



THE ONLY GLOBAL ASSOCIATION OF YOUNG LAWYERS

AIJA Prague '14 Congress

Transport Law Commission (TLC)

***“Traps and pitfalls in international and domestic
road transport regulations”***

Workshop – Questionnaire

General Reporters:

Marco Lenti

Niels Friborg

Legal Link

Date: January 20, 2014

INDEX

1. Inland road transport.
2. Regulatory
3. Miscellaneous

DESCRIPTION OF THE WORKSHOP

International inland transport is generally performed by road, railway, and in some case, inland water modes.

Among these modes, the most common is road transport.

Inland transport is, in many cases, separately regulated and contain potential traps for lawyers who is not from the jurisdiction in question, either with respect to the rules governing the liability of the carrier, or with respect to the regulatory side (several time deriving from the EU legislation), i.e. with respect to licenses, rules according to which foreign carriers are admitted to exploit cabotage, fuel surcharge rules etc. .

The aim of this general report is to provide an overview about the current discipline in force in different countries taken into consideration, examining how the CMR Convention has been applied, seeing how the national legislation have implemented EU rules under regulatory side, and how the national Courts have resolved conflicts between EU and national legislation.

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.*” only. The below answers aim to give an overview of regulations applying to inland road transportation of goods in Finland.

The answers have been prepared by Turo Sumu from Attorneys at Law Borenius Ltd, Finland.

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: The Road Transport Agreement Act (“Tiekuljetussopimuslaki” 345/1979, as amended) (hereinafter the “RTAA”) governs both Finnish domestic and international carriage of goods by road, as more closely stipulated in the RTAA. Finland has ratified the CMR Convention on road transports which has in principle been implemented into the RTAA. However, it is important to note that regulations concerning domestic road carriages differ to some extent from the provisions regulating international road carriages.

The RTAA is in general, when applicable, mandatory.

However, in accordance with section 5 of the RTAA it may be possible to deviate from the provisions of the RTAA in domestic transport in Finland in case this is, due to exceptional nature of the goods or the transport or due to other exceptional circumstances, reasonable. In practise relevance of this provision is anyway limited and main rule is that the RTAA is mandatory.

There are also various other laws and regulations that concern carrier’s liabilities regarding e.g. traffic safety and other issues.

- 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: Under the RTAA the carrier is liable for loss of or damage to the goods occurring between the time when he takes over the goods for carriage until the delivery, as well as for delay in delivery. Liability of the carrier is often described as strict or objective liability with certain “*force majeure*” type exceptions that relieve the carrier of or lessen his liability.

In general e.g. the provisions of sections 28 and 29 of the RTAA, regulating situations where the carrier is relieved of liability, follow quite closely

regulations of articles 17 and 18 of the CMR Convention in this regard (with certain exceptions).

Further, there are certain differences e.g. in the time periods after which the goods can be treated as lost in domestic transports compared with international transports. Under the RTAA, if the goods have not been delivered in domestic transport within 14 days following the expiry of the agreed time limit or, if there is no agreed time limit, within 28 days from the time when the carrier took over the goods, the person entitled to demand delivery of the goods can treat the goods as lost and claim compensation accordingly. Thus, the said time limits are in domestic road carriages shorter compared with the time limits applicable in international transports (and with those mentioned in the CMR Convention). There are also differences regarding e.g. treatment of missing goods that are later recovered in domestic and international transports etc.

According to section 36 of the RTAA, in domestic road carriage, interest on compensation is regulated by the Finnish interest rules. This means that interest on compensation in domestic road carriage is currently usually higher than 5 % that is mentioned in article 27 of the CMR Convention.

Under section 39 of the RTAA it may also be possible in certain exceptional situations to adjust the compensation in domestic transports, but relevance of this provision is in practise usually very limited.

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

A: In domestic road carriages the liability of the carrier in respect of loss of and damage to the goods is currently limited to EUR 20/kg under the RTAA (whereas, on international road carriages the limitation is SDR 8,33/kg). In addition also carriage charges, customs duties and other charges in respect of the carriage of the goods shall be refunded, as stipulated in the RTAA.

In case of delay and the damage resulted therefrom the carrier shall pay compensation for such damage not exceeding the carriage charges.

There are certain exceptions to the above mentioned principles on limitation of liability when e.g. value of the goods or a special interest is declared in the consignment note, as there are also in the CMR Convention. However, usability of these provisions is often limited in practise inter alia due to related liability insurance issues.

In case of wilful misconduct or gross negligence the carrier is not entitled to limit his liability as described above. However, the threshold for establishing carrier's gross negligence and thus breaking the carrier's right to limit liability has been rather high under Finnish law.

The preconditions of gross negligence have been elaborated on in the legal literature and considered by the Finnish courts in a number of cases. Generally assessment is made based on an evaluation of all the relevant factors. The Finnish Supreme Court has during the passed years rendered certain judgements on gross negligence which are considered to establish the general prerequisites for evaluating this concept. Generally, the Supreme Court has concluded that gross negligence is such very serious negligence which is close to intent. However, some lower courts have e.g. considered that the carrier had been grossly negligent when he was in breach of specific instructions given by the consignor.

Please also see 1.2. above.

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

A: In domestic road carriages, in case of externally observable/apparent loss or damage a reclamation shall be made to the carrier at the time of taking delivery of the goods, and in other situations in writing within 7 days from taking delivery of the goods or from inspection of condition of the goods performed by the carrier and the consignee together, as more closely stipulated in the RTAA. Reclamation concerning delay shall be made in writing within 21 days from the day when the goods were made available to the consignee.

If the consignee is a consumer, as defined in the Finnish Consumer Protection Act (38/1978, as amended), the reclamation shall be made in domestic road carriages within reasonable time.

In general it is important for the cargo interests that reclamations are made as soon as possible, as interpretation of the above mentioned provisions is not always totally clear in practise. Further, it is important to note that non-compliance with the above mentioned regulations of the RTAA regarding reclamations will usually result in domestic road carriages in the loss of right of action (with certain exceptions regarding e.g. carrier's gross negligence) and not only shift of burden of proof. Thus, regulation in respect of Finnish domestic road carriages is different in this regard compared with the rules of the CMR Convention.

- 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: Legal action concerning carriage under the RTAA must be taken in one year or, in case of action being based on wilful misconduct or gross negligence, in three years, as more closely stipulated in the RTAA.

Further, under the RTAA a written claim does not suspend the period of limitation in domestic road transports in a similar way as is regulated in respect of international road transports and in article 32.2. of the CMR Convention.

However, under Finnish law it is usually possible to agree on time extensions regarding the mentioned time bar after the damage has occurred/period of limitation has started to run.

Should the claim not fall under the mandatory regulations of the RTAA or other special provisions, the general time bar regarding claim for compensation in respect of breach of contract is three years under the Act on Limitation of Debt (728/2003, as amended), as more closely stipulated in the said Act. However, it is good to note that there are often standard terms used by freight forwarders and other parties that limit liability and set specific time bars then. One example is the General Conditions of the Nordic Association of Freight Forwarders (NSAB 2000). The NSAB 2000 are rather widely used in the Nordic Countries, but, in general, they are contractual terms which need to be agreed upon before becoming applicable.

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 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?

A: Road Carriers must comply in Finland e.g. with the requirements of Commercial Transport of Goods on Road Act (693/2006, as amended), which concerns inter alia application of EU Regulations 1071/09/EC and 1072/09/EC. This Act regulates e.g. requirements of and administrative procedures regarding permits necessary to be obtained by the road carriers.

Also requirements mentioned inter alia in the Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006, as amended) may be relevant. The said Act regulates, when applicable, that the Contractor (usually the contracting party ordering the work etc.) shall check that his contracting partner (e.g. a carrier) complies with the obligations mentioned in the said Act and request e.g. an account of whether the company is entered in the prepayment register and the employer register, registered as VAT-liable etc. This shall be checked, unless exceptions mentioned in the said

Act apply, prior the contract is concluded. In case the Contractor is in breach of this requirement a negligence fee may be imposed on the Contractor.

- 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?

A: Finnish national rules follow in general those set out in the aforementioned EU regulations, but national legislation specifies certain requirements of the EU regulations.

Under the Act on Commercial Transport of Goods on Road (693/2006, as amended) e.g. the definition of allowed cabotage transport is defined rather narrowly. Three internal Finnish transports, referred to in article 8 of the EU Regulation 1072/09/EC, are only allowed when they are provided on a temporary basis. For example transports performed on the basis of a contract that is in force until further notice or on the basis of a contract that has been made for a period of longer than a week and transports with a vehicle which has made more than 10 internal carriages in Finland within the last three months' time period are considered as non-temporary cabotage transports, as more closely stipulated in the said Act.

Further, the said Act defines when the transport manager is not considered to have good reputation expected in the EU and other regulations etc.

The said Act also sets forth requirements inter alia for the customer of the road carrier ordering the carriage. In case the customer breaches its obligation under the Act a fine can be imposed on the customer.

- 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 relevant Finnish national authorities can e.g. give warnings or even withdraw permits. In case the performer of the carriage cannot provide documents listed in the Act on Commercial Transport of Goods on Road (693/2006, as amended) the officials can on the other hand suspend the carriage.

Further, e.g. in case road carriage services have been provided without a relevant permission, fines or maximum of six months of imprisonment may be applicable.

- 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: Finnish national rules follow in general those set out in the aforementioned EU regulations, but national legislation specifies certain requirements of the EU regulations. Please also see section 2.2.

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: Please see section 2.3.

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: Finland is a member of the EU.

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

A: There are various provisions regulating road safety and other issues. The Finnish Road Transport Act (267/1981, as amended) regulates e.g. liabilities regarding loading and securing of the goods to the vehicle. Under the said Act in commercial transports inter alia the driver, the person who has loaded the goods as well as the person who has given instructions regarding the loading can be liable should the loading be incorrectly done.

According to the Finnish Penal Code (39/1889, as amended) breach of the Road Transport Act's requirements and traffic offences may lead to a fine or imprisonment.

Particular safety and other requirements have been established also e.g. in respect of carriage of dangerous goods.

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: Generally, if this is agreed, yes - e.g. fuel surcharges clauses are often used.

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: As mentioned above, there are certain important differences in regulations concerning Finnish domestic carriage of goods by road and international road transports (e.g. in liability limits, consequences of non-compliance with the reclamation provisions under the RTAA etc.).

The RTAA also covers e.g. furniture removals unlike the CMR Convention etc.