



# IETL

Institute for European Traffic Law



Our member newsletter IETL VOX is intended to be an information tool and news platform, enabling and facilitating the exchange of ideas. We hope that this exchange may even be more prosperous when our new and updated website is relaunched. Here is the first newsletter featuring the following contents:

The latest on the number of cross-border accidents and an interview with an expert in matters of the EU Commission's new regulatory measures regarding travel law and airline passenger rights;

Current developments in transport and traffic law in Germany, France, Italy, the Netherlands and Switzerland;

The detailed programme of the next European Traffic Law Days to be held on 9 and 10 October 2013 in Luxembourg. This is the forum to discuss everyday traffic law issues both from theoretical and practical points of view. The workshops will enable the exchange of ideas and information aimed at finding solutions and further developing European traffic law.

Prof. Hubert GROUDEL  
IETL President



**371.271**

«Number of cross border claims reported by the insurance bureaux of the Green Card System in 2011:» according to the statistics of the Council of Bureaux

## Website 2.0

**The Institute for European Traffic Law** intends to relaunch its website this year. Ideally the new website will be presented for the European Traffic Law Days, scheduled to take place in Luxembourg early October. Apart from a new, clearly structured design and layout, the website will dispose of a library section containing documents covering important aspects of European traffic law, which will be made available to the general public as a source of information. The new website will also feature an interactive member section, making the Institute's web-presence a virtual platform for academic and practical exchange, allowing for online discussions and access to documents restricted to the general public. Members of the Institute for European Traffic Law will receive free access to the interactive member section upon registration.

## **Interview with Silvia Schattenkirchner, Head of Consumer Advice (Legal Services) at ADAC in Munich**

### **1. Why is ADAC as a motoring club so committed in the field of travel law?**



As a recognised consumer organisation qualified to bring collective action under the German law on prohibitory injunctions for the protection of consumers' interests (UKlag), ADAC e.V. represents the rights of its over 18 million members. ADAC's statutory responsibilities include advocacy of the personal and professional mobility of its members and their families, defence of their interests and reinforcement of their consumer status, not only in terms of motoring but in terms of "travel" in general.

### **2. How do you explain the growing need for advice?**

The travel market is one of the economically most relevant industries in Germany and Europe both in the near and further future. This is likely to generate increasing potential for conflicts about travel law issues between passengers and carriers, transport service providers (e.g. airport companies) and tour operators. Add to that an entirely new legal situation in travel law due to numerous acts of EU legislation, which is very difficult for lawyers to oversee and manage and which is, moreover, subject to constant change.

### **3. What are the current changes in travel and airline passenger - law both on European and on national levels?**

On 13 March 2013, the EU Commission submitted a proposal for redrafting EU Regulation 261/2004/EC, also known as the Airline Passenger Regulation, for consultation by public policy organisations, trade associations and interest groups, political decision-makers, members of the EU Council and

numerous other parties involved or affected. The draft new package travel Regulation – which is very controversial among the various stakeholders – can probably be expected during the first half of 2013. Setting all that aside, the EU is the first union of states that has been successful over the past few years in legislating passenger rights for all modes of transport. Before, European passengers were protected under the Airline Passenger Rights Regulation and ship and railroad passenger rights. The Regulation on intercity coach passenger rights, which entered into force on 1 March 2013, completes the package of EU legislation on passenger rights.

#### **4. What are the most significant changes we can expect this year?**

The EU Commission's new Regulation on airline passenger rights aims to facilitate the enforcement of consumer rights, eliminate any regulatory grey areas and clarify matters of interpretation. It is unfortunate though that the Regulation did not fully adopt the consumer-friendly decisions of the ECJ on assimilating delays to cancellation of service. The draft Regulation also fails to implement an insolvency clause for airline passengers along the lines of the safeguards legislated with respect to package travel.

In relation to package travel law, the EU plans to include dynamic packages (components of a package added by the customers themselves) into the scope of the Directive on package travel. The question is still being debated whether travel catalogues should be bound to provide binding price information or could rather refer users for cost and pricing to a website that is more flexible.

At the national level, an act affording consumers the opportunity of mediation in settling claims against airlines was passed in Germany on 21 March 2013. We are pleased that, starting this year, a mediation procedure will be available for settling the claims of airline passengers.

## Germany

The **51st German Conference on Traffic Case Law / Deutscher Verkehrsgerichtstag (VGT)** attended by some 2000 participants was held at Goslar between 23 and 25 January 2013. The workshops were organised around the topics below:

- Determining loss of income after injuries sustained shortly before or after beginning one's work life
- The protection of underage road users vs. the protection of other parties involved in an accident: are these two principles incompatible?
- Speed readings in road traffic;
- The reform of the traffic offense penalty point system;
- Comparative study of the legal expenses insurers' claims management;
- How up-to-date is driver training?

The recommendations resulting from the workshops can be downloaded on the Internet at <http://www.deutscher-verkehrsgerichtstag.de/>. The 52nd Deutscher Verkehrsgerichtstag will be held at Goslar between 29 and 31 January 2014.

## Germany

### **Federal Court of Justice (BGH) decision on residence-based jurisdiction in road accidents in Switzerland / Cour fédérale sur la résidence de juridiction en cas d'accident routier en Suisse:**

In a decision of 23 October 2012 (ref. VI ZR 260/11), the BGH upheld the international jurisdiction of the competent courts at the German plaintiff's place of residence based on Art. 9 and 11 of the Lugano Convention of 30 October 2007 (EVEX 2007) for damage sustained in a road accident in Switzerland. According to the BGH, an injured party can bring a direct claim recognised under current national law against the insurer residing in another signatory of the EVEX 2007 convention at his/her jurisdiction of residence. On account of the fact that EVEX 2007 did not enter into force in Switzerland until 1 January 2011, the BGH was also bound to rule whether international jurisdiction was applicable to an action filed on 30 December 2010. The BGH confirmed this as well, since Art. 63(1) EVEX determines that the relevant date of entry into force is that in the plaintiff's country of residence.

## France

**Reflective equipment for motorcyclists:** The obligation for motorcyclists to wear a reflective vest in France as of 1 January 2013 was abolished in a new decree that entered into force on the same date. As before, motorcyclists are now not required to wear reflective gear in France.

## France

**Eco charge for HGV:** In France, HGV over 3.5 tonnes in gross vehicle weight will be subject to a charge labelled "Ecotaxe". The charge will be levied on the Route Nationale network of trunk roads and some other extra-urban roads. Introduction is scheduled for 1 April 2013 in Alsace and 1 July 2013 in all of France. However, the charge will be applicable only to commercial vehicles not to large motor homes.

## France

**Obligation for single-use breathalyser kits in France to be abolished:** French Minister of the Interior Manuel Valls announced that the obligation to carry an unutilised, single-use breathalyser kit onboard every vehicle as of 1 July 2012 is to be abolished. The national French traffic safety council (Conseil national de sécurité routière) had previously issued a statement on the subject, finding that carrying a breathalyser was recommendable but that non-compliance should not be subject to a fine. Although the obligation to carry breathalyzer kits onboard every vehicle is still in force, non-compliance is not an offence subject to a fine.

## Italy

### Higher fines as of 1 January

**2013:** Italy has raised the fines for traffic violations by 5.4% as of 1 January 2013. The increase was part of a regular adjustment to the Italian cost of life index scheduled to take place every two years.

## Italy

### Cars cannot be exported with temporary German license plates:

Vehicles registered in Italy may no longer be exported to Germany with temporary German license plates. This rule was now officially imposed in a decree.

## Netherlands

### Higher fines /Nouveaux Montants des amendes:

As from 1 January 2013, higher fines for traffic offenders have been in force in the Netherlands. Exceeding a speed limit by 15 kph on motorways now costs €110, running a red traffic light or using the mobile while driving €220. In addition, fines overdue will carry a 50% surcharge in the first reminder (hitherto 25%) and a 100% surcharge in the second (hitherto 50%).

## Switzerland

**Via sicura:** On 1 January 2013, the first package of measures under the Via Sicura road safety programme came into force. The programme aims at a drastic reduction of the number of people injured or killed in road accidents. One of the most important 2013 measures is the introduction of the offence of "recklessness" (Rasertatbestand). Although the Swiss word refers only to speeding, the definition of "recklessness" aims at any person wilfully violating elementary rules of the road and incurring the risk of severe injury or fatal accidents. The main focus of the statute is on excessive speeding, reckless overtaking and illegal racing. Violators are subject to fines, imprisonment (no less than one year) and revocation of their driving licenses. Another option is the confiscation and sale of the vehicle used in the offense. Furthermore a ban on public commercial speed camera alerts and aptitude tests for drunk or drug drivers susceptible of recklessness were introduced.

## Austria

### Higher administrative fine amounts:

From July 2013 the schedule of fines under administrative penalty status (traffic citations or Organmandat/Organstrafverfügung and citations against anonymous offenders or Anonymverfügung). Organmandat citations can be made out to the amount of €90 (hitherto €36) and Anonymverfügung citations to the amount of €365 (hitherto €220).

## Austria

### New statute of limitations:

**Also, the period of limitations** for traffic offences is scheduled to be extended from currently 6 months to one year.

## Spain

### Lower speed limit on extra-urban roads:

For 2013, the Spanish government has scheduled a reduction of the maximum speed on extra-urban roads from 100 kph and 90 kph respectively to lower levels which are still to be determined. The government has submitted a draft which will now have to pass through the legislative process, i.e. final passage in parliament.

**14th European Traffic Law Days,  
9 and 10 October 2013, Luxembourg – Outlook**

Over the years, the European Traffic Law Days, which the Institute for European Traffic Law (IETL) has hosted for 13 years now, have become one of the most prominent forums for the discussion of new developments in the field. The conference is a rendez-vous of choice for the actors in the field of traffic law and a platform for direct exchanges of information. For IETL, the Traffic Law Days are one of the main areas of activity. The topics broached and discussed here are the ferment for the development of new ideas. The interaction and exchange between the speakers and the participants ensures that these ideas are aired to an interested outside public and finally find their way into legislation, case law, the legal profession, academia and the insurance industry.

The Institute is well aware of the importance of the Traffic Law Days. In consideration of which, the format and schedule of the conference have continually been adapted to the needs of the participants so that the Traffic Law Days may truly live up to their proclaimed status as a “think tank”, most notably since the Institute’s re-establishment in 2011. The new approach has re-invigorated the Traffic Law Days. After a period of dwindling audiences, the conference is back on a successful track, not least thanks to the 2012 Traffic Law Days, which saw a distinct rise in the number of registrations.

So the organisers of the 14th European Traffic Law Days have again put together a balanced agenda with an interesting mix of presentations, workshops and discussion forums.

To be held on 9 and 10 October 2013 in Luxembourg, the 14th European Traffic Law Days will be kicked off with a welcome address by IETL President Prof Groutel who will briefly review the 2012 Traffic Law Days and then segue to the 2013 conference. He will point to the Institute’s efforts in support of academic work in the field of traffic law in 2013, most notably the establishment of an academic advisory committee and the announcement of an award for the best dissertation. This introduction will be followed by the address of a public figure from Luxembourg. At this point, we would like to acknowledge the Grand Duchy’s financial sponsorship of the Institute, which now has its seat in Luxembourg.

Then the conference will turn to recent developments in traffic law. We have planned a report on the latest developments in legislation and case law and presentations of one or more representatives of the European Institutions. The following module will address the issue of compensation for next of kin of victims of traffic accidents. Considering the great variety of solutions in terms of national law, this is a subject for the attention of the players in cross-border claims settlement. A series of presentations will be made in panel followed by discussion between the experts and the interested audience.

The first day of the conference will close with a series of workshops addressing various issues, including but not limited to the draft UN Charter on claims settlement and the rights and obligations of the road users and Intelligent Transport Systems (ITS) and their impact on traffic law.

The second conference day will start with a review of the results of the workshops and their discussion with the audience, which will hopefully result in conclusions and/or IETL recommendations to the other relevant bodies and organisations.

This session will be followed by a module on international claims settlement. The speakers will try to deliver answers to the question whether the present claims settlement regime, viz. the Green Card system and the regime introduced by the 4th MI Directive need to be reformed. Also in their focus: data protection with regard to the cross-border transfer of personal information and the fight against international claims settlement fraud. Furthermore, they will cover issues arising from the divergent national regulation with a view to periods of limitation and (causes of) suspension as well as the latest developments in the application of the Rome II Regulation and the HCCH Convention. Finally this module will offer the audience an opportunity to get detailed information on the 2012 CoB Protection of Visitors Agreement.

The event will be open to all interested parties. Special registration fees will apply to individual and corporate IETL members. As soon as registration opens, you will find more information, including the schedule and our registration fees on the IETL website at ([www.ietl.org](http://www.ietl.org)). In the mean time, please do not hesitate to contact the IETL Secretariat for more information:

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**9èmes Journée AREDOC**  
**25 octobre 2013 Paris**  
**L'expertise médicale : l'Art et la Manière**

**Matinée**

Président de séance : Christophe Radé,  
 professeur de Droit  
 Modérateur : Hélène Bėjui-Hugues, Délégué  
 général de l'AREDOC

**8 h 00** Café d'accueil

**9 h 00** Ouverture de la journée  
 Jean-Luc de Boissieu, Secrétaire général du  
 GEMA

**9 h 15** L'AIPP, du dommage au déficit

Evaluation  
 L'AIPP, « c'est pas commode ! »  
 Hélène Bėjui-Hugues, délégué général de  
 l'AREDOC  
 Qu'en est-il chez nos voisins européens ?  
 Situation en Allemagne, Holger Backu, avocat  
 Situation en Espagne, Carlos Sauca, médecin  
 Indemnisation : un référentiel ?  
 Situation en France, Benoit Mornet, Conseiller  
 à la Cour d'appel d'Agen  
 Situation en Allemagne, Holger Backu  
 Situation en Espagne, Carlos Sauca

**10 h 45** Pause

**11 h 15** Contradictoire et secret professionnel :  
 Principes de droit, d'éthique et de  
 comportement

Obtention des dossiers médicaux  
 Marie-Solange Julia, Présidente de l'AVIAM  
 Présence des parties à l'expertise et  
 communication des pièces  
 Annie Velle, avocat au barreau de Lyon  
 Contradictoire et CCI  
 Nicolas Gombault, Directeur général du Sou  
 médical-MACSF

**12 h 00** Débat

**12 h 30** Actualités  
 Isabelle Bessières-Roques, délégué général  
 adjoint de l'AREDOC  
 Patrick Martre, Président de la FFAMCE

**12 h 45** Repas



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**Après-midi**

Président de séance : Pierre-Yves Thiriez,  
 Président de l'AREDOC

**14 h 30** Matthieu Ricard, moine bouddhiste  
 (à confirmer)

L'évaluation des dommages futurs : un art  
 divinatoire ?

Modérateur : Isabelle Bessières-Roques,  
 Délégué général adjoint de l'AREDOC

**15 h 10** Les frontières de l'AIPP au quotidien :  
 quelques points clés

Les douleurs post consolidation  
 Denis Daupleix, Médecin chef GROUPAMA,  
 Président de la CPEM  
 Nathalie Tremblaye, Responsable du Domaine  
 Corporel - MMA

Les activités d'agrément  
 Gisèle Franceschini, médecin AXA  
 Luc Guillemain, MATMUT

L'incidence professionnelle  
 Gérard Brémond, Médecin conseil expert,  
 Valérie Ollivier, MAIF

**16 h 10** Accident, AIPP, vieillissement et dépendance  
 Thierry Sulman, Médecin conseil national  
 AIS-GMF, Conseiller technique de l'AREDOC  
 Alain Faure, MAPA  
 Bernard Serny, médecin chef Allianz

**16 h 50** Débat

**17 h 15** Conclusion

Jean François Lequoy, délégué général à la  
 FFSA

**17 h 30** Cocktail de clôture.