

THE IMPLICATIONS OF THE REGULATION OF SECTOR EXCLUSIONS IN THE EUROPEAN UNION PRACTICE FOR THE ESTABLISHING COMMUNICATION COMPENSATIONS BY INSURANCE COMPANIES AND LIQUIDATION OF DAMAGES COMMUNICATIONS

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RECEIVED
ACCEPTED

25 January 2016
1 June 2016

JEL
CLASSIFICATION

G22, G32, G38

KEYWORDS

EU regulations, sectoral exemptions, the cost of repair, risk management, insurance crime, process approach

ABSTRACT

According to the existing legal regulations, car repair due to the accident damage is not the manufacturer's warranty, in connection with this fact in such cases the insurance company thanks to the relevant EU regulations refunding the repair costs can also apply other categories of parts than the original ones during the process of eliminating the damage, what is reflected both in the economic and process terms.

Although from the moment of conducting the mentioned legal regulations almost ten years have passed, in literature there is no subject of publication, which would in the clear, available and at the same time interdisciplinary manner describe the nature of relationships between the new categories of the spare parts and the process of eliminating the damages, especially in the strictly economic terms. Therefore, the aim of the article is an attempt to measure the economic impact of the EU regulations in the form of sectoral exemptions on the processes of shaping the structure and levels of the communication compensations paid.

Introduction

Pending the entry into the European Union of the relevant legal regulations in the form of sectoral exemptions no provisions included the clear definition of the "original part". The concept of the "original part" functioned based on the common customs and habits and was reserved only for those parts, which were purchased in the authorised network of the car manufacturer and in the packaging containing the logo of the manufacturer of the given brand.

Only such parts could be sold and installed in the authorised service stations, and the use of others meant the void of the warranty for the given vehicle. According to the manufacturers of the engine vehicles, all other parts on the market were the “unoriginal parts”, and their use was allowed only outside the authorised network of the given brand of the cars and on the exclusive request of the vehicle user. However, the division into the original and unoriginal parts was not only not sufficiently fixed by the law, but it was also not clear, as it might seem. An important factor in the dispute included the fact that, as indicated by observations of the automotive market, the manufacturers of the cars produce almost approx. 20% of the scope of the parts used for their installation, the remaining 80% is commissioned for manufacturing to the external specialised automotive companies.

However, this situation changed dramatically in 2003 with the introduction of regulations in terms of the sectoral exemptions with regard to the automotive market in the countries of the whole European Union. It should be emphasised that new legal regulations had a significant impact on the way of clearing the communication damages by insurance companies in the whole European Union. An important element of the regulation is the fact that it has not violated the rights of the injured party to choose the way of repairing the damage. However, granting the insurance companies the possibility to negotiate in terms of the vehicle repair costs and convincing the client to the rule of the damage minimisation in the financial terms. Because in the EU jurisprudence the view, that the injured person is entitled from the insurance policy after the accident to the right of repairing the vehicle using the original parts, has not been questioned.

Insurance companies have not questioned this rule directly, but in the search of savings they begun to rely more on the lack of legal knowledge of the victims than on the tight logical and consistent system of questioning their right to use the “service” parts. Savings were achieved primarily due to the method of the total damage settlement – instead of settling it according to the real repair costs – by offering the cash payment based on the so-called estimate, in which the “depreciation” has been deducted from the costs of the “service” parts, understood as the use of elements resulting from the age of the vehicle exploitation. The whole system of the automotive industry actions has been developed and of the affected aimed to get the cash equivalent from insurance companies for the “service” parts, and in reality repair them cheaper using unoriginal parts, used ones or the reconstruction of the damaged elements, and previously qualified only for replacement. Because the analysis of the components of the car repair costs still indicates that the share of the values of spare parts in the overall sums of repair costs is fundamental, the issue of the impact of the EU regulations in the form of sectoral exemptions on the process of eliminating the communication damages is still an important research problem, especially in the aspect of the deteriorating age structure of the car park of the insurance crime increase. At this point of considerations it should be emphasised that so far there are no analyses, especially in the literature on economics, which would in an accessible way describe the impact of sectoral exemptions on the process of damage elimination, and therefore also on the dealings of the insurance crime.

Literature review

Considering the definitions and regulations contained in the available literature concerning the rules for the use of spare parts, and interpretations, which the European Commission presented in the official document, a division of spare parts into four categories was adopted:

1. “*Original spare parts*” provided by the vehicle manufacturer. In the trade literature and on the Internet most often labelled as OE (and as O, Q1). Such parts have original packaging of the vehicle manufacturer

bearing its logo. Although 4/5 of the total number of such parts are ordered by the vehicle manufacturers from the external suppliers, still he is responsible for their quality, technical and technological specification, distribution, etc. Therefore, the employer agrees that the car manufacturers can require the use of this category of parts, when the vehicle repair is performed at a dealer of the given brand of the car.

2. "*Remaining original spare parts*". In the trade literature and on the Internet most often marked as OEM (and Q, Q2). Sectoral exemptions expanded the term of the "original spare parts" to all components, which have the same quality and are manufactured according to the same specifications like the parts distribute by the mere vehicle manufacturers. This above all applies to the parts coming directly from the so-called "suppliers for the first installation" (like Bosch, Delphi, Hella, Magneti-Marelli, Pikington, Valeo, etc.).
3. "*Unoriginal spare parts - replacements*". Most often marked as AM (and Z, Q3). This group can be defined as all parts, which have not been qualified by the EU regulations neither to the "original parts" nor to the "parts of the comparable quality".
4. "*Spare parts of the comparable quality*". In literature there is no established labelling, so the OEQ labelling has been proposed (and P, Q4). EU regulations have separated from all other "replacements" this new category of parts, which in terms of the quality match the elements distributed by the vehicle manufacturers, but without the obligation to use the identical technical and technological specifications while their manufacturing, so e.g., the material of which the given element was made does not have to be the same.

The identification of individual categories of spare parts used for the repair of the vehicle seems to be particularly important not only in the process of settlement of the communication damages, understood in the economic terms as the refund of repair costs, but also in the aspect of tackling the phenomenon of the insurance crime.

The observations of the market reality made by the author of the article clearly show that during the repair in the authorised repair stations or more or less often, less or more officially, some dealers in practice use, e.g., a reflector taken out of the Valeo "box" instead of the same, more expensive one taken out of the General Motors "box". The use of these parts during the repair process leads to the presentation on the invoice refunded by the insurance company the price of the original part, and de facto using the part of another quality during the repair. While for the unauthorised workshop the aspect of using the individual category of parts in the process of repairing the vehicle is the matter of the fundamental economic meaning. On one hand, the EU regulations enabled the "revolutionary" right to use other categories of spare parts than the original ones, while on the other hand, they created the bases for the increase of the insurance crime of this matter. The analysis of the market and the professional practice indicate that the unauthorised workshops for a long time have used the parts of "different categories" during the repair, often demanding the refund amounts from insurance companies as for new parts.

Method

The impact of the sectoral exemptions on the shaping of the structure and the amounts of the compensation was conducted based on the analysis of 234,664 thousand of compensation paid out from the insurance policy by the insurance companies conducting their insurance activity in Poland in the years of 2003–2015. The source material appeared in the form of electronic case records. Obtaining data for examinations was possible by virtue of a pursued profession of the car expert. The analysis covers both the percent distribution of the finished damages,

fixed in terms of the way of their elimination, and the calculation of the share of the cost of the spare parts in the overall sums of the paid compensation.

It should be noted that this value is the average of all calculations concluded in 234,664 thousand of the studied damages, what allows the assumption, from the point of view of the research methodology, that such a significant number of analytical data guarantees high reliability of the obtained result.

In order to show the interdependencies the structure of the registered communication damages was divided into the following types, depending on the way of their final elimination:

- cost estimate,
- invoices for the repair,
- total damages,
- damages ending with the lawsuits,
- settlements signed with the victims,
- denials to pay the compensation,
- withdrawal of claims.

Results

The analysis of the components of the paid compensations showed that the share of prices of the spare parts in the overall cost sums of vehicles is about 70%. This value has been determined based on the analysis of the calculations of repairs performed in the expert computer systems, used to determine the repair costs of the accident-damaged cars. The percentage distribution of individual types of damages, determined in the studies described above, has been presented in Figure 1.

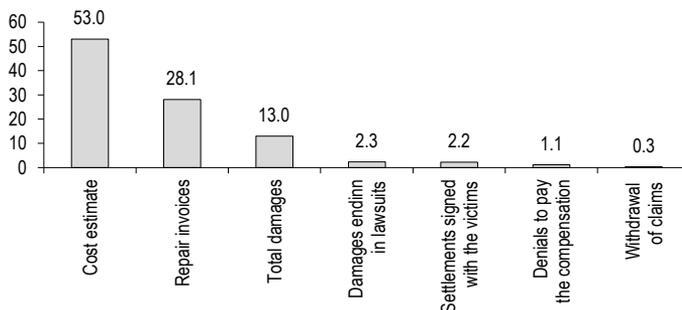


Figure 1. The percentage distribution of the communication damages according to the method of their valuation

Source: own study.

As it can be seen from the distribution presented in Figure 1, the most important determinant affecting the amount of the claims paid, and this on the economic result, includes the calculations of damages. The second position is held by the compensation determined on the basis of the presented invoices, documenting the fact of repairs of the damaged cars. At this point of considerations, it should be noted that the sectoral exemptions may

impact only two positions. As you might guess, the vehicle repairs conducted in the dealer networks take place mostly using the original parts manufactured by the vehicle manufacturers and in this case in the future no significant changes can be expected going towards the reduction of the paid compensations. The owner who decides to repair own vehicle in the authorised service will also be interested in the installation of the most expensive parts in his car, for which the final payments will be done by the insurance company.

Results supply

Each new update of these systems offers more and more possibilities to choose the alternative parts, and the price differences according to the performed observations, in case of some elements may amount even up to 50% of their price. This means that you can acquire new parts for the post-accident repair about 50% cheaper in relation to the maximum prices suggested by the manufacturer or the general importer of the vehicle, what according to the author finds a clear economic dimension.

Results demand

Assuming that the paid compensations represent 100%, and the impact of the EU regulations in the form of sectoral exemptions, as previously demonstrated, may mainly apply to the damages determined by the cost estimate – that is 53% of the payments. In the 53% the component, which may vary is the price of the part, constituting on average about 70% of this part of payments. As it is easy to calculate, this constitutes 37.1% of the total paid compensations. With the assumption that in terms of cost estimates the insurance companies on average pay about 50% of the prices of the original parts, ultimately we have achieved:

$$37.10\% \times 50\% = 18.55\%$$

As it results from the above analysis, the introduction of the EU regulations in the form of sectoral exemptions in the processes of elimination of the communication damages has led to the reduction of the paid communication compensation by about 18.55%, what in the scale of the whole country and the market of the communication insurance estimated at the millions of euro is considerable amount.

Limitations

In accordance with the current regulations of the European Union, the selection of the repair belongs to the client and the insurance company does not have an impact on this. Another situation takes place when the calculation of the communication damage takes place based on the so-called “repair cost estimate”. The insurance company presents its clients the offer of the cost estimate and the payment of the compensation at his request. Regardless of this, the insurance companies are obliged, under the rules of the applicable provisions, within 30 days from the date of notification, to present the victim with the offer of the undisputed compensation amount. This fee is calculated by the insurance company using the average hourly rates used by the repair workshops in the given area and the prices of parts occurring in the bases of the expert systems used for estimating the repair costs.

Conclusions

The insurance practice is dominated by the partial damages, what should be understood as the determination of the amount of the compensation based on the repair costs of the damaged vehicle. The cost of the post-accident

repair is determined by two factors – the cost of spare parts and the cost of labour, with the provision that the cost of labour is not so significant because as it has been shown by the original studies, the share of prices of the spare parts in overall costs of the vehicle repairs amounts to as much as 70%. Thus, the correct choice of the category of the spare parts, so that the amount of the due compensation reflects the real costs of the repair takes on the fundamental economic meaning not only for the automotive market, but also the insurance market of the whole European Union. Currently, in retrospect, it is obvious that the insurance companies have not wasted the time, rightly noticing in the new regulations the chance for the substantial reduction of the amounts granted and paid as communication compensations. As pointed out by the author in his research, the introduction of the EU regulations in the form of sectoral exemptions in the processes of eliminating the communication damages to 2015 has led to the reduction of the paid communication compensations by about 18.55%. Noteworthy is the fact that the analysis of the components of the paid compensations has shown that the impact of the EU regulations in the form of sectoral exemptions may concern mostly the damages determined by the cost estimate – that is 53% of the payments, what in consequence may lead to the new forms of insurance crime in the sector of the communication sector, which as you might guess in the future may find their significant economic dimension.

At this stage of summaries it should be emphasised that the experiences of the European Union countries on the impact of the sectoral exemptions on the broad automotive and insurance market may serve as a kind of a base of solutions for the potential disputes concerning the interpretations of the rights and obligations resulting from the introduction of this regulation. Therefore, the legal actions are extremely important, which may lead to the changes in the legislation sphere, therefore forcing the further studies in this matter from the insurance companies. In addition, noteworthy is the fact that in 2010 the European Commission under the pressure of the public opinion, including the consumer organisations, independent manufacturers and distributors of the parts, insurance companies, automotive experts, has made a decision to prolong the period of the sectoral exemptions until 2027 in order to examine all economic and organisational results of implementing this regulation not only to the European automotive market, but also to the markets related to it, including the EU insurance market. In summary, the attempt undertaken by the author to analyse the impact of the EU regulations on the structure of the compensations paid by the insurance companies in Poland does not fully exhaust the essence of the matter, and it is only the attempt to signal the complexity of the analysed problems concerning the impact of introducing the sectoral exemptions on the automotive and insurance market in the aspect of the economic dimension and certainly requires further and continuing research in this matter.

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Cite this article as: Lewicki, W. (2016). The implications of the regulation of sector exclusions in the European Union practice for the establishing communication compensations by insurance companies and liquidation of damages communications. *European Journal of Service Management*, 19 (3), 51–57. DOI: 10.18276/ejism.2016.19-07.