

# Carrier Liability in International Road Transport According to CMR

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**Abstract:** *The CMR provides a predictable system of liability for carriers and insurance to both carriers and their clients about the risks involved in the shipment of goods. CMR Convention establishes a strict liability regime for the carrier, meaning that the carrier is generally liable for any loss, damage or delay of the goods from the time they take the goods into custody until delivery. According to CMR provisions, this liability is limited to a fixed amount per kilogram of gross weight lost or damaged. Even if there is a limited amount, the loss, damage or the delay of the goods can lead to substantial claims. CMR insurance mitigate the financial risks associated with this liability, playing thus a crucial role in international road transport.*

**Keywords:** *liability, CMR insurance, carrier, international road transport*

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## I. General remarks

In the global trade, international road transport enables the movement of goods across borders in an economically and efficiently way. The road transport is exposed to various risks, especially for the carriers and their liability.

*The Convention of the Contract for the International Carriage of Goods by Road*, known by the acronym of CMR is one of the most significant international conventions which is the framework regulation in this field, including also the liability of carriers.

The Convention applies to the carriage of goods by road in vehicles for reward, if the place of taking over the goods and place designated for delivery are situated in different states of which at least one is a party to the CMR.

What is important according to the provisions of CMR is not the residence or nationality of the parties of the contract of carriage of goods by road, but the delivery of goods and their receipt to be in different states. Thus, CMR provides a uniform legal framework and a predictable system of liability for carriers, which is applied regardless of the national laws of the involved in the road transport. Moreover, CMR also provides assurance to carriers and to their clients about the risks involved in the shipment of goods.

CMR insurance is a core part of the CMR Convention, which provides a framework for managing carrier liability, protecting carriers by the financial lost.

This article is about to explore the nature of carrier liability in international road transport, focusing on the importance of the CMR insurance.

## 2. Sedes materiae

Usually, carriers assume many responsibilities and risks dealing with the goods transported internationally by road.

The Convention on the Contract for the International Carriage of Goods by Road (CMR), adopted by United Nations at Geneva on 19 May 1956<sup>1</sup> provides the legal framework for international road transport between signatory parties.

Article 17 of the Convention regulates carrier 's liability, establishing a framework for determining when the carrier is liable for the loss, damage or delay of the goods and under what circumstances this liability can be excluded or limited.

The regulation establishes a strict liability regime for the carrier, according to which the carrier is generally liable for any total or partial loss or damage of goods, from the time they take the goods into custody until delivery.

This liability extends to delays in delivery unless the carrier can successfully invoke one of the exonerating circumstances set out in the Convention. The compensation for delay is typically limited to the carriage charges, unless actual damage from the delay can be proven.

The principle of strict liability means that the carrier is responsible for the condition of the goods throughout the entire transport, regardless of fault. The liability under this provision applies unless the carrier can prove the existence of an exonerating circumstance listed in Article 17(2), which limits or excludes the carrier's liability in certain situations, such as force majeure or unavoidable external events, inherent defect in the goods, such as perishability, fault of the consignor or consignee, including defective packaging.

However, the carrier is not relieved of liability by the reason of defective condition of the vehicle used in carriage international road transport or by the reason by the reason of wrongful acts of the person or of the agents from whom he may hire the vehicle.

There are also a lot of circumstances that might limit liability, such as *inter alia* the carriage of livestock, use of open unsheeted vehicles agreed and specified in the contract, insufficiency or/and inadequacy of marks or/and numbers on the packages; improper or inadequate packaging, improper loading or unloading, sensible goods to rust, rotting breakage, desiccation, leakage or the action of moths or pests.

According to Article 17(5), the carrier remains liable to the extent of the factors which have contributed to the loss, damage or delay.

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<sup>1</sup> Romania has acceded to the Convention by Decree 451/1972, published in B.Of. 145/1972.

The framework of liability provides the carrier a consistent defense mechanism, mitigating the application of liability. To invoke these exceptions with success, the carrier must prove that the loss, damage or delay falls within one of the exceptions strictly provided by the Convention.

### 3. Limitations on Liability

Although Article 17 establishes strict liability, the CMR Convention includes limitation of liability provisions.

Under Article 23, the carrier's liability for loss or damage to the goods is limited to a fixed amount per kilogram of gross weight lost or damaged (8.33 Special Drawing Rights per kilogram as of the latest CMR protocols). Of principle, the Convention limits compensation to the amount of the damage actually suffered (*damnum emergens*), even this is capped, and does not allow compensation for loss of profit (*lucrum cessans*)<sup>1</sup>.

These limitations can be overridden if the claimant can prove that the carrier acted with willful misconduct or gross negligence under Article 29, in which case the carrier may be held liable for the full value of the goods.

Carriers may also attempt to limit their liability additionally through contract provisions: in this regard, article 41 of the CMR stipulates that any derogate provision from the ones of the Convention are null or void, without involving the nullity of the other provision of the contract.

### 4. CMR Insurance and its importance

Because of the broad nature of liability stipulated by Article 17, carriers can face significant financial exposure. For example, under Article 23 of the CMR, compensation for damaged or lost goods is calculated on the basis of the value of the goods, and although there is a limit of 8.33 Special Drawing Rights (SDRs) per kilogram, even this limited amount can lead to substantial claims, especially for high-value goods.

In addition, carriers can also be liable for delays under Article 17(1), with damages potentially reaching the full carriage charge and additional damages if can be proved by the consignee or consignor any financial loss.

Secondly, to reduce the financial risks associated with this liability, CMR insurance plays a outstanding role, ensuring that carriers can handle potential claims without facing serious financial results.

While the CMR Convention outlines the legal liability of carriers, CMR insurance is the instrument that helps manage the financial risks associated with this liability. Carriers are required, or/and strongly encouraged, to take out CMR insurance to cover their liability under the convention. This insurance is essential because the

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<sup>1</sup> Dragoș-Alexandru Sitaru, Șerban-Alexandru Stănescu, *Contractul de transport internațional de mărfuri*, Ed. Lumina Lex, București, 2007, p. 80.

financial consequences of loss, damage, or delays can be substantial, particularly in global trade where the value of goods can be high.

Given these risks, carriers operating under CMR contracts must take appropriate measures to protect their financial stability—this is where CMR insurance becomes crucial.

CMR insurance is a specific insurance policy born to cover the obligations imposed on carriers under the CMR Convention. This insurance protects the carrier from having to personally bear the financial burden of claims for loss, damage, or delay to goods under Article 17.

In a nutshell, CMR insurance steps in to cover the cost of such liabilities, up to the policy limits, providing mind comfort to carriers engaging in international road transport.

CMR insurance usually covers claims arising from the total/partial loss of goods, as well as damage incurred during transportation.

Most policies also guarantee compensation for delivery delay, although these guarantees may be subject to specific terms and limitations. Some policies cover also the legal costs of defending a claim under the CMR Convention.

It's very clear that while CMR insurance covers most liabilities stipulated by Article 17, there are exclusions or limitations for gross negligence or willful acts, governed by Article 29 of the CMR Convention. For example, it does not cover damage caused by wrong conduct of the carrier or losses caused by insufficient packaging by the shipper. It also does not cover force majeure events, which are excluded from the carrier's liability under the CMR Convention.

The CMR Convention sets limits on the compensation carriers must pay for loss or damage. The liability is generally limited to 8.33 Special Drawing Rights (SDR) per kilogram of gross weight of the goods. CMR insurance retrieve these limits, providing security up to the amounts stipulated in the convention.

Although CMR insurance offers a certain safety net, it is not without challenges or limits. One of this is the restricted limit of amount, which may not cover the entire value of high-value items. For example, when the shippers transport expensive or valuable goods.

Moreover, the geographical area may be an issue of disputes. CMR Convention does not apply globally, only in the countries have signed the Convention. Transporting to or through the countries that are not signatories necessitate additional insurance arrangements.

In principle, the carriers in the international road transport sector should carefully assess their insurance needs and ensure that they have adequate coverage to protect their interests.

Additionally, shippers and consignees benefit indirectly from CMR insurance, as it ensures that claims for loss or damage to goods will be paid, even if the carrier lacks the personal financial capacity to cover such claims.

## 5. Conclusions

Article 17 of the CMT Convention establishes a strict liability regime for the carrier, providing a predictable and uniform regime for resolving disputes arising from the international road transport of carriage of goods.

Carrier 's liability may expose them to substantial financial risk, especially in cases involving valuable goods. CMR insurance becomes a practical solution, allowing carriers to reduce the financial impact of their legal obligations under the CMR. By covering claims for loss, damage, and delay, CMR insurance is a crucial safeguard in the international logistics industry.

Shippers, carriers and the buyers benefit all from the protection provided by CMR insurance. In international road transport, CMR insurance protects carriers from the potentially payments consequences of a liability claim. These payments may have the potential to threaten their business, or the insurance will ensure from suffering catastrophic losses.

In the international trade, the risks of loss or damage is significant for the shippers, so the CMR insurance brings a guarantee of the shipment, in case of an accident, for example, which causes damage or loss.

The buyers are also protected by CMR insurance. If the goods are delivered improper, they can be compensated by the carrier through his insurance.

We appreciate that the international road transport of goods will continue to develop and so the importance of CMR insurance also will increase, ensuring a predictable and safety framework alongside with the minimise of exposure to financial claims.

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