



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**

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## **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

### 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?

Decree law 239/2003 dated of 4 October 2003 constitutes the main legal framework of the contract for the inland carriage of goods by road.

The rules are generally speaking mandatory.

- 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 road carrier is liable for any loss or damage that happens to the goods as from the moment it has taken custody of them up to the moment it delivers them.

The carrier is liable in contract for the acts or omissions of his servants, agents, representatives or sub contractors. It is a (presumed) fault based liability.

The carrier can also be held liable for delay in its delivery when there is delay and the delay has caused actual loss or damage to the claimant. There is delay when the agreed time limit for delivery has not been met or, even when said time limit has not been agreed, when the goods are not delivered after 7 running days have elapsed after the taking of possession of the goods by the carrier. The goods shall be considered as a total loss if they have not been delivered after 7 days have elapsed since the agreed date of delivery or, when there is no date agreed, 15 days after they were taken over by the carrier.

The carrier shall not be held liable where damage or delay has arisen from:

- Inherent vice or nature of the goods;
- Fault of the shipper or of the receiver;
- Force majeure or fortuitous act;
- Insufficiency or defective packaging regarding goods that, considering its own nature, are subject to loss when are not properly packed; and
- Maintenance, loading, stowage or discharge of the goods by the shipper or by the receiver or by persons acting on the latter's account.

The carrier can not allege defects of the vehicle used to release himself from liability.

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

Save when the value of the cargo is stated in the consignment note or, alternatively, save when a special interest has been agreed by the parties, the carrier can limit his liability in all cases where liability rests with him with exception when it has acted wilfully or with intent to cause the damage or the delay. When the carrier has acted wilfully he will not be able to avail himself of the limits.

The limit of liability for damage or loss to the goods is € 10 per kilogram of gross weight of damaged or lost goods.

When there is delay and an actual loss was so caused the carrier shall not be held liable for more than the amount of the freight paid. However, when a special interest has been agreed, the claimant shall be able to ask also for compensation for loss of profits.

- 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.

No. The time bar period is the relevant one and the way to interrupt time bar needs to be considered.

- 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 relevant time bar to claim damages arising out of the responsibilities of the carrier under Portuguese internal law is of one year. The one year time bar is counted from the date of delivery of the goods to the receiver or of its return to the shipper or, in case of total loss, as from the 30<sup>th</sup> day after the taking of the goods by the carrier.

Time bar is only interrupted by way of service of papers done by the court. A mere out of court notice is not sufficient.

## **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?

With the provisions of Decree law 257/2007 dated of 16 July that was duly amended to reflect the provisions of the two relevant EU Regulations 1071/2009 and 1072/2009.

The activity of road carriage is licensed by the IMTT – Land Carriages and Mobility Institute (“IMTT”).

Generally speaking the following are the requirements to be met:

- Moral probity – by not having a criminal record related to certain crimes such as tax fraud or drug trafficking or money laundering or related to the carriage activity;
- Professional capacity of the directors – to be a bearer of a professional capacity certificate;
- Technical capacity – to have the technical and human capabilities or means adequate to the size of the company;
- Financial capacity – a company shall need to have as a share capital of € 125.000; and
- To be in good standing vis-à-vis tax and social security dues.

Both carriers and the vehicles used need licensing.

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 law imposes additional requirements than the ones listed in article 3 of EU Regulation 1071 but I think it is in line with said EU provision.

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?

The IMTT and other police forces have the authority to check the compliance with licensing requirements. The performance of inland road carriages by unlicensed entities shall be punished with a fine in cash that shall be determined in an amount as from € 1.250 to € 3.740, if the infringer is a physical person, or € 5.000 to € 15.000 if the infringer is a corporation.

- 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?

National law provisions are in line with EU Regulation 1072 in this respect, i.e., the requirement of an EU license for the carrier and a driver's certificate.

Carriers residing in a non EU country will need permission from IMTT to perform activities in Portugal and this will be subject to reciprocity of treatment.

- 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?

The IMTT and other police forces have the authority to check the compliance with licensing requirements. The performance of road carriages by unlicensed entities shall be punished with a fine in cash that shall be determined in an amount as from € 1.250 to € 3.740.

- 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?

N/A.

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

Yes in particular related to the maintenance of the vehicles and also related to the hours of work and rest times.

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

No. The freight rate shall be determined considering the carriage to perform + time of use of vehicles and man power during loading and discharge operations + time for compliance of the carriage to be performed + reference price of fuel.

If the contract is stipulated in writing, the reference price and the type of fuel need to be stated clearly in the contract.

In case there is no written agreement the law contains a subsidiary criterion to determine the reference price of fuel.

In case of no written agreement the consignment note and the invoice need to make reference to the fuel cost. The law admits, subject to certain conditions, the revision of the fuel costs where there is a change equal to or more than 5%

in the reference price between the date of the contract and the date of the performance of the carriage.

This are mandatory rules and a fine may be applied ranging from € 1.250 up to € 15.000 if this is not complied with.

### **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 internal statutory regime for inland road carriage is quite similar to the CMR Convention but has been slightly improved to clarify some tricky points of the CMR. The main difference rests in the test required to break limitation. The CMR requires wilful misconduct or gross negligence to break limitations whilst the inland regime breaks limitation only with wilful misconduct.