

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 Latvia.

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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?

Domestic road transport is regulated under the *Law on Carriage by Road*. Parties are free to deviate from the national rules of law, if not explicitly prohibited by the 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.

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 for damages caused due to the delay. In case of the loss of and damage to the goods the fee for carriage can be recovered as well.

Law on Carriage by Road does not set any limitation on recovery of damages.

In accordance with Article 26 para two of the *Law on Carriage by Road* a carrier shall not be liable for loss, shortage, spoilage or damage of goods if he or she proves that it has happened due to the following reasons:

1) due to the fault of a consignor (consignee);

2) due to lack of tare or packaging which upon acceptance of the goods for carriage could not be noticed from the external appearance or because such tare has been utilised which fails to comply with the special features or standards of the goods (except the cases where there are signs that damage to the tare have been caused on the way);

3) if goods has been transferred for carriage without specifying in the transport documents the particular characteristics of the goods for which special safety rules must be complied with or relevant measures must be taken in order to ensure safe-keeping of the goods in the carrying or storing thereof.

There are general rules of *Civil Law* governing force majeure as the exception of liability which is applicable to the contracts of carriage.

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 entitled to limit liability, unless in case of wilful misconduct.

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.

In accordance with the Article 46 the *Law on Carriage by Road* claims may be submitted to the carrier within a period of six months.

The commencement of the time limit referred to shall begin:

1) from the date of the transfer of goods or baggage (or the day on which it was to be transferred) – if the claims are submitted in relation with the compensation for loss, shortage, spoilage, damage or late delivery of the goods or baggage to be carried together with passengers;

2) four months following the registration of goods for carriage – if claims are submitted for the compensation of the value of the lost goods in the direct mixed traffic; and

3) from the date on which the event which is the basis for submission of the claim has taken place – in all other cases.

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.

In accordance with the Article 46 the *Law on Carriage by Road* consignors, consignees and passengers may bring an action in court against a carrier only if the carrier refuses to accept claims in whole or in part or if a reply has not been received from the carrier within the time period set by law.

The action referred to may be brought in a court according to the location of the carrier within a period of three years after the receipt of the reply or after expiration of the time period intended for the reply.

Carriers may bring an action against consignors, consignees or passengers in court within a period of three years from the date on which the infringement of right took place which was the basis for the bringing of the action.

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?

Regulations by the Parliament and the Council of European Union have binding legal force through every Member state. Due to a general case law principle of the European court of Justice, national legislation of member states is to be implemented to the level that it does not contradict the EU regulations. Therefore European Union treaties and the law have supremacy over the law of member states, under the conditions laid down by the said case law. ¹

EU Reg. No 1072/2009² states in an imperative form that international carriage shall be carried out subject to possession of a Community license and, if the driver is a national of a third country, in conjunction with a driver attestation. It also permits any hauler who is a holder of a community license and whose driver, if he is a national of a third country, holds a driver attestation to carry out cabotage operations. Therefore member state authorities are not permitted to request additional documentation to prove that hauler is permitted to carry out international carriage and cabotage operations other than the appropriate license and documentation comprising all details listed in article 8(3) 2nd (usually in CMR format) This, however, does not mean that control authorities cannot use other evidence required by EU or national road transport legislation, e.g. the tachograph data, to establish whether the transport operation is carried out according to the rules. Therefore a Community license is required to be admitted to international road carriage market.

Article 4(1) states general rules for issuing a Community license.

1. The Community licence shall be issued by a Member State, in accordance with this Regulation, to any haulier carrying goods by road for hire or reward who:

(a) is established in that Member State in accordance with Community legislation and the national legislation of that Member State; and

(b) is entitled in the Member State of establishment, in accordance with Community legislation and the national legislation of that Member State concerning admission to the occupation of road haulage operator, to carry out the international carriage of goods by road.

Therefore to receive a license road carriers must be established in a Member state (i.e. registered as an undertaker according to state and EU law) and be entitled to carry out the international carriage of goods by road.

“And be entitled” is further described in EU reg. 1071/2009³ article 3(1) & 3(2). According to said provisions undertakers must:

¹ (Costa/ENEL, 15 July 1964, Case 6/641) ; Declarations annexed to the final act of the intergovernmental conference which adopted the treaty of Lisbon, signed on 13 December 2007, declaration nr. 17., pg. 436, available at <http://www.consilium.europa.eu/uedocs/cmsUpload/st06655-re01.en08.pdf>

² Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009, on common rules for access to the international road haulage market., official journal of the European Union, L 300/72, 14.11.2009

³ Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009, establishing common rules concerning the conditions to be complied with to pursue the occupation of

- a) have a effective and stable establishment in a member state

As further explained in Article 5, not only this provision requires road carrier to be registered as an undertaker, but also to have premises in which it keeps core business documents. To maintain the license they also need to have at its disposal one or more vehicles that are entitled to carry goods and to participate in traffic in conformity with the law of that member state.

- b) be of good repute

As further explained in Article 6, determining the conditions to be met by road carriers to have a good reputation is left to the member states. These conditions set by the member states have to include at least those that are listed in article 6. Member states are not denied the right to impose other conditions than those set in article 6, as long as they are proportionate and non-discriminatory. Therefore road carriers have to refer to and comply with national legislation at this matter.

- c) have a appropriate financial standing

As further explained in Article 7, road carriers are required to be able to meet their financial obligations. At the end of accounting year the undertaker must have a certified report that shows that it has at its disposal capital and reserves totaling at least EUR 9000 for one and additional EUR 5000 for each additional vehicle used. Competent national authorities may also agree or require that undertaker demonstrates its financial standing by means of a certificate such as a bank guarantee or an insurance in respect of the amounts specified before.

- d) have the requisite professional competence

As further explained in Article 8, road carriers are required to demonstrate knowledge of the road haulage field by the means of a written examination (can be supplemented by an oral exam). Road carriers can be exempted from particular examination parts if they can provide certificates of education which covers particular examination parts. Member states may provide training and require periodic retraining. Examination subjects are listed in annex 1 of this regulation.

Member states may also impose additional requirements in national law, as long as they are proportionate and non-discriminatory.

To maintain the license, road carriers have to always meet these requirements, as they are subject to a check imposed by the competent national authority. Especially it is important to refrain from breaching the rules laid down in article 6 paragraph 3 section (a) and (b) and annex IV.

A serious infringement of these rules may lead to suspension or withdrawal of the community license and authorization to partake in road trafficking operations.

To be admitted to the market of international road carriage of goods (including cabotage), carriers have to comply with both - EU and national law. Due to implementation of regulation 1071/2009 and 1072/2009 there might be conflicts between these regulations and national law. EU law has supremacy over national law. However due to the complex nature of conflicts between regulations it is not always easy to determine, whether conflict has occurred or not. Therefore a legal adjudgment may be required for each particular situation. To be admitted to the

market of domestic road carriage of goods, carriers have to comply with national law usually requiring a carriage permit or license.

List of EU provisions that road carriers have to comply to:

Regulation (EC) No 561/2006 - Driving time and rest periods

Regulation No. 3821/1985/EEC on recording equipment in road transport

Regulation EC 1/2005 on animal transport

Directives are not directly legal binding but are implemented in national law; therefore they should be taken into account.

Directive 2008/68/EC on dangerous goods

Directive 96/53/EC on vehicle dimensions and weights

Directive 2009/40/EC on roadworthiness tests for motor vehicles and their trailers

Directive 2006/126/EC on driving licenses

Directive 2006/22/EC rules on enforcing drivers hours 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?

National rules, also for domestic transport, follow largely those set out in the aforementioned EU regulations.

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 210 to EUR 430.

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?

Regulation No. 121 by the Cabinet of Ministers state how a licence can be acquired for the purpose of international road carriage. The regulation is in compliance with the Regulation 1071/09/EC – to receive a licence the carrier must provide documentation that it coincides with the Regulation 1071/09/EC (Point 12 of the Regulation No. 121).

This allows concluding that national rules do not provide more restrictive requirements for the admission to the market of international road carriage, but is solely based to meet the criteria given by the EU Regulations.

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?

Infringement of the EU and national law usually leads to administrative penalties in a form of a fine. In case of a serious infringement competent national authorities may also suspend or withdraw the issued community license or some or all of its copies. Administrative penalties in form of a fine may be issued by any member state in which territory infringement has occurred. And this member state may also request the member state in which the undertaker is established in to impose suspension or withdrawal of license in case of a serious infringement. In some cases infringements of EU or national law may also result in criminal sanctions.

Penalties may be issued to both the driver and the undertaker. Some provisions are more driver specific, e.g., exceeding the allowed 9 hours of daily driving time. In this case undertaker may be held liable, if it is proven that undertaker has ordered or allowed such actions on regular basis.

In Latvia for performing an international carriage operation without a community license is penalized by a fine between 210 EUR to 430 EUR. For breaching driving time by two or more hours both the driver (70 – 140 EUR) and undertaker (210 – 430 EUR) are fined.⁴

According to the Reg. 1072/2009, in the event of a serious infringement of EU law which governs international road carriage, the competent authorities of the Member state of establishment of the hauler may impose administrative penalties to temporary or permanently withdraw community license or some of its certified copies or issue a warning. Suspension or withdrawal of community license may also occur in case of loss of good repute.

Detailed list of sanctions can be found in national law of specific member states. Some of the most serious infringements in the field of road trafficking are listed in annex IV of regulation 1071/2009.

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?

As Latvia has been a part of the EU since 2004, this part of questionnaire does not apply to our country.

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

Civil Law Article 2233 states that for all the damages that have been made, if the shipment has been lost or damaged, the carrier has to take responsibility, unless the cause is force majeure or the natural properties of the shipment or if the consignor hasn't properly packed the shipment.

Other rules may be presented by the insurance companies or may be included in the contracts that road carriers have signed. Civil Law Article 1 states that all rights must be exercised and all obligations must be fulfilled in good faith. That also means that road carriers have to fulfil their duties responsibly.

⁴ Latvian Administrative Violations Code, 07.12.1984

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

To avoid an unnecessary legal dispute with sender, when agreeing on a carriage contract fuel surcharge, tax, road tolls and any other costs should be included in agreed freight for. Article 6(i) of CMR convention⁵ states that all charges related to carriage are to be shown in consignment (contract). This is a common rule in European civil law systems.

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 international road transportation in Latvia follow closely the rules laid out in the CMR, other international conventions, as well as the respective EU legislation.

⁵ Convention on the Contract for the International Carriage of Goods by Road (CMR) - (Geneva, 19 May 1956)
United Nations (UN)