

## MODIFICATIONS OF MTPL LEGISLATION AND NEW METHODS OF SYSTEM FRAUD

Corina Maria TONENCIUC<sup>1</sup>

**Abstract.** *In Romania, we are facing a stage of changes, whether they are political, economical or legal. In the context of an intense economic turmoil, the rules are beginning to change to the advantage / disadvantage of some actors from the auto and insurance market. Of great importance for all these entities is the mandatory MTPL – MOTOR THIRD PARTY LIABILITY (RCA), because as its name implies, it is mandatory for any vehicle owner. It is certain that until now, the insurance company where the MTPL was made was for most users, selected according to cost / level of insurance premiums. The new part intervenes through the new regulations that will take effect; with a series of modifications that have their actual origins in foreign / EU systems. Given the idea that we need to implement quality in the services field, some relevant aspects of fraud control have been omitted. The core of economic issues is the one to be debated, namely - why can't we create a complex electronic system (a common database) that would significantly minimize the irregularities, therefore saving funds otherwise used to detect them, because unfortunately, the changes attract methodological imperfections found in the calculations within the insurance industry.*

**Keywords:** mandatory MTPL, auto market, damages, legislation modifications.

**Jell code:** K42, L83

### 1. Introduction

Currently, the legal framework of MTPL insurance is represented by the Government's Emergency Ordinance no.54/2016, a normative act that applies since September last year and which at the time of its entry into force, has replaced 136/1995 Law (Insurance Law). Despite these issues, the Parliament has decided for a new change to the legal framework for MTPL insurance, announced to enter into force on July 12<sup>th</sup>, 2017, so the mandatory motor insurance will be established through the new law (132/2017 Law). Its entry into force also involves the abrogation of GEO no.54/2016. So the succession of legislative changes is extremely fast in a field where the numbers show alarming proportions for both the insureds and the insurers, due to the ingenuity of those who are fraudulent

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<sup>1</sup>PhD. Stud, Titu Maiorescu University, Bucharest, Romania (corina\_tone@yahoo.com).

and probably to the greed within the field. What we need to highlight is the issue of the changes that will be imposed by the new law. At the same time, following the changes, we will be able to spot the repercussions on all the parties on the market, even if we obviously and simultaneously look forward to the insertion of the enforcement rules within the aforementioned law.

## **2. Modifications done with celerity in the legislation system that are related to the mandatory Motor Third Party Liability insurance field**

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### **2.1. The high-risk insurant (Article 19)**

The idea of a high-risk insurant will be introduced. Those who fall into this category will be able to go to the Romanian Motor Insurers' Bureau to obtain a personalized insurance offer and will be assigned to a MTPL insurer to close the insurance contract. In order to understand who the high-risk insurants are, an example is required, besides the review of the notion. The high-risk insurant - as defined by 132/2017 Law - is the person who, based on risk classification, for which at least three MTPL insurers offer a premium rate of N times higher than the reference rate calculated by Romanian Motor Insurers' Bureau; the N factor is set by RMIB with the approval of the Financial Supervisory Authority and is calculated for a vehicle with the same technical characteristics as the vehicle for which the insurance is claimed, as well as for the same class of bonus-malus of the insurant; The technical characteristics of the vehicles will be reported to the cylindrical capacity, except for electric-powered vehicles, in which case their power will be the one taken into account'. Example: Transport companies owning several trucks; Companies that show up with more than 100% damages. (Actuarial, non-economic, but social calculation to protect third parties).

### **2.2. MTPL insurers have the obligation to notify the policyholders that the contract is expiring (Article 18, paragraph 8).**

"MTPL insurers and insurance intermediaries have the obligation to inform policyholders / contractors of the MTPL contracts termination and the possibility of their renewal, with 30 days before the termination of the contracts." In relation to the current legal framework, there is the obligation of the MTPL insurers to inform their policyholders / contractors when the contracts are about to expire and

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there is, of course, the possibility to renew it with 30 days before the termination of the MTPL contract. "

### **2.3. Insurers' replies to compensation claims will have to be quicker (Art. 21)**

Law no.132/2017 will intervene on this issue, with a significant change to the current provisions. Thus, MTPL insurers are obliged to give a firm answer within 30 days from the date when the claims are submitted by the insureds. This term is less permissive than the current one, GEO no.54/2016 establishing that the settlement has to be done within 30 days from the date of filing the application, but not later than three months from the date of the damage's notification.

### **2.4. False insurance policies and counterfeited parts are grounds for criminal punishment, the 132/2017 Law "dedicating" an individual section for crimes**

The law that is going to take effect in July 2017 also provides offenses that are not currently regulated by GEO no.54/2016, in close correlation of course with art.245 of the New Penal Code. Therefore, the issuing and commercializing false or falsified MTPL contracts and using counterfeited parts by auto shops will be punished according to the applicable criminal law.

### **2.5. Direct compensation will become direct settlement (Article 26) "Direct settlement between MTPL insurers"**

(1) Direct settlement between MTPL insurers is applicable with the cumulative fulfillment of the following conditions: Car accidents occur on Romanian territory; Vehicles involved in accidents are registered / matriculated in Romania; Damages are produced exclusively to vehicles; Both vehicles involved in the car accident have MTPL insurance valid at the date of the event; Damages exclude injuries.

(2) The direct settlement service is mandatory offered by the insurer, but its purchase is optional by the insured.

(3) The direct settlement procedure is established by FSA regulations.

(4) The direct settlement does not affect the right of the injured person after a car accident produced by an MTPL insured vehicle to pursue the direct action of recovering the caused damage against the MTPL insurer of the person responsible for the car accident.

Direct compensation, currently provided by the MTPL Ordinance, is renamed by the new law - Direct Settlement. Direct settlement will be in fact an "attachment" to the damage management service, but this auxiliary service will be binding for MTPL insurers, meaning that it will be mandatory to be included in the insurance contract. However, the purchase of the service will be optional for the insured.

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**2.6. Suspending the mandatory MTPL contract entails "handing over" the registration plates Art. 6.**

The MTPL contract can be suspended at the request of the policyholder who has closed a contract during the suspension of the vehicle's right of movement according to the legal provisions or during the immobilization of the vehicle, with the obligation to submit the registration plates to the authority that issued them. The suspension procedure and the immobilization cases are established by common regulations of the Ministry of Internal Affairs, the Ministry of Transport, FSA and the Ministry of Regional Development, Public Administration and European Funds." Suspending by request the MTPL insurance contract will still exist as an option for the insurant if we discuss about suspending the vehicle's right to movement or immobilizing it, but the owners will have to submit the license plates to the issuing authority, currently not existing such an obligation. Practically, this provision comes in support of the policyholders who, for example, sign an insurance contract for 6 months, and after the payment, the consumer may leave the country for a while and will not use the vehicle. Thus, the suspension procedure will help him to keep the insurance months he has already paid for, offsetting the period of use of the MTPL service, depending on the times he uses his car, with the sole obligation that during the suspension period, to immobilize the vehicle in a private area, outside the public domain.

**2.7. The reference rate will not be calculated by the FSA Art.18. - Establishing the MTPL insurance premium and informing the insurant "**

The reference rate is calculated half-yearly by a company with accredited expertise in the field, contracted by the FSA, according to the formula provided in art. 2 pt. 24 and is published by FSA." The MTPL Law modifies the existing rule, that the reference rates have to be calculated by the Financial Supervisory Authority. Basically, they will be calculated half-yearly by a company with expertise contracted by the Authority and will be published by the latter. Essential changes to the insurance contract, how the MTPL insurance policy will be known for, are not many and are not difficult to understand by the consumers, but the big challenge comes with the Regulations that FSA has to publish within 30 days from the entry into force of 132/2017 Law, in accordance with Article 43 of the aforementioned Law. The concepts of "Insurance Policy", inserted by the new insurance law, are not entirely innovative tools, so many of the aspects that are found have their origins in the external, community legislations within the mentioned field. Given that the economic context is one less favorable, what draws the attention of consumers with criminogenic potential to MTPL products and of the investigator - insurers, is of course art.38 of 132/2017 Law. Introducing this article has already led to a series of debates among car repair workshops, precisely because, as we all suspect there are internal "procedures" of car shops

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that diverts from what the injured customer is expecting, the final collector of the MTPL. Therefore, we will focus on this issue and we will analyze the changing potential of the behavior of car shops administrators by exemplifying and clearly explaining the irregularities encountered in car workshops. Thus, practice has shown that there are a lot of auto repair shops that want to earn easy gainings in car repairs by virtue of MTPL and CASCO insurance. What the damaged customer does not know and who just wants to repair his car based on the MTPL, is that: when it comes to a car service (that wants big and easy gains, taking on other risks that are not specific to their activity), the repair is done in the AUDATEX system (specialized program for recording the repair data, but draws up the prices at the maximum rate on the market, containing in its database the maximum prices from the importers in Romania). AUDATEX offers the estimates, not the final prices), the invoice is perfected, the money is collected as if the car repairs were already done using the new parts and obviously there is added the workmanship whose amount differs from car shop to car shop and is charged by the hour. Please note, however, that some repair shops do not have the technical equipment that is in compliance with the repair technology released by the manufacturers. In this way, we must underline that both the customer and the insurer can be deceived by the car shops regarding the auto parts they install on the broken vehicles. As far as customers are concerned, things are simple and perceptible: they want their cars to be in perfect working condition, despite replacement of parts and the reassembling. That's why a lower quality piece damages them, feeling the damage in terms of wear time and increased costs for replacement, which involves both the actual cost of the pieces and the extra manufacture amount, but also by lowering the value of the vehicle. Why the insurers too? Although this answer does not target us directly, it's necessary to know that all this fraud method acts as a trophic chain. If the insurers pay the price of some original pieces at maximum prices, but other parts are mounted on the vehicles, the insurer is also injured - a higher price for a non-compliant product, consumption of staff resources and time for internal investigation to prove the existence of attempted fraud, and then carrying out the legal steps to criminal investigation authorities, competent courts, procedures that also involve administrative costs, etc. Installing second-hand or aftermarket parts instead of original parts affects insurance companies on two levels. This problem is hard to verify and demonstrate, because in most cases, vehicle owners are not in the business field and insurance companies lack the human and technical resources needed to check and expertise, so they are easily defrauded by car shops whose managers consider themselves "smart guys".

**As a prevention measure, an idea for diminishing the unlawfulness within car shops would be that insurance companies, together with the NAFA, would ask the auto services for their own repair estimate with the store receipt**

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**attached. Store receipts would unload the management and partly elucidate the problem related to stock and orders to car materials suppliers.**

Along with these changes, there will obviously be new ways of fraud in the profile market. First consequence will be the decrease number of CASCO policyholders, as they will "straighten" towards the settlement of claims between insurance companies, a way to save. This aspect raises the "implementation" of the MTPL system of cars whose origins and parameters are questionable. A new defrauding way of the "experts" in the field is currently upsetting investigators of several systems, working together to reduce payments made by insurance companies. It's about introducing into the country a lot of cars with a high purchase price (between 40,000 and 100,000 euros), with a recent manufacturing year, but with unreal kilometres declared. Although this practice is a well-known one for those who handle such business, the problem appears when the possibilities of testing the board computers are extremely limited. The chassis series offers information, but only up to a point - basically, the real parameters can be found out, but only until the last revision made at a representative office. Dealers do not have all the search criteria, an attribute that belongs exclusively to the producer, who provides all the data only as a result of criminal or court complaints. Thus, fake accidents occur in real conditions, so that the car reaches the stage of total damage, using for this procedure the valuation from Brand car shops, authorized brands' dealers in Romania, manufactured at maximum costs, so that the final amount of money to be as high as possible.

From different reasons, if the desired amount of payment is not attained, a recourse is made by the people inside, and because "other problems" occur, the report leads to the much-wanted verdict of "total damage". It is important to be aware of the real danger of fraud in the MTPL sphere, as high amounts paid to scammers lead to higher prices of insurance contracts for all consumers, for every honest entity that complies with the rules in the idea of driving with all documents required by the field legislation in force. The example of an "accident" that could take place so that a file could be paid by an insurance company that includes the MTPL product in the grid would be: Two vehicles collide lightly, they are "wiped out" and the most expensive of them is driven by a frightened driver, who hits a bridgehead or a tree, and obviously a new car is needed. He takes the car for a review at a representative office where he has certain relationships and after the assimilation of an estimate, it results total damage. It is relatively complicated to understand this cliché by applying the MTPL, but it is a true one, a palpable situation, that it will flood the bills of insurance companies with damage files. Such an example which currently enters the "CASCO account" can also be found, unfortunately, in the compulsory insurance, within "direct compensation" formula. In order for the MTPL price not to rise constantly and to affect all the

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insured, it is imperative to have vigilance from all the services that conspire to the fight against fraud.

## Conclusions

Anti-Fraud Departments of insurance companies will be overcome by the ingenuity of experienced “operators”; domestic investigations, as currently demonstrated, are inadequate, with multiple gaps, so making as many civilian conventions with authorized and specialized experts can represent a step towards diminishing the phenomenon. However, awaiting for the regulatory norms that FSA (Financial Supervisory Authority) will issue within 30 days of the entry into force of the law under Article 43 of Law 132/2017, it is inevitable to correlate this new Article 38 of Law 132/2017 " 38. - Offenses (2) "Use in the repair of damaged vehicles of counterfeit and / or falsified parts and / or falsified assemblies") with Article 20 3 of OG 54/2016 "(3) The MTPL insurer may carry out investigations carried out by authorized experts on the occurrence of the accident, if there are reasonable grounds for suspecting its occurrence and provided that it is not subject to ongoing criminal investigations; The insurer shall notify in writing the injured person / insured person, within 5 working days from the date of the damage notification and the drawing up of the report, regarding the intention to conduct investigations; If on the basis of the expert report it was found that the compensation is due to the injured person, the provisions of art. 12 paragraph (2) lit. c) are also applied; The non-notification regarding the intention to conduct investigations within the term stipulated in sentence II decodes the MTPL insurer of this right, being obliged to pay the compensation; The motivated result of the investigations shall be communicated to the prejudiced party within 3 working days after the completion of the investigation / submission of the expert report, but without exceeding the deadlines provided in paragraph (1). The conduct of its own investigations by the MTPL insurers does not create additional obligations for the entities stipulated in art. 38 para. (1)." Thus, currently under OG 54/2016, insurance companies have the possibility to verify / investigate non-conformities by testing the parts / materials mounted on cars by authorized experts (judges) from repair workshops. Within 5 days from the claim endorsement, the insurance company, through its competent departments, must notify the parties in writing, respecting the correspondence requirements, that the payment of the file is temporarily suspended; Following this procedure, a resolution is issued to reject or not the file. In the blend of changes, consumers will be the most affected: first of all by assuming new information, although the biggest problem remains the rising costs due to the current impossibility of verifying the real situation in the insurance sphere. Unfortunately, in the insurance industry, questionable principles are ruling and their modification is extremely slow due to the economic gaps welded by the unprofessionalism that rises in this field.

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