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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 intend to give an overview of rules and regulations applying to inland road transportation in Denmark.

The answers have been prepared by Hafnia Law Firm, Copenhagen.

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?*

A: In Denmark, domestic road transportation is governed by general principles of contracts and tort as well as the Danish Road Traffic Act (L 2013-12-11 nr. 1386).

In practice, the freight forwarders will often refer to the CMR Convention, the General Conditions, or the general terms of the Nordic Association of Freight Forwarders (NSAB 2000) in their agreements. These rules are not mandatory and they provide for a high degree of contractual autonomy between parties.

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.*

A: Since there are no statutory rules and regulations governing domestic road transport in Denmark, the carrier's liability is determined under the general principles of contracts and tort law.

The general rule under Danish tort law provides for fault-based liability. Accordingly, the carrier is liable if he acts negligently. In road transporta-

tion, the burden of proof is reversed, so if the carrier is claimed to have acted negligently, the carrier must prove that he did not act negligently.



Under the general rule in Art. 101 of the Danish Road Traffic Act, the carrier is strictly liable for damage and personal injury caused by a road accident. The liability lies with the owner or user of the vehicle. As a result of this, the carrier is always liable for damage caused by his own vehicle. The truck driver is only independently liable if the costumer can prove that the incident was caused by the truck driver's negligence. It must be noted that the strict liability only applies to damage caused by traffic accidents. The carrier is liable for the customer's full economic loss.

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

A: The freight carrier is liable for the full loss suffered by the costumer, and interest accrue in accordance with the Danish Overdue Payment interest Act (LBKG 2014-05-13 nr 459).

However, the parties may agree to limit the carrier's liability. Under art. 36 of the Danish Contracts Act (L 1996-08-26 nr. 781), agreements on limited liability may be disregarded if they are considered unreasonable or unconscionable.

It is generally assumed that limitation of gross negligence and/or intent cannot be regarded as having legal effect. The principle is equivalent to art. 37 of the CMR Convention. An exception to this is that the limitation of gross negligence set out by NSAB 2000 and/or other agreed documents are normally considered legally valid.

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.

A: No Danish rules and regulations lay down specific deadlines within which the cargo interests shall give notice of claim, but it follows from general principles of contract that the cargo interests shall give notice within a reasonable time after delivery.

What "a reasonable time" means depends on the circumstances. In some cases, the cargo interests need a survey in order to assess the claim. In others, the cargo interests can assess the claim immediately. In any case, the requirement does not allow the cargo interest to sit on its hands after a claim has arisen.

The cargo interests do not have to give notice of claim if the carrier is already aware of the claim when it arises.



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.*

A: Under art. 3 of the Danish Limitation Act (L 2013-08-28 nr. 1063), the general statute of limitation provides for a 3-years' limitation period. The period begins at the point in time when the claimant discovered or ought to have discovered the claim. Art. 3 (3) of the act provides an absolute limitation period on 10 years.

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 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 comply with in order to be admitted in the market of road carriage of goods?*

A: According to the Freight Carriers Act (L 2012-11-12 nr. 1051), a carrier must have a valid carrier's license. To obtain such, one must

- i) have a business premises within the EU;
- ii) pass an approved carriers course;
- iii) prove a solid economic foundation (the carrier must have a certain equity capital, see para. 2.2);
- iv) have no arrears with the public authorities;
- v) have a good reputation in accordance with art. 19 of 1071/09 EC, i.e. have no former convictions that could suggest a future offence; and
- vi) be VAT registered.

The rules comply with EU Regulations 1071/09 EC and 1072/09 EC.



Further, the carrier must comply with the regulations of the driving and resting times as stated in Regulation 561/2006 EC.

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 Danish rules comply with the EU regulation as set out in Reg. 1071/09 and 1072/09 EC. See the requirements above under para. 2.1.

The Danish requirements as to equity capital are higher than the requirements provided by the EU regulations. One must have DKK 150,000, i.e. approximately EUR 20,000, to obtain the first two licenses, and subsequently DKK 40,000, i.e. approximately EUR 5,300, for each additional vehicle.

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?

A: The primary remedy for breaching the Freight Carriers Act is a fine. In case of a breach of the Act, the fine imposed amounts to somewhere between DKK 5,000 and DKK 35,000, i.e. between EUR 670 and 4.680. In case of serious and repeating offences, the vehicle may be confiscated under art. 17 a of the Freight Carriers Act. The lack of required license could constitute a serious offence.

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?

A: The requirements for the admission to the market of international road carriage are the same as the requirements for the admission to the market for domestic road carriage. See paras. 2.1 and 2.2 above.

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?

A: The sanctions in case of breach of EU and/or national legislation regarding the admission to the market of international road carriage are the same as the sanctions for breach of legislation regarding admission to the market of domestic road carriage. In case of a breach of the Act, the fine imposed amounts to somewhere between DKK 5,000 and DKK 35,000, i.e. between EUR 670 and 4.680. In case of serious and repeating offences,

es, the vehicle may be confiscated under art. 17 a of the Freight Carriers Act. The lack of required license could constitute a serious offence.



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?*

A: Denmark is an EU member state.

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

A: The carriers must comply with the Danish Road Traffic Act and with the provisions on driving and resting times as set out in Reg. 561/06 EC.

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

A: Extra costs may be agreed between the parties, but no general rule entitles the carrier to charge extra costs.

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?*

A: No other particular aspects should be highlighted.