

The permanent disability percentage thus defined takes account of three factors, a little like the model used in common law. The functional loss is assessed to begin with, i.e. the inability to carry out everyday tasks, though not necessarily the victim’s job. Aesthetic damage will also be assessed which, in some cases, depends on the sex of the victim, but generally on appearance. Disfiguration, for example, would attribute a high percentage of physiological prejudice. Lastly, a third factor, which depends on the total of the first two - pain and suffering which we refer to as “loss of enjoyment of life” in Quebec - is also considered when the victim is in a fairly traumatic situation.

Under the Quebec system, the benefits for replacing earnings make up our primary expenditure, along with medical assistance and rehabilitation expenses. Compensation payments for physiological prejudice only account for 6% of the benefits we pay out.
Marie-Chantal Blandin

After this detour in Quebec, let’s return to Europe to look at two other countries – Italy and Luxembourg – which are unique in that they have changed their compensation system or plan to do so. A radical reform is under way in Luxembourg, while Italian legislation was amended in 2000.

This panel discussion involves

- Alberto Cicinelli, who is managing director of the Italian insurance system against occupational risks (INAIL) and
- Pascale Speltz, legal advisor at the Insurance Association against Accidents (AAA) in Luxembourg.

My first question is for Mr Cicinelli. Could you please explain the reasons which led your country to reform its compensation system of occupational injuries?

Alberto Cicinelli, INAIL, Italy

The INAIL currently guarantees employees compensation that is the fruit of legislative, socioeconomic and cultural changes which have been a long time coming. Traditionally, compensation only focused on the assets loss associated with loss of earning capacity, but it has since evolved to take greater account of additional services and benefits. As a result, in addition to benefits in cash, we also offer victims of accidents at work and occupational diseases today an integrated service that combines medical treatment with physical/functional rehabilitation and schemes for getting back to work. The reform of the permanent disability system that took place in 2000 was a part of these general changes.

The reform has placed employees’ health at the heart of the system. By providing for the compensation of “biological” injury now, and no longer just loss of earnings, the legislative decree of February 2000 took account of the opinions of the Constitutional Court which asked the legislator for several years to extend the regulations laid down for compensating civil law losses to the social insurance system. The notion of biological injury enables a health impairment as it stands to be compensated, even when there is no loss of earnings.

Marie-Chantal Blandin

What actual changes has the reform introduced?
Alberto Cicinelli, Italy

The legislative decree of 23 February 2000 introduced the notion of biological injury, by which we mean a person’s physical or mental integrity has taken a hit, with a medico-legal assessment likely. Under the old system, only the loss of earning capacity was compensated, provided that disability was at least 11%, however. With the new system, any harm to physical or mental integrity, including aesthetic damage, is compensated above a certain level of severity (6%). Compensation will take the form of capital for disabilities of 6% to 15%, and pensions for disabilities equal to or more than 16%. Note that above this limit, the severity of disability calls for payment of additional benefits, economic in nature, to compensate the loss of a victim’s earning capacity. The new system therefore applies the opposite reasoning to the old one.

The consequences of harm to physical or mental integrity are assessed on the basis of criteria laid out in three tables. The first one lists the injuries sustained from accidents at work or occupational diseases (there are 400 or so) and the disabilities arising from such injuries. The second one defines the amount of compensation granted for biological injury, in the form of capital (for disabilities of 6 to 15%) or pension (for more severe disabilities). The third table presents the coefficients to consider when calculating the percentage of wages to be taken as the basis for compensating the financial consequences of the biological injury.

To illustrate how this mechanism works, we simply need to apply it to Mr Dubois’ and Mrs Dupont’s cases.

Regarding Mr Dubois, according to the old system, the level of disability would have been put at 7%; which means he wouldn’t have received any compensation given that the minimum limit required (11%) is not reached. Now, the disability percentage is estimated to be 5%, again denying Mr Dubois any compensation (as this level is below 6%). However, with an aggravation coefficient of 1%, the level would rise to 6%, entitling him to compensation, paid as capital, of 4462.19 Euros.

Mrs Dupont’s case is different, since the injuries sustained are much more severe than those suffered by Mr Dubois. Under the old system, her level of disability would have been 22% which, applied to an annual salary capped at about 26,000 Euros, would have resulted in her receiving an annual pension of 2,968.62 Euros. Under the new regulations, her level of disability is put at 18%; on which basis she would be paid an annual compensation sum of 1,239.50 Euros for biological injury, as well as 3,252.58 euros for the financial consequences of this biological injury, totalling an annual payment of 4,492 Euros.

This annual compensation, unlike in most other countries, does not depend on the subsequent events encountered by the employee. If Mrs Dupont goes back to work, even earning more than her previous salary, the INAIL would continue to pay her 4,492 Euros a year.

These benefits - and this is perhaps the only case in Italy - are exempt from all taxes as they are deemed compensation for the biological injuries suffered by the employee.

Marie-Chantal Blandin

How long are the pensions paid for?

Alberto Cicinelli, Italy

Annual payments made, to reiterate, when the level of disability is at least 16%, are received throughout the employee’s lifetime, unless we observe that his or her condition has significantly improved and the level of disability has subsequently been reduced from 16% to 13 or 14%.
Marie-Chantal Blandin

If we compare the old compensation system to the new one, it looks like the reform must have been costly.

Alberto Cicinelli, Italy

I don’t think we can put it like that, especially since the primary need was social in kind: with the introduction of the new system, we went from 37,000 compensations a year in 2000 to 45,000. Socially speaking, the reform has therefore granted an average of 8,000 employees a year better compensation. In terms of costs, we went from 3.1 billion Euros to 3.4 billion – which is by no means a colossal increase. The increase observed (300 million Euros) is moreover in keeping with the forecasts we made, and it is entirely absorbed by employers’ contributions which have risen slightly.

The 2000 reform is positive for us as it has increased the level of social protection. The number of people receiving compensation has gone up, as has the average level of regular payments made - since this has risen from 3,700 euros a year to around 6,000 Euros a year currently.

From an economic standpoint, the biological injury reform still hasn’t stabilised - for example, indexing to the cost of living still isn’t in place. Revision of pension amounts stems from specific laws and not from automatic indexing.

Marie-Chantal Blandin

Do you have plans to improve your system even further?

Alberto Cicinelli, Italy

Actually, we do plan to introduce a mechanism for the automatic indexing of pensions. A 2007 law enacted the principle, but it is yet to be enforced in full for purely economic reasons associated with the crisis of the social protection system.

Moreover, the social partners which run the INAIL have recommended reducing the minimum level required for compensation from 6 to 4%. This would entitle people suffering from irregular heart beats, nose fractures or scars for example to benefits. They also want the level of disability at which regular compensation is paid to be reduced from 16 to 11%.

We also hope to put greater emphasis on risk prevention and getting victims back to work. This is a strategic objective that our Institute is currently working towards.

Marie-Chantal Blandin

After this presentation of the Italian system, let’s hear about the reform that is in the pipeline in Luxembourg. Now part of those countries that grant global compensation of injuries, this country is planning a major overhaul of the system. Mrs Speltz, who works as legal advisor at the Insurance Association against Accidents, will present us the strong points of the reform, beginning with an explanation of the reasons for it.
Pascale Speltz, AAA, Luxembourg

In 1992, the government of the time tasked the Economic and Social Council, within which all social partners are represented, with analysing the existing accident insurance system. The Council submitted its report in October 2001, in which it came to the conclusion that the current system lacked transparency. Although it was justified at the time it was set up, this was no longer the case. At the turn of the 20th century, in the industrial era, the basic principle was that there was a correlation between physical disability and loss of earnings due to the consequences of an accident at work. It was therefore decided to compensate these consequences by granting a pension determined by multiplying the salary earned before the accident by the percentage of permanent disability.

The world of work is different now: with more and more jobs in the tertiary sector, work is now more intellectual than physical. Our system is therefore out of sync with the current economic and social context, and has even become unfair for, in the event of a serious accident, regular benefits do not compensate the loss of earnings, while compensation is much too high for slight disabilities. The Economic and Social Council therefore suggested evolving towards a global compensation system as practised in common law. What’s more, in 2002, so one year after the report was submitted, a new law came into force in Luxembourg laying down provisions aimed at helping workers who are unable to resume their old job to retrain. This system stipulates that the loss of earnings suffered by an employee because of a disability - irrespective of whether this was caused by an accident at work or at home - is compensated by the allocation of a compensatory allowance. Now, this allowance is currently paid on top of the regular accident compensation, which the legislator did not take into account in this new law, resulting in an unjustified accumulation. This needs changing.

Back when the Economic and Social Council submitted its report, the government didn’t act. It wasn’t until the next government was elected that a draft law was submitted in July 2008. The legislative procedure is under way. We are waiting for the Council of State’s report - the professional chambers have already expressed their opinion. A new government is currently being formed, and since this is a similar coalition to the last one, it is hoped that the project will make headway.

Marie-Chantal Blandin

What will the reform actually change?

Pascale Speltz, Luxembourg

To illustrate the changes on the table, I will first discuss the case studies from our angle and then introduce the reform.

In Mr Dubois’ case, the medical advisor of the Social Security Medical Inspection Administration - which is a separate body from the Insurance Association against Accidents - would currently put his PPD level at 4%, which would entitle him to pension equal to 4% of 85.6% of his annual salary before the accident. Why 85.6% of the annual salary? Well, because accident pensions are exempt from social and tax deductions, we don’t take full account of the annual salary. It is worth noting that, initially, this level was 66% like in other European countries, but this has been increased over time. Benefits under 10% are automatically paid as capital, so Mr Dubois would receive 15,252 Euros as capital.

One of the purposes of the reform is to distinguish between losses and to compensate them separately. Mr Dubois has not suffered from any loss in earnings as he returned to his job, and his salary was therefore reinstated after the accident; he wouldn’t get anything in this regard then.
In addition to loss of earnings, the reform also provides for the compensation of three other damages: daily pain and suffering (i.e., all the inconveniences of the accident’s consequences on everyday life), the physical pain endured until the victim’s condition stabilised, and aesthetic damage. The indemnity for daily pain and suffering is calculated on the basis of the PPD level determined by the Social Security Medical Inspection; in the draft law, a table determines the fixed amount to be allocated for each percentage. This amount is paid as capital up to 20% and as monthly payments from 21%. Regarding Mr Dubois’ pain and suffering, he would receive 4,849.24 Euros as capital. The indemnity for the physical pain endured until the victim’s condition stabilises is a fixed sum based on a scale from 1 to 7 depending on the pain rating: level 1 corresponds to “very slight” pain and entitles the victim to 600 Euros and level 7, the last one, entitles the victim to 50,000 Euros. In Mr Dubois’ case, the medical inspection would consider his pain “moderate” (level 3), which would give rise to 3,000 Euros of benefits.

A scale from 1 to 7 has also been drawn up to assess aesthetic damage. Again the medical inspection would determine the level of damage, and in Mr Dubois’ case, the aesthetic damage suffered is very slight, level 1, corresponding to an indemnity of 400 Euros.

Lastly, compensation for Mr Dubois’ various impairments would amount to 8,249 Euros.

Marie-Chantal Blandin

Mr Dubois would clearly lose out with this reform.

Pascale SPELTZ, Luxembourg

I quite agree, but the aim of the reform is to grant fairer compensation. The current system grants too much compensation for slight accidents and doesn’t compensate serious sequelae enough. We’ll see that Mrs Dupont, however, would receive more compensation under the new system.

At present, based on the sequelae described, the medical advisor would put her PPD level at 30%. On this basis, she would receive 12,324 euros in regular payments (i.e., 30% of 85.6% of her annual salary before the accident). For a 30% level, the amount is paid monthly but, up to 40%, it is possible to ask for the amount to be paid as capital.

Once the reform is passed, it will be possible to compensate Mrs Dupont’s professional loss, i.e., her loss of earnings, subject to certain conditions laid down in the draft law: the PPD level must be at least 10%, the loss of earnings must be at least 10% and the medical advisor of the medical inspection must have confirmed that the loss of earnings has been directly caused by the sequelae of the accident.

As long as these three conditions are met, which is the case here, the loss of earnings is compensated. To assess this, the victim’s annual salary before the accident is assessed and compared with her annual salary once her condition has stabilised and she has retrained: the difference is compensated in full. In Mrs Dupont’s case, this represents 18,000 Euros. While this loss of earnings used to be indemnified by the compensatory allowance introduced by the 2002 law, the latter will be replaced by the partial pension of accident insurance, such that there will be no accumulation in the future if the reform is passed.

Note that during the conversion period (i.e., between the end of total unfitness for work and return to work, involving vocational training with a view to getting a new job), Mrs Dupont will be entitled to a regular transitional payment set at 85% of the full payment, or 3,400 Euros a month.
Mrs Dupont would also receive benefits for daily pain and suffering which, since hers has been put at over 20%, will correspond to a monthly payment of 242.88 Euros, a capital of 15,000 Euros for the physical pain endured (level 5 “quite severe”) and an indemnity of 1,000 Euros for aesthetic damage (level 2 “slight”). As I said at the beginning, Mrs Dupont would receive much more compensation with the reform.

Marie-Chantal Blandin

Have you gone further in calculating the costs of the reform? If the most benign cases are less compensated while the most serious cases are better compensated, might we say that the system will balance itself out?

Pascale Speltz, Luxembourg

The first studies conducted by the Social Security General Inspectorate show that our compensation expenses will break down in a different way to how they do at present, but overall, the reform will have little financial impact. The draft law predicts enforcement for 2010, but this will be postponed at least until 2011.

Philippe Calatayud, Switzerland

Can annual pension be revised? Is it paid up until retirement?

Pascale Speltz, Luxembourg

It is paid until the age of 65, retirement age. It may be revised within 3 years of the accident occurring according to a procedure to be defined by Grand-Ducal Regulation. Revision is possible under the current system - and will remain so under the new one - should the victim’s condition deteriorate, provided that this deterioration is at least by 10 % of the level previously defined and that it seems to be definitive.

Marie-Chantal Blandin

Will the victim have to pay contributions on his/her pension?

Pascale Speltz, Luxembourg

Yes, tax and social deductions will be applied to the new accident pensions aimed at compensating loss of earnings. But monthly indemnities for daily pain and suffering will be exempt from such deductions as these will compensate consequential loss. Regarding the old accident pensions, i.e. pensions allocated pursuant to the current system, these will remain exempt from social and tax deductions.
Stéphane Seiller, Cnamts

Under the current system, is the overall annual pension you pay supposed to compensate all of the types of loss described in the future system, particularly as regards physical pain and aesthetic damage, or will the reform introduce new compensation items?

Pascale Speltz, Luxembourg

Jurisprudence considers that social security only compensates material loss. We currently only have recourse to the material proportion of indemnities allocated in common law to the victim. On the other hand, the Economic and Social Council has accepted that the current compensation was of a mixed nature. The calculation method and compensation are the same, no matter whether there is loss of earnings or not. If the victim does not suffer any loss of earnings and receives compensation in the form of pension, we might say that this compensation indemnifies pain and suffering. If the loss of earnings is significant, it indemnifies material loss. The compensation is mixed in kind in this regard. But this isn’t very clear.

Stéphane Seiller, Cnamts

Does what you have described apply to both victims of accidents at work and occupational diseases? Including pensioners at the time the occupational disease is reported or acknowledged?

Pascale Speltz, Luxembourg

Yes. For pensioners who report an occupational disease in the future, the new system will apply: it will not entitle them to compensation for professional loss, which no longer applies, but they will be able to receive all of the other benefits.

Bernhard Pabst, Germany

During the discussions held in Germany on a possible reform of accident insurance, we raised the question of the ensuing red tape. In Luxembourg, do you expect red tape to increase once this reform comes into force? Likewise in Italy, is the new system in place easy to manage? Or have you been obliged to hire more personnel for carrying the reform out properly?

Alberto Cicinelli, Italy

As far as Italy is concerned, the reform hasn’t generated an increase in administrative costs. The INAIL manages 1 million accidents a year. The fact that there has been a certain increase in the number of covered victims has not brought about a change in administrative structures and has not generated any extra costs as a result.

A national system operates for large volumes: a 5 to 10% rise in work load does not impact structures. A large number of different professions work for the INAIL, including actuaries, doctors and biologists. Our professional structure can cope with increases in the range of 5% to 10% - or even 15% in work load. We have also invested significantly in information systems. What’s more, the Government has instigated an increase in employers’ contributions. The reform has not resulted in an increase in work to the extent that our institution’s activity is hindered or held up altogether.
Pascale Speltz, Luxembourg

We currently note that around 75% of accidents result in a PPD of under 10%, which means that these accidents will not be taken into account because of the ceiling set for calculating loss of earnings. As for the remaining 25%, there will be a part without loss of earnings, in other words, without need for pension. For the other cases, we have social security statistics. Annual salaries, pre- or post-accident, should not lead to an increase in work load in theory. However, new efforts will be required in terms of the self-employed, where things are somewhat more complex.

Regarding the other types of loss, the medical inspection will carry out their assessment. This will involve a change in working method for the medical inspection, without necessarily increasing the work load.

Stéphane Seiller, Cnamts

You reminded us that, below a 10% level of disability, there will be no compensation for loss of earnings. Does this 10% limit guarantee that there will be no one who, despite having a disability below 10%, will no longer be able to practise their profession because of the environment or skills involved? I’m thinking about an asthmatic baker for example. While you were brainstorming the 10% limit, did you take this hypothesis into account?

Pascale Speltz, Luxembourg

We discussed it with the social partners and mentioned the hypothesis of a pianist who loses a finger and therefore, despite a low PPD level, suffers a sharp loss of earnings. These are rare cases. I think the most important thing is to design a system that operates for the majority of cases. For rare cases such as these, it will of course be possible to attribute generous PPD levels where necessary.
Panel discussion:  
The pros and cons of each compensation system (global or on a loss-by-loss basis)

Marie-Chantal Blandin

The summary tables we have put together clearly show the wide disparity of systems set up in our countries.

Mr Dubois will get

➢ indemnity as capital in 5 countries:
  ✓ €2,000 in Austria
  ✓ €2,700 in France
  ✓ €4,200 in Sweden
  ✓ €4,900 in Denmark
  ✓ €15,250 in Luxembourg  (€8,250 after the reform)

➢ annual compensation of €306 in Belgium

➢ no compensation in 4 countries: Germany, Switzerland, Finland and Italy (where the level of disability attributed to Mr Dubois is just below the minimum level required)

Mrs Dupont will get

➢ In those countries granting global compensation, annual compensation of:
  ✓ €1,380  (if 5%) or €3,681 (if 10%) in Belgium
  ✓ €4,500 in Italy
  ✓ €5,420 in France
  ✓ €9,600 (for 2 years) then 6,400 in Austria
  ✓ €12,800 (for 2 years) then 9,600 in Germany
  ✓ €12,320 in Luxembourg (before the reform).

➢ In those countries granting compensation on a loss-by-loss basis, annual compensation of between €16,320 and €18,000 to cover loss of earnings and €11,200 to €30,000 as capital for the other types of loss or damage.

In Denmark, €114,635 for all the damages combined.

It is interesting to note that, even if the answers given for the case studies are fairly similar within a group of countries, there are nevertheless differences, particularly in Mr Dubois’ case which, although the less serious admittedly, is also the most common.
In any case, this comparison clearly shows that the compensation granted to Mrs Dupont is much more generous in those countries distinguishing between losses in the compensation they pay out: the pensions paid to cover solely loss of earnings are considerably higher and, in addition to this compensation, the victim also receives a not-insignificant sum as capital for the other forms of damage.

We need to qualify matters, however, for you will remember that benefits - particularly pensions- are subject to social contributions and income tax in some countries, and that they cease when the victim retires.

The purpose of this final panel discussion is to discuss very freely the pros and cons of the two compensation systems (global or on a loss-by-loss basis). To get the ball rolling, I will remind you that when the current coalition government in Germany took office, it had planned to change its system to a differentiated model, not unlike the one being considered in Luxembourg; but this project seems to have been forgotten. How come?

**Bernhard Pabst, Germany**

I think this is mainly because of political reasons. Experts in the ministries, BGs and universities for example lay down highly technical, often complex, regulations, but as soon as their project enters the political arena, it is above all examined from such angles as: how much is the reform going to cost? Or will someone get less? In this case, it wasn’t possible to reach a compromise. On the one hand, employers deemed the new system too expensive, and on the other, the Social Democrats didn’t want the reform to lead to a reduction in benefits - not even for a single person. Similar divisions already existed within the main governmental coalition between the Christian Democrats and Social Democrats by the way. This is why it’s been interesting to listen to the Luxembourg and Italian representatives’ presentations: their reform was or will be neutral in terms of cost. Moreover, it is clear that there may be losers in any reform, and in my view, although the politicians don’t share this view, we shouldn’t let this fact frighten us if the overall result is a greater justice.

It therefore wasn’t possible to have the draft which was prepared and which provided for better compensation in the most serious cases accepted. We will probably have a new government this autumn, so we’ll see if the project is picked up again.

Another aspect worth highlighting is that social security policies must be planned with the long-term in mind. With the main coalition in Germany, the government wanted to take immediate action - it came up with an idea without having the time to examine every aspect of it.

**Marie-Chantal Blandin**

I was quite surprised by the responses Belgium gave to the case studies. Indeed, this country grants by far the most generous compensation to Mr Dubois (with the annual payment of around 300 Euros), as well as the least generous compensation to Mrs Dupont. There is a very marked contrast between the ways the two cases are handled. How do you explain this situation?

**Jacqueline de Baets, Belgium**

Since 1981, accidents at work and occupational diseases have made up one section of the social security system. As explained at the beginning of the meeting, our system is unique in that it combines a private sector (for accidents at work) with a public sector (for occupational diseases). Even if a public organisation - the Fund for Accidents at Work - regulates the system,
accident-at-work claims are managed by private insurance companies, which operate according to private-sector rules - with capitalisation and constitution of technical reserves for the future.

Another regulation applicable in Belgium is that benefits from different sectors cannot be paid out to someone at the same time (pension and unemployment allowances for example). Lastly, account should be taken of our State federalisation structures. The Branch of accidents at work and occupational diseases is federal, but everything to do with adapting work stations and getting the disabled back into work falls within the scope of the community. The difficulty resolving some claims is therefore understandable.

We have often debated the problem that slight disabilities were perhaps too generously compensated, while major disabilities were not compensated enough. But I should tell you that we have always come up against the refusal, primarily of trade union representatives, to no longer compensate slight disabilities.

That said, we have also wanted to grant more compensation for the most severe disabilities and have recently amended third-party assistance as we now base any calculations on the average minimum monthly income guaranteed. But since we are in a capitalisation system, every time we want to revise regular compensation payments, which is the case since 2005, we have to provide for financial equalisation as insurance companies tell us they haven’t factored in this additional expense. We are therefore obliged to put together considerable financial packages that are complex.

Among the projects under way, it is proving somewhat difficult to revise old pensions. Since 2006, we have also discussed a cross-sectional project on vocational rehabilitation which encompasses both health insurance and occupational risks, but the project is at a standstill.

As part of the Ministry of Employment’s national strategy in response to the European strategy 2008-2012, we decided to think about the efficiency of our system. We had already broached this subject on the occasion of the 100th anniversary of our law, in 2003. An initial investigation was carried out on the matter on the basis of a sample of cases, to see what had become of victims once their claims had been settled. Another study should therefore be launched.

Marie-Chantal Blandin

You mentioned that, in Belgium, the trade unions would not accept that someone who had suffered an injury scarring him or her for life would not get any compensation. But this is the case in Germany and Switzerland. How do you explain this difference in attitude?

Philippe Calatayud, Switzerland

Allow me first to point out that, despite (or because of?) sometimes very pronounced regional and linguistic differences, consensus has become a way of life in Switzerland.

In particular, everyone agrees that compensation of the slightest losses (i.e. a slight physical or mental - less than 5% - or minimal loss of earnings - less than 10%) should not be borne by social insurance, but assumed by the whole community of premiums payers and thus should be underwritten by a private insurance policy or by individual private funds.

The vantage of differentiated compensation (prejudice by prejudice), as practised in Switzerland, compared to global compensation is twofold: ensuring fairness and transparency. Differentiated compensation is fair firstly because the material loss represented by the actual loss of earnings is compensated on an individual basis and secondly because the psychic prejudice which is constituted by the bodily or mental harms compensated in a totally egalitarian way. Furthermore,
it is transparent because everyone is able to gauge their own loss and check whether or not the assessment carried out is correct. I will add that this system has the unanimous support of all the social partners.

Bernhard Pabst, Germany

Bowing to pressure from trade unions, the German system remains unchanged. If truth be told, we’ve got used to it, as it stems from a long social consensus. But the issue may return to the fore, as it did in 1974, brought by the Constitutional Court, if we see an increase in compensation granted as regards general civil law while social benefits stagnate or even diminish. In Germany, an accident is compensated according either to general civil law or to social law. The same goes for France by the way, even if things have not been as clear since the jurisprudence of the Court of Cassation on the inexcusable error. Indeed, in Italy the matter has been brought before the Constitutional Court for good reason. All over Europe, the courts have considered that compensation of pain and suffering falls within the scope of civil law. And yet things could change if the difference between the benefits paid out were to widen further. Any major changes will be brought about by this phenomenon it seems.

Pascale Speltz, Luxembourg

The amounts pencilled in under our draft law are in line with those in the pipeline under common law. The division - if this was to occur - will take some time to appear as the amounts allocated in common law only change slowly. Indeed, case law is heading towards a harmonisation of the two types of compensation, although accidents at work will continue to be compensated by fixed amounts, in accordance with the Constitution. The offset of this compensation is its virtually automatic nature in fact; unlike in common law, the fault of the victim is not taken into account.

Ellen Cadi, France

We first became aware that the system in France could be improved more than 20 years ago, and study after study is being carried out to find solutions.

In my view, the advantage of the current system is its simplicity. From what I have heard about the systems in other countries, they seem to be a lot more complex, with the existence of several thresholds in particular. In France, from 0 to 9%, a lump sum is paid as capital, and from 10 to 100%, regular payments are made. These are a percentage of the victim’s salary, which is pretty close to the level of disability in the most serious cases. Things have become somewhat more complex over the years, that’s true. For example, we now take account of accidents that the victim may have previously suffered when calculating the regular compensation amounts for a current accident.

The advantages of the French permanent injury compensation system seem to me to be fairly numerous.

First of all, the method for compensating disability is global, which means that both physical disability and unfitness for work are taken into account and combined. From the first drafts as regards a reform, the idea has been to separate these out, with the solution differentiating losses and paying separate compensation for each.

Under the current system, slight disabilities receive generous compensation, especially when they do not generate any loss of earnings, and very severe disabilities are also well compensated.
A 100% disability is compensated by a pension equal to 100% of the victim’s salary. Moreover, to date this sum isn’t taxed: so, subject to certain ceilings, the victim may end up receiving more money in benefits than he or she did while working. We might consider that this supplement covers other losses that are not compensated elsewhere.

Medium, intermediate disabilities receive much less satisfactory compensation, however. For the indemnities are almost identical irrespective of whether or not there is unfitness for work. They might prove to be too high if the victim can continue working despite being quite seriously disabled, or, on the other hand, completely inadequate if the victim has had to stop working. For example, if an immigrant construction worker who cannot speak French suffers a serious knee strain at age 50, it may prove impossible to find him another job. In the best-case scenario the medical advisor could attribute him a PD level of up to 40%, entitling him to a pension corresponding to 20% of his salary. But how he is expected to live on such a sum...

Also, the system, which correlates the regular payment amounts strictly to the salary, even with ceilings, isn’t fair. A leg amputation gives rise to a 70% level of disability, i.e. 55% of the salary. Depending on the victim’s salary, an executive’s leg is therefore “worth” a lot more than a builder’s, even though the builder has more need for his legs than a top executive...

In 2003, an extensive study was conducted into global compensation, with account taken of diverse scenarios. One of them clearly showed that, with global compensation, victims suffering from 0% disability today would receive compensation since pain and suffering would be taken into consideration. We ended up with generous compensation at all levels. You have all spoken of reforms at constant costs; as things currently stand in France we cannot grant more compensation to everyone and keep costs stable. I believe that the French system is very generous, but this generosity is not well distributed.

The system set up at the beginning, in 1898 and then in 1945, was based on the direct link between physical disability and loss of work capability. This direct link has been lost today.

One final point: fixed compensation amounts stem from the automatism of the system in my view. I don’t know if automatism is as automatic in other countries as in France... Let me explain: in France, as soon as an accident occurs during working hours and at the workplace, it is presumed to be an accident related to work. It’s not just the compensation that is automatic, but also the recognition of the incident as an accident related to work. We cannot dissociate the way in which countries handle claims and the way in which they recognise accidents as related to work. I consider the compensation approach to be tied in with the question of presumption of imputability. We grant fixed compensation, so this is bound to be less, insofar as we practise broad and generous recognition.

Philippe Calatayud, Switzerland

In Switzerland, this problem has been resolved fairly simply: all of the benefits that I described this morning are paid in the event of an accident, whether this be work-related or otherwise. The difference in compensation is determined between accidents and diseases.

Jacqueline de Baets, Belgium

I share Luxembourg’s view. Our system is automatic to a certain extent, since there are mainly two presumptions in play. If a sudden event and injury are discovered, the latter is presumed, until proven otherwise, to be due to the accident. The fixed compensation amount is bound to be less as a result.
Ellen Cadi, France

We have talked about accidents at work but, with regard to occupational diseases, we have a system based on tables with criteria in France. If all the criteria are met, the disease is presumed to be occupational which, given the way the tables are laid out, leads to almost automatic compensation for some. It’s a bit of a case of all or nothing in France: if you have lung cancer and you’ve been exposed to asbestos for the necessary length of time as stipulated in the table, you receive compensation whether you’ve smoked three packs a day for 20 years or not. Most occupational diseases are due to multiple factors, but the system in France is two-sided, it’s either yes or no. I have heard that the system in other countries is different in this regard, with more subleties. Isn’t this the case in Belgium?

Jan Uytterhoeven, FMP, Belgium

In Belgium, our occupational diseases system is fairly similar to the French one: it’s all or nothing. As soon as a victim meets the criteria in the list, he or she receives compensation. That said, there is an asbestos fund that compensates non-occupational victims. Lung cancer isn’t recognised as an asbestos-related disease, however. And unlike in France, we do not compensate pleural plaques from the asbestos fund or as an occupational disease. The trade unions don’t agree on this issue, but pleural plaques, having resulted from asbestos exposure without loss of pulmonary function, do not result in unfitness for work. We only compensate medical expenses.

Ellen Cadi, France

Let’s take the example of carpal tunnel syndrome that people who work a lot with their hands suffer from. Is it still the system of all or nothing that applies in this case too?

Jan Uytterhoeven, Belgium

That’s right, it’s all or nothing. So carpal tunnel syndrome is included in the list, but other hand disorders, such as de Quervain’s tendinitis, are not. While the disorders included in the list benefit from a presumption, it is up to the victim to prove a direct and decisive link between the disorder and his or her job for those that are not on the list.

Pascale Speltz, Luxembourg

If I am in my office and suffer a heart attack without having exerted myself particularly, you can’t really call this an accident at work. However, case law believes it is up to the accident insurance company to compensate this accident. Our case law is inspired by French case law, which goes into some detail. We have made an appeal in a recent case and hope the judges will fall back on more reasonable solutions.

Bernhard Pabst, Germany

I get the feeling we’re at a turning point in German case law, for it is indeed more restrictive in certain cases. For a dozen years or so, benefits have no longer been granted automatically.
Pascale Speltz, Luxembourg

In France, do you have the notion of a pre-existing pathological condition?

Ellen Cadi, France

Of course, but if the pre-existing pathological condition didn’t present itself, if it wasn’t known, then it cannot be taken into account. And the medical advisor doesn’t always have the means to find out whether or not this condition was already known.

The medical advisor questions and examines the victim and may sometimes obtain additional information by contacting the victim’s current doctor. That said, in France there is always the underlying, essential notion of medical secrecy. A complete and official medical record reporting a patient’s condition simply doesn’t exist. We only have the information provided by the victim in question, reports from any hospital admissions and the comments that the victim’s current doctor sends us, but we have no means by which the medical advisor can personally go and look for all the information that will enable him to know whether or not a previous condition really existed. Admittedly, deliberately concealing key information is fraud but, in practice, the medical advisor doesn’t always have all the information that would be useful to him. I don’t know if the same applies in other countries.

Philippe Calatayud, Switzerland

In Switzerland, the SUVA can access a complete medical record. The law asks the victim’s doctor and healthcare providers for any useful information for determining benefits, whatever these may be. Beyond this obligation, there is a genuine spirit of collaboration between doctors, whether this be the patient’s own doctor, hospital consultants or our own organisation’s practitioners. This is in the patient’s interest.

Jan Uytterhoeven, Belgium

When the victim’s file is being put together, he or she is asked to sign a document giving the doctors permission to get hold of all useful information from the victim’s doctor.

Jacqueline de Baets, Belgium

The insurance company’s doctor compiles his file and has his own means of investigation.

Bernhard Pabst, Germany

I would like to go back over cases that are considered to be difficult, for example the builder who loses a leg at 30 years of age. Builders are one of the socioprofessional groups that the population perceives as poorly treated and poorly considered. And yet a social system shouldn’t prioritise certain types of people to the detriment of others. The Italian system seems to be going down the right route in my view: loss of earnings is only part of the physical disability, and these therefore need addressing at the same time. This would make it possible to resolve cases whereby the victim suffers aesthetic damage; I’m thinking, for example, about a young woman who, through a serious accident at work, becomes disfigured, but is still able to keep
her job. In the German system, she is hardly entitled to any benefits as she has not suffered a
loss of earnings. But under the Italian system, this same case would have firstly led to a physical
injury being identified and then a loss of earnings.

Unfortunately, the Italian system wasn’t taken into account when the draft reform of the
German system was written. It is interesting to note that the Italian system has not seen its red
tape increase with the reform. If we were to pick up where we left off in Germany, I would very
much like to put forward what’s taking place in Italy from this point of view.

Ellen Cadi, France
Can we just go over the Italian solution for Mrs Dupont’s case again briefly?

Palmira Petrocelli, IPSEMA, Italy
I am Director of the other Italian institution, similar to INAIL: IPSEMA, which is mainly intended
for maritime employees. The same legislation applies to the two fields. Mrs Dupont would have
received the same sum from our institution as indicated by Mr Cicinelli. One problem that
arises in Italy is the existence of a ceiling for calculating pensions; we mentioned this for Mrs
Dupont’s case. This ceiling is currently around 26,000 Euros, and Mrs Dupont therefore suffers
from a certain loss of earnings insofar as there is a big difference between this 26,000 Euro
ceiling and her former salary, which was 48,000 Euros a year. This is why her monthly indemnity
will only be 364 Euros. But, if the ceiling had been higher, based on a level of disability of 18%,
Mrs Dupont would obviously have received more compensation. As Mr Cicinelli mentioned in his
presentation however, this amount is exempt from tax and charges and it is paid throughout
Mrs Dupont’s lifetime.

As regards our calculation values, it is clear that the question of the minimum threshold and the
ceiling needs to be readdressed. The law currently provides that the biological injury be taken
into account from 6%; this could be amended.

Philippe Calatayud, Switzerland
A disadvantage of the Italian system, which is similar to the French model in this regard, is that
the compensation is fixed at a given time, on the basis of a given situation, and it is then no
longer revised to take account of the victim’s professional evolution. In other ways, even if,
some time later, the victim resumes work and earns the same salary as he or she would have if
the accident hadn’t happened, he or she continues to receive the pension. I sense “unfairness”
on this point, by comparison with someone else who sustains the same injury but who, in
this case, could not regain any job and therefore should live in a more precarious economic
condition.

Palmira Petrocelli, Italy
The law requires us to check up on victims every two years. Two years after the first decision,
Mrs Dupont would be invited for a check-up which would have to confirm if the 18% level of
disability was still the case. This level may be adjusted downwards or upwards depending on
how her condition had changed.
Philippe Calatayud, Switzerland

Yes but, if I’ve understood correctly, unless her medical condition changes, this 18% level would not be reassessed.

Palmira Petrocelli, Italy

That’s right.

Ellen Cadi, France

For victims starting a new job, it seems fair to compensate their physiological damage. The two examples we’ve talked about have not really allowed us to examine a case where the victim does not go back to work at all, or only resumes a very minor job. It’s in this case that problems arise: we see situations in which the victims have a 50% level of disability according to the scale. To take the example of the foot again: having a foot amputated in France represents a 50% level of permanent disability, which corresponds to a pension equivalent to 25% of the salary. Granted, if the victim has lost his or her job at the time the sequelae are assessed, we can add a loss of earnings coefficient and thus reach 30% of the salary. But it would be difficult to do more than this because, even if the victim manages to retrain in another field, it would not be possible to reduce this loss of earnings coefficient, even if the victim earns more than before in the new job. These are examples of cases that need taking into consideration should the legislation be amended.

One study in France had planned to make a clear distinction between the two: on the one hand, the pain and suffering was assessed according to a set scale and compensated uniformly - a victim’s leg would be worth the same amount of compensation regardless of whether the victim was a managing director or merely an employee. On the other, the study recommended analysing the professional situation separately, over several years following the victim’s condition stabilising. The victim might get another job, then might lose it, he might find a suitable job and, for a time, earn a normal salary, and then the company might close and he or she might then end up on a job market that is more or less difficult given his or her disability and so on. Victims’ professional situations can change a great deal over the first few years. This is why the possibility of meeting with the victim on a regular basis, at least for a few years, as regards his or her professional situation seems essential to me.

The countries which distinguish between the two types of loss are those which, in my view, best enable this category of victims to receive a decent income. The reverse is also true of course: a victim of several successive accidents might very well receive several significant regular allowances in France; for example, there are cases, albeit rare, in which a victim can receive more than 100% of his or her salary, or even in extreme and exceptional cases, where he or she might have two 100% regular allowances.

Pascale Speltz, Luxembourg

Pin your hopes on the Swiss system!

Palmira Petrocelli, Italy

In Italy, a victim of an accident at work can also receive disability benefits, also being entitled to double compensation.
Ellen Cadi, France

In France, an accident at work victim cannot be compensated by disability insurance for the consequences of an accident at work.

Gert van der Laan, the Netherlands

I am an observer from the Netherlands. I seem to have heard a clear message. In the Netherlands, our system is different from yours: here, both Mr Dubois and Mrs Dupont would have to go to court if they wanted to obtain additional compensation. What’s the best system in your view? Should we combine elements from all of them?

Marie-Chantal Blandin

I’d like to point out that, in 1966, the Netherlands decided to stop distinguishing between occupational diseases or accidents and everyday life diseases and accidents in their compensation system. Health/disability insurance therefore compensates all types of accident and disease, regardless of how they were caused. But the victim of an accident at work or an occupational disease may take his employer to court to ask for extra compensation.

Jacqueline de Baets, Belgium

I wrote my thesis on the Dutch system a few years ago. There was a specific system for occupational risks, like we have in other countries, that was got rid of in 1966. Its replacement started out very extensive and generous, but it was gradually nipped and tucked for various reasons. Problems now arise because employers do not have immunity.
Conclusion

Stéphane Seiller, director of Occupational Risks, CNAMTS

As I mentioned in the introduction, the French system could be improved in many respects and I would really like to thank all of you for your active participation. Thanks to your presentations and the discussions that followed, we have learnt a great deal today.

This morning, I had some doubts: would we be able to fill the whole day with our chosen subject? Now I know that we have achieved what we set out to do, as I sensed a very real interest among all the participants throughout this meeting.

For the frankness of the exchanges, the wealth of information provided and the new approaches you have suggested for improving our system, I would like to commend the contribution of the European Forum and I reiterate my thanks to each of its members.

We have heard many worthwhile things, but that said, I don’t think we should underestimate the limits of comparisons. The amounts mentioned in some countries may be surprising, but we must remain cautious because some elements that might seem worth considering more systematically - such as taxing benefits, paying benefits for life or not or the possibilities of receiving work-related injury benefits concurrently with other social benefits - may change the picture. Regarding this point, I would be grateful if Eurogip could put all of this information together, so as to complete the overview that Raphaël Haefliger gave us at today’s opening.

I will highlight two key ideas.

The issue of compensation - the terms and the level of coverage - cannot be separated from the procedure that leads to recognition of an injury as work related, especially the weight of presumption of origin.

Compensation of occupational loss, in the sense of loss of income, needs to be regularly assessed if we want to be fair.

Concerning this monitoring and assessment of the victim’s situation, I feel very strongly about a particular subject: the lengths to which the insurance system can go to help victims return to work. The European Forum has already discussed this, but it would be important for us to get a clear idea of what vocational rehabilitation schemes exist, as well as the different back-to-work procedures in the countries.

Some countries have opted for better, but more concentrated compensation. I am thinking of Germany, Italy, Austria, Switzerland and Luxembourg, where a certain level of disability is necessary to obtain compensation. This means, however, that “minor” accidents are not entitled to any compensation. Our Belgian colleague explained that, in her country, the trade unions didn’t accept such a system, which clearly goes to show that the subject is not only technical, but has a major social component that can vary from one country to another.

Improving our system by 2012, in line with the ambition of the Convention of aims and management signed with the State, will be no easy task. As we have seen in those countries
that have decided to follow this path, the sheer amount of preparatory work required alone illustrates the difficulty of this enterprise. This is because these are highly technical subjects, with major social repercussions. Before submitting the case to our politicians, it would probably be advisable that the social partners come to an agreement on the contents of the reform. I would even go further than that and say that this subject absolutely requires a consensus on the part of our social partners, given the fact that we may all fall victim to an work-related injury, one day.

In France, in the occupational risk sector, the social partners have already managed to agree on some complex matters; the difficulty of the exercise should not make us postpone for too long a reform, which we are all convinced is needed. We will doubtless have to come up with a working process that makes it possible for us to make some clear choices together.