

## QUESTIONNAIRE

This questionnaire has been prepared for use at the AIJA Prague '14 Congress workshop "*Traps and pitfalls in international and domestic road transport regulations.*" The below answers aim to give an overview of regulations applying to inland road transportation in Lithuania.

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### 1 INLAND ROAD TRANSPORT.

Inland domestic transports have, in different jurisdiction, rules partially different from those provided in the CMR Convention.

#### 1.1 Which rules govern domestic, i.e. non international, road transport in your jurisdiction? Are the rules mandatory or can be deviated from by contracts?

General provisions regulating domestic road transport are established in the Civil Code of the Republic of Lithuania (hereinafter – **Civil Code**), a special regulations applicable for domestic road transport are established in the Road Transport Code of the Republic of Lithuania (hereinafter – **Road Transport Code**).

It must be noted that from the wording of the provision it is not always clear if this provision is mandatory or may be deviated by agreement of the parties. Some provisions have the clause "if the parties do not agree otherwise", which clearly shows that this provision is not mandatory. In other cases if the law does not provide such clarification the answer may be found in court practise.

#### 1.2 When is the road carrier liable for loss, damage and delay? Please describe the basis of liability and any liability exceptions available to the carrier.

The Road Transport Code establishes liability of the carrier for any damage caused by the loss of and damage to the goods and this liability is presumed. In the Road Transport Code there is established that the carrier shall be liable from the moment the goods were accepted for carriage until the moment of delivery thereof for the damage caused due to the total or partial loss of or damage to the goods, unless there is evidence that the damage was caused through no fault of the carrier.

The Road Transport Code provides clarification of liability of the carrier: failure to deliver the goods or luggage to the place assigned for delivery within the set time limit shall be considered as loss thereof; reduction in the amount or quantity of the goods or luggage shall be considered as partial loss thereof; deterioration in the qualitative condition of the goods or luggage shall be viewed as damage caused thereto.

The carrier is also liable for delay of delivery of goods. In the Road Transport Code there is established that the carrier who fails to deliver goods within the agreed time limit must compensate the sender or consignee of the goods losses incurred as a result of the carrier's failure to comply with the agreed time limit, unless the contract provides for the payment of penalty. Income not received shall not be compensated for. National law allows the parties to agree concerning the penalty for delay of delivery of goods.

The Road Transport Code there is established that the carrier shall be relieved of liability for total or partial loss of or damage to goods, unless there is proof that all necessary measures have been taken to avoid damage or that he could not apply such measures. If the carrier proves that damage was caused or influenced or increased by the acts of the consignor or consignee of the goods, taking into account the person's culpability, the extent of liability may be reduced or the carrier may be relieved of liability.

The carrier shall be relieved of liability for total or partial loss of or damage to the goods if the consignor (consignee) fails to prove his fault in the following circumstances:

- (1) the goods are delivered by a vehicle without mechanical defects and with the consignor's seals intact or there is no insufficiency or inadequacy of the consignor's or producer's security markings, seals on the delivered packages;
- (2) there is partial loss of or damage to the goods due to natural causes through the carriage of goods by vehicles (desiccation, rust, wastage, etc.);
- (3) the goods have been accompanied by the consignor's or consignee's agent;
- (4) partial loss of the goods does not exceed natural wastage rates or allowable error limits of measuring devices applicable in cases of carriage of goods by road vehicles.

Regarding the liability exceptions, delay in delivery shall not be considered to have occurred if the carrier was prevented from performing his obligation by a case of *force majeure*, an attempt to eliminate a breakdown of the vehicle posing a risk to the life and health of passengers (in case of carriage of passengers) or other circumstances beyond the carrier's control.

**1.3** Is the carrier entitled to limit liability for loss, damage and delay and, in the affirmative, can the limits be broken?

National law expressively establishes that an agreement between the carrier and the consignor or consignee of goods on relieving the carrier of liability for the damage caused or limiting the liability shall be invalid. Invalidity of such agreement shall not invalidate the contract of carriage.

Regarding the limitation of liability of the carrier, the Road Transport Code provides a reference to the CMR Convention: "compensation for the lost goods or loss of part of the consignments may not exceed the maximum amount of compensation set in 1956 Geneva Convention on the Contract for the International Carriage of Goods by Road" (Art. 46 Part. 5 of the Road Transport Code). Due to this reason it can be concluded the liability limitation of the carrier do not differ from the ones established by the CMR Convention. The limitation of liability of the carrier may be broken under the grounds established in the CMR Convention.

**1.4** Are there any deadlines within which the cargo interests shall give notice of claim? In the affirmative, please set out the deadlines and the consequences of non-compliance.

The notice of claim by the cargo interests is not mandatory and does not prevent from initiating an action before the court. The notice of claim has an important role in distributing the burden of proof between the parties, i.e. if the cargo was delivered with a "clean" consignment note, it must be proved that the damage has occurred during the carriage of goods, and or that the damages were not obvious at the moment of delivery.

**1.5** Please describe time bars applicable to claims for loss, damage, delay as well as other claims for breach of contract by the carrier.

The period of limitation for an action arising out of contract of carriage shall be two years. The filing of a claim to the carrier shall suspend the period of limitation for one month. There are no exceptions from the prescribed period of limitation established by the law. It is not clear whether the parties may agree on the extension on the period of limitation.

## **2 REGULATORY**

The exploitation of the business of national and international road carriage and cabotage is governed by some EU Regulations (Reg. 1071/09/EC, harmonising the requirements carriers must comply with in order to exploit the business of the carriage of goods by road, and Reg. 1072/09/EC, providing common rules for the access to the market of the international carriage of goods. These rules intervened overriding existing national rules, causing conflict between EU and national regulations, and, several times, leaving to the national legislation the duty to provide sanctions in case of breach.

Moreover national legislation provides different rules in terms of safety and security during trips, fuel surcharge etc.

In the light of the EU Regulations:

**2.1** Which rules road carriers have to comply with in order to be admitted in the market of road carriage of goods?

The road carriers have to comply with the Rules on licensing of the road transport activity approved by the Government of the Republic of Lithuania (hereinafter **Rules**).

**2.2** Does national rules provide more restrictive requirements than EU Regulation for the admission to the market of domestic road carriage? In the affirmative, is there an issue of conflict between EU and national legislation?

The Licensing rules establish procedures and requirements which the carriers must comply with in order to achieve the Community license. The requirements set by the Licensing rules are:

- (1) The manager of the carrier must prove its qualification in the area of transport in accordance with Art. 21 of the EU regulation 1071/2009;
- (2) The carrier must present documents proving its financial status in accordance with Art. 7 Part 1 of the EU regulation 1071/2009;

(3) Documents proving good reputation in accordance with Art. 19 of the EU regulation No. 1071/2009;

**2.3** Which are the relevant sanctions in case of breach of EU and/or national legislation regarding the admission to the market of domestic road carriage? And which are the remedies, if any?

The fine for breach of rules regulating domestic and international transport is from 900 to 1500 EUR.

**2.4** Does national rules provide more restrictive requirements for the admission to the market of international road carriage? In the affirmative, is there an issue of conflict between EU and national legislation?

No.

**2.5** Which are the relevant sanctions in case of breach of EU and/or national legislation regarding the admission to the market of international road carriage? And which are the remedies, if any?

The sanctions for the breach of the obligations of the carriers are established in the Code on administrative offence of the Republic of Lithuania.

**2.6** In case your Country is not an EU member, which are the relevant requirements that law provides in order to admit haulers to run the business of road carriage?

Not applicable.

**2.7** Do the road carriers have to comply with particular rules to grant safety and security during trips?

The carriers must comply with the safety rules established by the Law on safe road traffic of the Republic of Lithuania.

**2.8** Are the road carriers entitled to pretend extra costs over the agreed freight for, as example, fuel surcharge and/or other costs?

Generally the freight for carriage should include all costs incurred by the carrier. Extra costs could be demanded by the carrier only if expressly agreed by the parties.

### **3 MISCELLANEOUS**

**3.1** Are there any other particular aspects, not covered by the above questions, which have to be highlighted (briefly) in your jurisdiction?

Notice must be made of the fact that the relevance of the domestic road transport is rather small due to the small territory of Lithuania. In practise rules on international carriages are incorporated into the contract and agreed by the parties even in domestic transport.