



THE ONLY GLOBAL ASSOCIATION OF YOUNG LAWYERS

**GENERAL REPORT
ON
‘INLAND TRANSPORT’**

A workshop organised by the Transport Law Commission

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General Reporters

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1. Introduction

1.1. With an annual congress to be held in the landlocked Czech Republic in Central Europe the Transport Law Commission decided that it would organise a workshop on inland transport, in particular road carriage.

1.2. At the outset, the intention was cover two aspects of both international and domestic road carriage, namely (a) the contractual aspect, specifically the liability of carriers for loss, damage and delay in the delivery of goods, and (b) the regulatory aspect, specifically road carriers' access to a country's market for road carriage of goods.

As the preparations progressed, however, it was decided only to examine (a) the contractual aspect of domestic road carriage and (b) the regulatory aspect in the context of EU Regulations 1072/2009 and 1079/2009 concerning conditions for operating as a road carrier and for access to the market of international road carriage or similar regulations in non-EU member states.

1.3. On this basis, the attached questionnaire titled "Traps and pitfalls in international and domestic road transport regulations" was circulated to members of the Transport Law Commission.

The questionnaire contained a description of the workshop, which unfortunately and unintentionally contained a few remnants of the original ideas about the workshop, and which should instead have read as follows:

"Inland transport is generally performed by road, railway and, in some cases, inland waterways. Among these modes of transport, the most common is road transport.

Inland transport and especially domestic inland transport are, in many cases, regulated by national laws which may contain potential traps and pitfalls for lawyers, who is not from the jurisdiction in question, either with respect to the contractual side and the liability of the carrier or with respect to the regulatory side and the right of a carrier to pursue its business and to access foreign markets.

The aim of this workshop is to provide an overview of select issues in relation to liability regimes for domestic road carriage of goods and in relation to regulatory regimes for a carrier's right to pursue its business and to access foreign markets."

1.4. In response to the circulation of the questionnaire, national reports were received from 11 countries: Brazil, Denmark, Estonia, Finland, Germany, Italy, Latvia, Lithuania, the Netherlands, Portugal and Ukraine.

2. Liability regimes for domestic road carriage

2.1. The liability regimes for domestic road carriage are usually separate from the liability regimes for international road carriage such as the CMR and while convention based liability regimes are generally mandatory in the sense that they cannot be deviated from by contract (at least not to the detriment of cargo interests), the level of party autonomy in liability regimes for domestic road carriage is, as the national reports show, more nuanced.

In Finland, Lithuania and Portugal the liability regimes for domestic road carriage are as a general rule mandatory although deviation by contract may be allowed in Lithuania by express provision or court precedent and is allowed in Finland if the deviation is reasonable.

In Germany and the Netherlands the liability regimes for domestic road carriage can be deviated from by contract (save for consumer contracts in Germany), but such deviation requires individually negotiated terms in Germany and individually agreed terms in the Netherlands.

In Denmark, Estonia, Latvia and Ukraine the principle of freedom of contract governs the liability regimes for domestic road carriage save for unreasonable terms in Denmark and save for consumer contracts in Estonia and Latvia.

- 2.2. The liability regimes for domestic road carriage in the countries covered by the national reports all operate with a presumption of liability for the carrier in the event of loss of, damage to or delay in delivery of the cargo, but they differ in respect of the grounds for liability exemption.

In the Netherlands the carrier is only exempt from liability in the event of force majeure, which is understood as an event which a prudent carrier could not avoid and the consequences of which could not be prevented.

In Brazil, Italy and Latvia the carrier is exempt from liability in the event of force majeure and a few other causes, including act or omission of cargo interests and inherent vice. In Brazil insufficient packing, external fortuitous events and insurance and in Latvia insufficient packing and insufficient instructions from cargo interests may also exempt the carrier.

In Estonia, Finland, Germany, Lithuania and Portugal there are comprehensive exemption catalogues, which in Estonia, Finland and Germany bear great resemblance or are identical with the catalogue of exemptions in CMR.

In Denmark and Ukraine the carrier is exempt from liability if the carrier shows that the loss, damage or delay was not caused by fault or neglect of the carrier.

- 2.3. The liability regimes for domestic road carriage in the countries covered by the national reports are quite different as concerns the carrier's ability to limit liability and to break any such limits.

In Lithuania the rules on limitation of liability in CMR has been enacted in respect of domestic carriage of goods.

In Estonia, Finland, Germany, Italy, the Netherlands and Portugal the limits range from EUR 1 to EUR 20 per kg goods lost or damaged (plus lost or wasted charges at least in Finland), and in Estonia, Finland and Germany a special limit of liability for delay ranging from the agreed freight to three times the agreed freight has been instituted. The limits are broken in the event of loss, damage or delay caused intentionally and, in some countries, also caused by reckless conduct with knowledge that damage would probably result or gross negligence although in the Netherlands limits are only broken if the carrier is personally guilty of such intentional or reckless conduct.

In Brazil, Denmark and Ukraine there are no statutory limits of liability, but the parties to the contract of carriage may agree on limits of liability (and how they may be broken) although such contractual limits may not be insignificant in Brazil and not be unreasonable in Denmark.

- 2.4. The liability regimes for domestic road carriage in the countries covered by the national reports are also quite different as concerns the requirement for a claim notice within a certain deadline and the consequences of not meeting any such requirement.

In Denmark, Lithuania, the Netherlands and Portugal there are no claim notice deadlines (in addition to limitation of action time-bars).

In Latvia and Ukraine claims must generally be notified within 6 months of the date, when the goods were or should have been delivered.

In Brazil claims for partial loss or noticeable defects must be notified within 10 days of delivery, and in Italy such claims must be notified at delivery if apparent and otherwise within 8 days, failing which the claims are lost.

In Estonia, Finland and Germany the deadlines for notification of loss, damage and delay are the same as in the CMR, but the consequences of late notification may differ, e.g. in Finland where late notification results in loss of the claim except if the loss, damage or delay is caused by gross negligence of the carrier.

- 2.5. The liability regimes for domestic road carriage in the countries covered by the national reports provide for different rules on limitation of actions, including different time-bars ranging from 6 months to 1, 2 or 3 years (in some cases depending on the degree of culpability exhibited by the carrier) for commencing legal action against the carrier.

3. Road carrier requirements and market access

While some or even many of the requirements are similar (at least in nature), requirements in member states of the EU can be distinguished from requirements in countries, which are not member states of the EU.

Out of the countries, from which national reports have been received, Denmark, Estonia, Finland, Germany, Italy, Latvia, Lithuania, the Netherlands and Portugal are all member states of the EU and hence subject to EU Regulations 1072/2009 and 1079/2009. In most cases, national rules and regulation governing the right to perform domestic and international road carriage and access to these markets are not more restrictive or otherwise in conflict with the EU Regulations. However, in Finland only temporary cabotage as defined in Finnish legislation is allowed by community (EU) licence holders, and in Italy only road carriers operating vehicles acquired from another properly licenced road carrier or in compliance with certain environmental standards are allowed to operate. Sanctions for violations vary from country to country and include fines or temporary confiscation of a vehicle to loss of licences or even imprisonment in the worst cases. In respect of fines, the levels also differ: from

as low EUR 210-430 in Latvia to EUR 1,250-15,000 in Portugal and up to EUR 200,000 in Germany.

Brazil and Ukraine, on the other hand, have their own rules and regulations. Under Brazilian law a road carrier is, among other things, required to be of undisputed repute, have a competent technician trained in road carriage in its employ and have no union fee debt while under Ukrainian law a road carrier is, among other things, required to have insurance against its potential civil liability and certain programs to maintain its drivers' skills and safeguard their health. Fines for violations of the Ukrainian rules and regulations range from UAH 340 to UAH 17,000.