

# QUESTIONNAIRE

## 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?

Even though Ukraine has become a party to CMR Convention since 2006, the provisions of CMR Convention are not directly incorporated into the Commercial or the Civil Code of Ukraine or other laws of Ukraine.

In the meantime, national legislation regulating domestic automobile transport and carriage of goods by road can be divided in three main groups:

- legal acts regulating carriage of goods by automobile transport;
- regulations for rendering services by automobile transport;
- legal and technical requirements to vehicles involved in carriage of goods by road.

The main specialized law which regulates the sphere of domestic automobile transport and carriage of goods by road is the Law of Ukraine "On Automobile Transport" No.2344-III dd. 5 April 2001.

The Civil Code of Ukraine (Chapter 64, Articles 908-928) contains general provisions regulating the carriage, its terms and conditions, and the carrier's liability; the Commercial Code of Ukraine (Chapter 32, Articles 306-316) contains the provisions determining the rules for the carriage of goods as business activity. The Law of Ukraine "On Transport", the Law of Ukraine "On Traffic", the Rules of Automobile Transportation of Cargoes in Ukraine contain standards of rendering services by domestic automobile transport and legal/technical requirements to vehicles.

### Are the rules mandatory or can be deviated from by contracts?

The main mandatory regulations of the Ukrainian law concern:

- legal status and licensing of local carriers;
- technical conditions of the vehicles;
- compliance with the Road Traffic Rules;
- requirements of labour law as for the driver work schedule;
- road transport documents; and
- obligatory insurance of dangerous cargoes.

Quite strict requirements are established in respect of the passenger transport including municipal one, and the carriage of dangerous goods.

The parties cannot deviate from the requirements in the spheres as mentioned above. In the meantime, the parties can regulate the terms of carriage of goods by road, freight rates, insurance etc. in their contracts on carriage quite deliberately.

Ukrainian law supports the doctrine of the 'freedom of contract'. According to the Article 628 of the Civil Code, the content of the contract constitutes conditions determined at the discretion of the parties and approved by them, as well as the terms that are binding under the civil law.

Under the Law of Ukraine "On Automobile Transport", a contract on carriage by road transport is a bilateral agreement between the carrier, the sender or the consignee, which is a legal document regulating the terms and conditions of carriage of goods, rights, duties and responsibilities of the parties.

The definition is quite general as well as the provisions of the law regulating terms and conditions of such contract. So the parties of a contract on carriage have the option to fix in it their intentions and agreements not contradicting the law.

In particular, the Article 920 of the Civil Code provides that in case of breach of the obligations arising from a contract on carriage, the parties bear responsibility established by agreement of the parties, unless otherwise provided by the Civil Code and other laws, transport codes (statutes).

### **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 Ukrainian legislation provides only general rules as for the carriers' liability. All specific requirements in respect of their liability are to be determined by the carriage, forwarding or logistics service agreements.

The general principle of the parties' liability is stated in the Article 614 of the Civil Code, according to which a person who has breached the obligation is responsible if he is in fault (intent or negligence), unless otherwise provided by contract or by law. A person is presumed innocent if he/she proves that all measures for the proper performance of the obligation have been used by him.

The main principles of the carrier's liability are established by the Civil Code of Ukraine. Pursuant to Article 924 the carrier shall be liable for the safety of cargo from the moment of its acceptance for transportation and up to the moment of its delivery to the receiver or to the person legally authorized to receive the cargo or the luggage, unless he proves that the loss, shortage or damage of cargo, luggage or post occurred due to the circumstances which the carrier could not have prevented and their elimination was beyond his control.

Similar provision is contained in the Article 314 of the Commercial Code of Ukraine stipulating that the carrier shall be held liable for the loss, shortage, spoilage or damage of cargo accepted for transportation, unless he proves that this happened not through his fault.

According to the Laws of Ukraine, the civil liability for damages is not absolute. Existing law provides the grounds whereby the party can be released from the duty to compensate the damages. One of the grounds for such exemption is an act of force majeure.

According to the general rule that can be found in the Article 617 of Civil Code of Ukraine, a person which breached the obligation shall be released from responsibility for such breach if it proves that breach was caused by an act of force majeure.

In the meantime, the Civil Code of Ukraine does not contain the definition of an act of force majeure. The Commercial Code of Ukraine somehow clarifies this point. Pursuant to the Article 218 of the Commercial Code, unless otherwise is provided by the law or contract, an entity that breached the obligation shall be liable for such breach unless it proves that breach was caused by an act of force majeure, that is extraordinary and unavoidable circumstance under the existing conditions.

Such vague wording leads to disputes between the parties in Ukrainian courts and each situation is reviewed on a case-by-case basis.

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

Under the Article 314 of the Commercial Code, the damage caused during the carriage of goods is recovered from the carrier on the following basis:

- In case of loss or shortage of goods or baggage – in the amount of the lost or missing cargo;
- In case of damage to goods – in the amount of the sum on which the value is decreased;
- In the event of loss of the goods passed for transportation with the declaration of their value – in the amount of the declared value if it is evident that it is lower than the actual value of the goods.

If due to damage the quality of goods has changed to the extent that they can not be used as intended, a consignee has the right to abandon the goods and to claim for loss.

Paying the penalty for delay of delivery of the goods, if any, established by contract, does not relieve the carrier from liability for loss, shortage or damage that occurs due to delay (Article 313 of the Commercial Code).

The parties are free to limit the carrier's liability by the provisions of the contract of carriage unless such limitation does not contradict certain requirements of law (e.x., as for dangerous goods).

**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.**

Ukrainian law does not contain special provisions as for the notice of claim to be given to the carrier. However some kind of deadlines exists in respect of different types of claim letters service.

According to the Article 315 of the Commercial Code, claim letters may be served within 6 months since the date of event being the ground of such claim letter, except the claim letters for penalties and bonuses, which are to be served during 45 days. The carrier has to reply the claim letter during three months, notifying the applicant whether he satisfies or rejects the claim. The claim letters in respect of direct intermodal carriage shall be given and proceeded within six months. Claims for payment of a fine or premium shall be presented during 45 days.

With respect to the court practice in Ukraine, the court will normally ask parties to exchange with claim letters before starting the proceedings.

**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.**

According to the Article 315 of the Commercial Code, if the claim contained in the claim letter is denied or if the answer to it is not received within three months, the applicant may apply to the court within six months from the date of receipt of the answer or the deadline set for reply. This lawsuit must be accompanied by the documents evidencing the damage and calculation of losses.

According to the Article 925 of the Civil Code, a lawsuit to the carrier may be brought during one month by the consignor or consignee in case of total or partial failure of the carrier to satisfy a claim or failure to give a reply.

The general time bar of one year since the date of event being the ground of a lawsuit is established under the Ukrainian law for filing a lawsuit arising out from the contract on carriage of goods.

## **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, harmonizing 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 time, leaving to the national legislation the duty to provide sanctions in case of breach.

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

In the light of the EU Regulations:

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

As long as Ukraine is not the EU Member, the EU Regulations are not in force on its territory, so further national rules only will be considered.

### **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 Law of Ukraine "On Automobile Transport" stipulates that the domestic road carriage includes carriage between points of departure and destination located in Ukraine, and a set of auxiliary operations related to such transportation and carriage.

In order to admit haulers to run the business of road carriage the undertaking has to comply with the requirements as follows.

The Article 34 of the Law of Ukraine "On Transport" provides the requirements to the road carrier according to which the carrier has to follow the laws and rules on carriage of goods; keep vehicles in good technical and sanitary condition; provide a medical monitoring service to the drivers; organize periodic training of drivers; provide working conditions according to those stipulated by laws; ensure the safety of the road to others, who use the road.

The Article 9 of the Law of Ukraine "On Automobile Transport" specifies the type of carriage which should be licensed which is now inland transportation of dangerous goods by trucks, trailers and semitrailers.

Vehicles performing inland transportation must comply with governmental security, safety and the environmental standards, and in cases of carriage of dangerous goods they are to be approved to carry dangerous goods.

Under the Law "On Insurance" it is forbidden to exploit vehicles without policy on compulsory insurance of the carrier's civil liability before the third parties operating on the territory of Ukraine. The Law "On Insurance" defines in the Article 7 as a type of compulsory insurance the liability of the vehicle's owners; as well as the liability insurance when carrying dangerous goods covering the risks of adverse consequences for the carriage of such dangerous goods.

The Article 48 of the Law of Ukraine "On Automobile Transport" stipulates that automobile carriers and drivers must have and present to those, who is in charge to

monitor the road traffic and road safety, the documents on a particular carriage. Those documents are the driver's license of the appropriate category, the registration documents on vehicles, waybill, documents on the cargo including license if needed.

### **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?**

In case of breach of national legislation regarding the admission to the market of domestic road carriage the fines stipulated in the Law of Ukraine 'On Automobile Transport' are as follows:

- fine of one hundred untaxed minimum incomes\* is applied in case of carriage of goods without having proper documents;
- fine of twenty untaxed minimum incomes\* is applied in case of failure to comply with the driver's working regime;
- fine of forty untaxed minimum incomes\* is applied in case of failure of a carrier or his representatives to follow the orders of state control authorities to eliminate violations of appropriate laws;
- fine of one thousand of untaxed minimum incomes\* is applied in case of failure to obtain a permit from Ukrainian authorities by foreign carriers who carry the goods through the Ukrainian territory.

\*1 untaxed minimum incomes = 17 UAH.

### **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?**

International road carriage is mostly regulated by the international conventions, which are ratified by Ukraine, in particular, CMR Convention and bilateral agreements.

As a general rule, under the Article 53, 59 of the Law of Ukraine 'On Automobile Transport', in order to be engaged in international road carriage of goods, Ukrainian residents should have: a document certifying their qualifications including knowledge of the following subjects: commercial and financial management; technical standards and operations; road safety; access to markets; elements of commercial, social, labor, civil and tax laws. Also, they should have permits from the authorities of foreign countries through the territory of which the carriage will be made; license card in case of carriage of dangerous goods; permits for carriage of goods in case of exceeding weight limits; certificate of registration of the vehicle; certificate of compliance of the vehicle with technical requirements of countries through which carriage will be made unless otherwise is provided by international agreements of Ukraine; documents on the goods (according to the Law of Ukraine 'On Transit of Goods' dd. 20 October 1999 N1172-XIV).

The international transport of dangerous goods is allowed to Ukrainian residents who have experience in domestic traffic on a contractual basis for at least three years (Article 53 of above mentioned law).

Non-residents of Ukraine should have: permission from Ukrainian authorities; permits for carriage of goods in case of exceeding weight limits; certificate of registration of the vehicle; certificate of compliance of the vehicle with technical requirements; documents on the goods which are carried.

### **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?**

In case of breach of national legislation regarding the admission to the market of international road carriage the fines stipulated in the Law of Ukraine on "Automobile Transport" are as follows:

- fine of one hundred of untaxed minimum incomes\* is applied to non-residents of Ukraine, in case of performing by them of international carriage of goods without proper documents;
- fine of forty untaxed minimum incomes\* is applied in case of the absence of control devices (tachographs) or daily registration sheets evidencing regimes of work and rest;
- fine of twenty untaxed minimum incomes\* is applied in case of the absence of state registration marks on the vehicles which are engaged in the international road carriage.

Admission from/to the territory of Ukraine of the vehicle performing international carriage of the goods and which has breached transport legislation can be made only after payment of a fine.

\*1 untaxed minimum incomes = 17 UAH.

### **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?**

The answer is stated in the above.

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

Main regulations as for the safety and security during trips are contained in the Rules of Automobile Transportation of Cargoes in Ukraine, which in particular stipulate the requirements as for due package of the goods providing safe driving; the rules on carriage of containers; on carriage of life animals; carriage of agriculture products and grocery, etc.

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

According to the Article 916 of the Civil Code, during transportation of cargo, passengers, baggage, mail, freight fees are charged at the rate determined by agreement of the parties, unless otherwise provided by law or other legal acts. If the price of a contract of carriage is not specified, the freight fees will be charged as reasonable fees. Services performed at the request of the owner (holder) of the goods are paid additionally by agreement of 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?**

It should be stated, that it is still in force the Statute of Road Transport issued by Council of Ministers of the Ukrainian SSR dd. 27 June 1969. It was lastly updated in 1981 and mainly became the basis for newly elaborated Rules of Automobile Transportation of Cargoes in Ukraine. Notwithstanding it is still in force, it is almost not used by the practitioners. In the meantime it can be used as the grounds to prove the position in the court proceedings.