

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 Estonia.

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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?

Rules on domestic road transport have been outlined in Chapter 42 of the Law of Obligations Act (the **LOA**). The LOA generally allows for party autonomy, i.e. the parties to a contract are free deviate from the regulation of the law, if not explicitly prohibited by law to do so or if such prohibition follows from the nature of the provision. In particular, a number of provisions are mandatory if the sender is a consumer.

In addition, provisions for the transportation of dangerous goods can be found outside the LOA.

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 carrier is liable for any damage caused by the loss of and damage to the goods, as well as exceeding the time limit set for the carriage.

Such liability may be reduced if the consignee himself played a part in causing the damage.

Furthermore, the LOA prescribes several bases for the limitation of the carrier's liability and in certain cases the carrier shall not be liable at all for the damage.

The carrier shall not be liable for damage which is caused due to *force majeure*.

The carrier shall not be liable for the loss of or damage to the goods or for exceeding a time limit when this arises from the special risks inherent in one or more of the following circumstances:

- use of open unsheeted vehicles when their use has been expressly agreed;
- the lack of or defective condition of packing of the goods by the sender;
- loading or unloading of the goods, and other operations with the goods by the sender or consignee and the giving of instructions regarding operations with the goods;
- the nature of the goods which particularly exposes them to loss or damage, especially through breakage, functional failure, rust, decay, desiccation, leakage or normal wastage;
- insufficiency or inadequacy of marks or numbers on the packages;

- the carriage of livestock.

It is evident from the above that the regulation of carrier's liability follows closely that of the CMR.

Compensation payable for the total or partial loss of or damage to goods is limited to 8.33 SDRs (Special Drawing Rights) per kilogram of gross weight of the totally or partially lost or damaged goods.

The liability of the carrier for exceeding a time limit shall be limited to three times the carriage charge. The latter therefore differs from the respective CMR provision, according to which damage for delay shall not exceed the carriage charges.

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

The carrier is in certain cases entitled to limit liability (see above).

The limitations on liability provided for in the LOA do not apply if the carrier causes damage intentionally or through gross negligence.

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.

There is no deadline for notice of claim. However, the sender and/or the consignee shall notify the carrier of the loss of or damage to the goods within prescribed deadlines.

If such damage is apparent upon external inspection but the consignee accepts the goods and the consignee or sender fails to notify the carrier of the damage delivery at the latest, the goods are deemed to have been delivered in a condition prescribed in the contract.

If, upon their delivery, the damage to or partial loss of the goods is not apparent to the consignee of the goods upon external inspection, the goods are deemed to have been delivered in a condition prescribed in the contract if the consignee or sender fails to notify the carrier of the loss or damage within seven days as of the delivery.

If a time limit has been exceeded by the carrier, the consignee shall notify the carrier of this within 21 days. If this is not complied with, the consignee loses his right to claim damage which arose due to the time limit being exceeded.

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 limitation period for claims arising from a contract of carriage is one year. However, in case the damage has been caused intentionally or through gross-negligence, the limitation period is extended to three years.

This limitation period commences as from the delivery of the goods. If the goods are not delivered, the limitation period shall commence on the date when the goods should have been delivered. If the time of delivery of the goods has not been agreed, the limitation period shall commence when sixty days have passed from acceptance of the goods for carriage.

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?

In addition to the EU regulations 1071/09 and 1072/09, domestic rules are laid out in the Road Transport Act (*autoveoseadus*) and, to a lesser extent, in the Traffic Act (*liikluseadus*).

In order to provide road transportation for hire the carrier shall possess a Community licence and be introduced into the commercial register (or the non-profit associations and foundations register). A person who is not a national of the EU or EEA nor a long-time resident of such a country, shall possess a driver attestation.

The Road Transport Act requires for the haulier to comply with the requirements for financial standing, good repute, and have a transport manager. The haulier is deemed to have a good reputation if it has not been found guilty of a particular crime or misdemeanour in the field of traffic law, waste law, or taxation.

The transport manager shall enjoy good repute and be sufficiently competent in carrying out its task (i.e. he shall have completed a training course and examination in an institution recognized by the Ministry of Economic Affairs and Communication or possess other documentation proving his competence).

In case of international transport, the haulier shall carry a transport permit. The vehicle used for road transportation shall be registered in Estonia, the EU or the EEA, and comply with statutory requirements regarding the technical condition of such vehicles. The trailer shall be registered in the traffic register or put to use in accordance with international requirements.

2.2 Does national law 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?

National rules, also for domestic transport, follow largely those set out in the aforementioned EU regulations. While national legislation does specify some of the requirements of the EU regulations, in our assessment such requirements merely elaborate upon such provisions and cannot be considered as more restrictive compared to European Union rules.

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?

Where goods are transported without a Community licence, the haulier faces a fine of up to EUR 3,200 (EUR 1,200 for natural persons), and in case of no transcript of the Community licence being available, the carrier may be subject to a fine of EUR 3,200 (EUR 800 for natural persons).

For disregarding the requirements set out on the transcript of a Community licence, driver attestation, or transport permit, a fine of up to EUR 3,200 is foreseen (EUR 200 for natural persons).

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, Estonian legislation is not to be considered more restrictive compared to EU rules.

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?

For failure to meet the requirements set for cabotage, the haulier faces a fine of up to EUR 3,200 (EUR 800 for natural persons).

Please also refer to Section 2.3 for more information on sanctions regarding the lack of required documentation.

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?

Particular safety requirements have been established for the road transport of dangerous goods. These mainly relate to the packaging and labelling of dangerous goods, but also to the specification of vehicles carrying dangerous goods and the competence of the drivers. Furthermore, the drivers of such vehicles shall have completed a special-purpose training programme.

The loading and fastening of the goods is also subject to domestic regulations.

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

The carrier may, supplementary to the carriage charge, demand reimbursement of the expenses which the carrier incurred in relation to the goods and which the carrier might have considered reasonably necessary according to the circumstances. The carrier shall not demand the reimbursement of such expenses which normally arise upon performance of a contract of carriage or which the carrier would also have incurred without entering into the contract of carriage.

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?

The regulations concerning road transportation in Estonia follow closely the rules laid out in the CMR, other international conventions, as well as the respective EU legislation. Hence, there is nothing noteworthy to mention.