

**SHARING ECONOMY IN LOGISTICS:
TOWARDS A LEGAL FRAMEWORK FOR CO-OPERATION
SELECTED CMR ISSUES RELATED TO SHIPPERS' CO-OPERATION AGREEMENTS**

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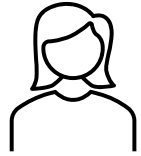
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CMR Colloquium 2024

Uniform interpretation of the CMR



Cooperation between LCL shippers

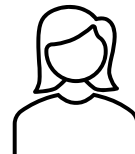


➡ **Half empty**

➡ **LCL carrier**

➡ **FCL container (thanks to cooperation)**

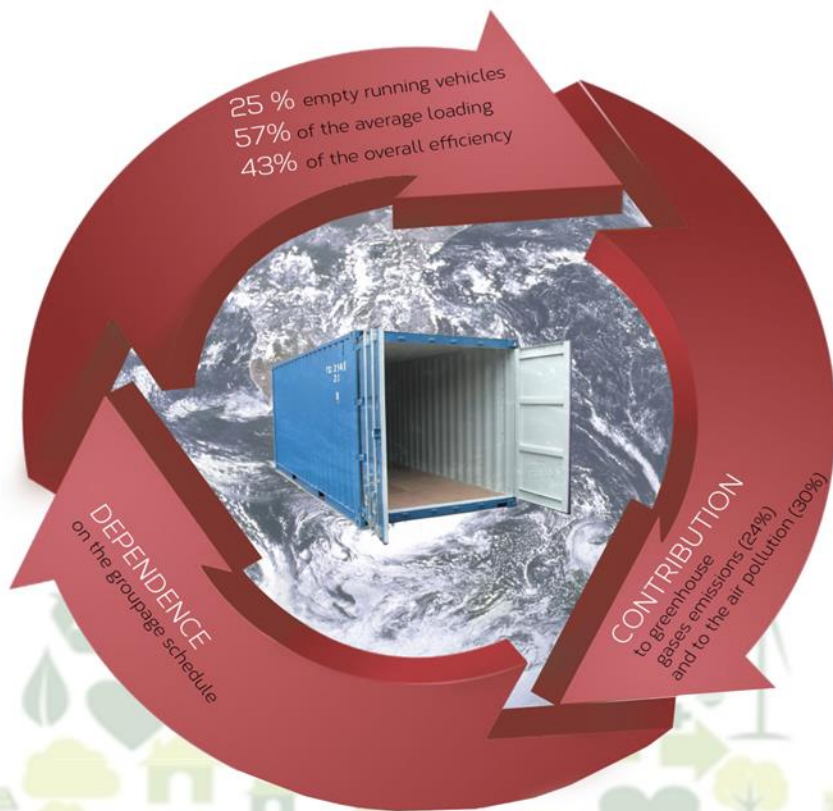
40' container = 24 pallets





CARGO BUNDLING

• GROUPAGE



• SHIPPERS' CO-OPERATION

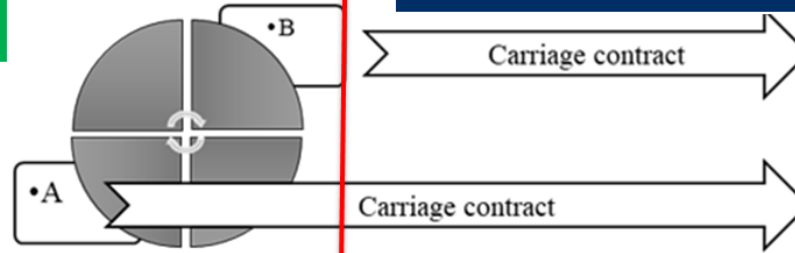


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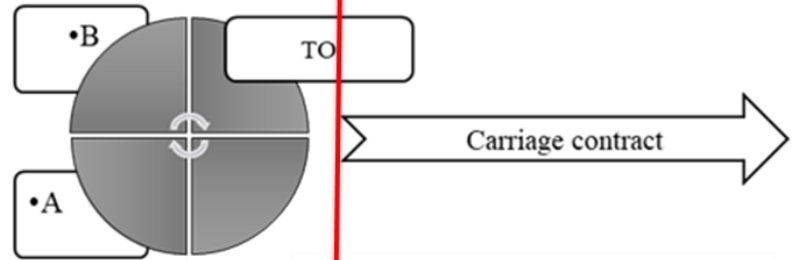
Structure of internal co-operation

Model 1



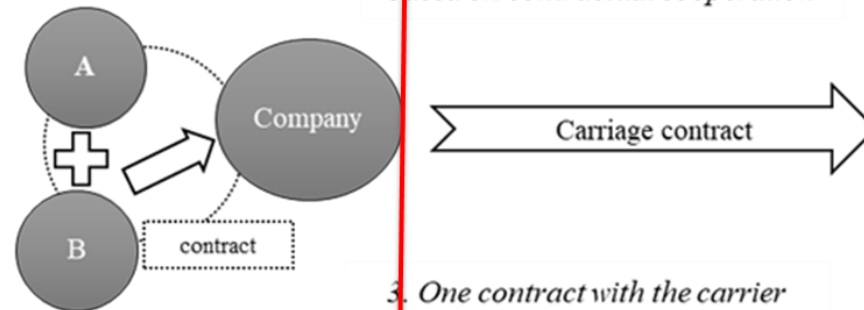
1. Separate contracts with the carrier

Model 2



2. One contract with the carrier based on contractual cooperation

Model 3



3. One contract with the carrier based on institutional cooperation

Execution through contracts of carriage

Operational execution

milk-runs



Consolidation points

Problems analysed in the project

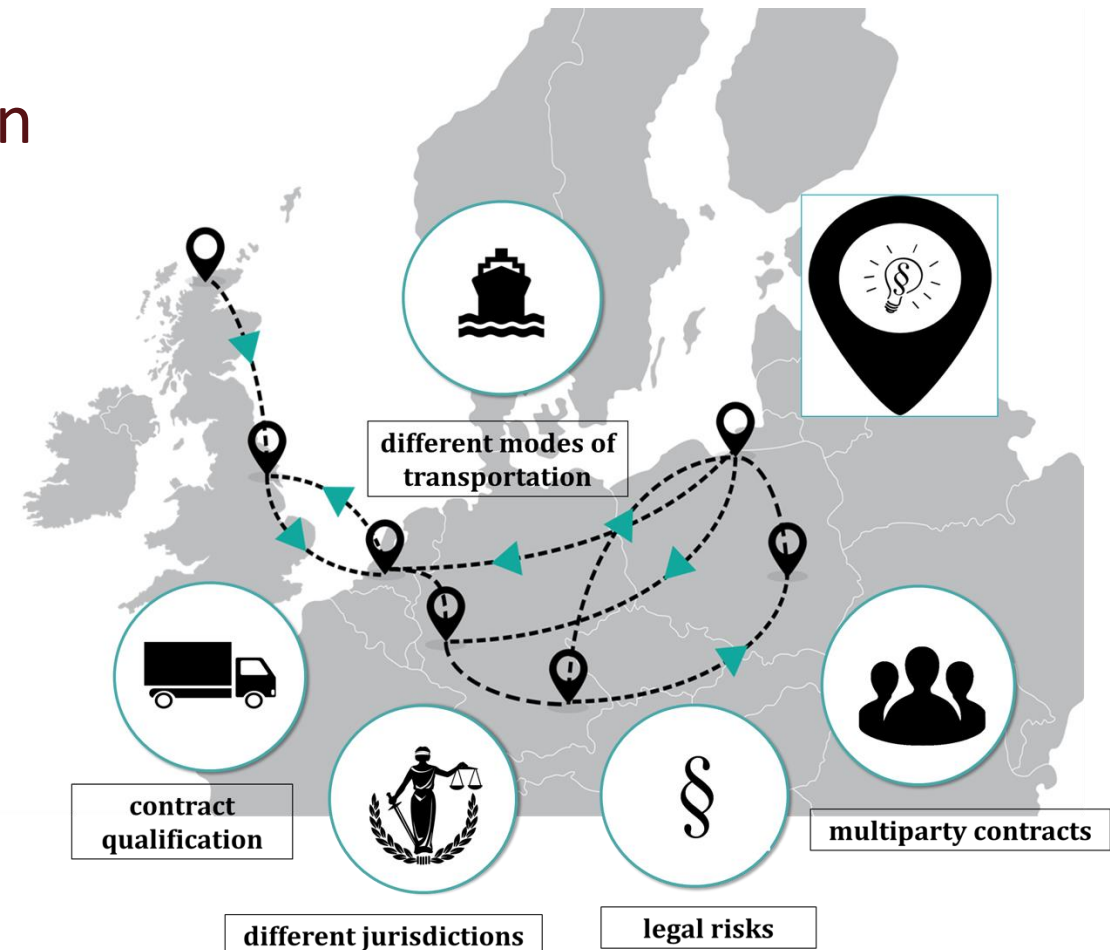
Problem 1 – restriction of competition v sustainable initiatives

Problem 2 – erga omnes or inter partes claims in mandatory contract law

Problem 3 – mandatory v non-mandatory regimes for the classification of internal co-operation and new intermediaries

AIM: legal framework for CB

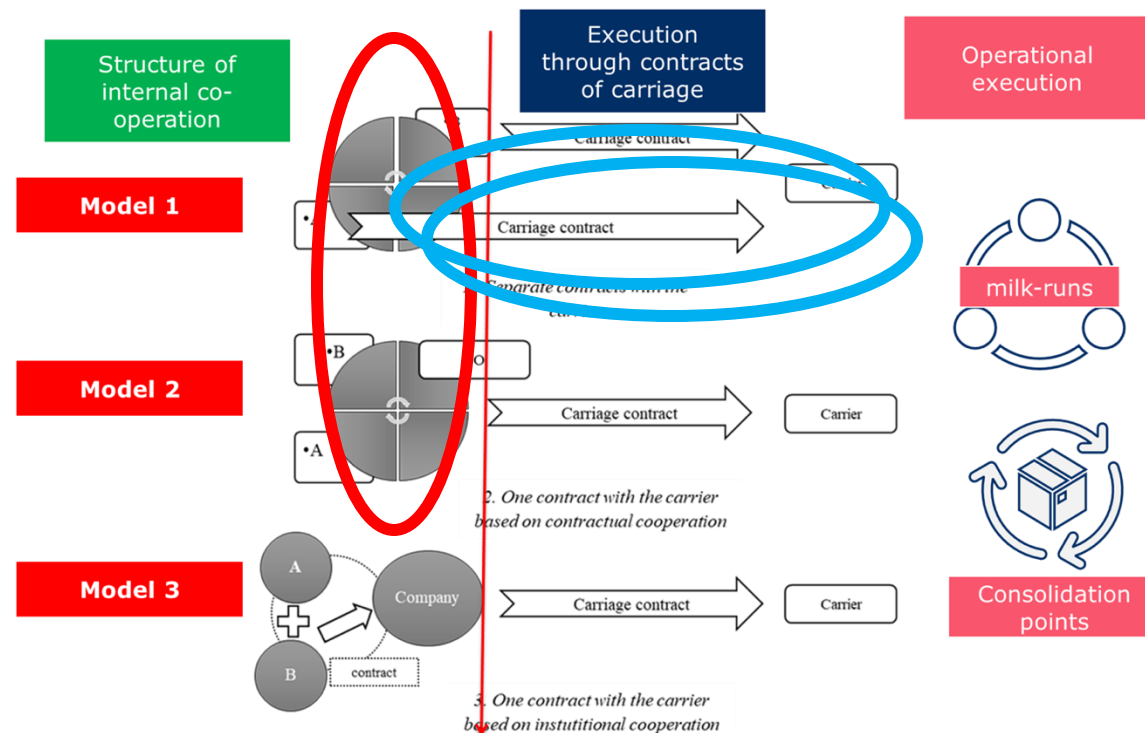
Which solutions (regulatory & contractual) would remove the legal obstacles to co-operation in cargo bundling?



2 a) **Problem 1** – legal classification of internal co-operation agreements – contract of carriage?

2 b) **Problem 2** – operation of exoneration ground concerning insufficient packing

3. Way forward?



PROBLEM 1

CO-OPERATION AGREEMENT AS CONTRACT OF CARRIAGE?



Co-operation agreement as contract of carriage?



A **framework contract** organises the process of concluding contracts in the future. The provisions of the executory contracts are included in it in a form that is so unspecific that it is impossible to determine the content of the parties' future performance.

An **incomplete contract** is a contract with missing provisions.

An **umbrella or volume contract** is a contract that provides for carriage on multiple occasions.

CMR –existence of a CoC->
determination of contractual
obligations -> what are the
elements necessary?

Is there a valid
contract?



Is there a
contract for the
carriage of
goods?



Is there a
contract falling
under the scope
of a
convention?

The court must consider the elements
that are necessary for the existence of
a carriage contract. Given **the
external gap in the CMR**, this
assessment leads to recourse to
national laws.



Is there a
contract?

A framework contract organises the process of concluding contracts in the future – not a CoC -> terms not sufficiently definite/determinable/ ascertained -> similar approach CISG



Is there a contract for the carriage of goods?

- similar contracts & ancillary contracts?

Similar contracts are not CoC -> The CMR does not apply to co-operation contracts that **do not have the transport of goods as their purpose such as** a preliminary agreements on the basis of which the parties **undertake to conclude a future contract;**

volume & umbrella contracts

- 'volume contract' - denotes a single obligation to **carry a certain volume of goods** that can be discharged through multiple shipments **over a defined period**
- umbrella contract- contract for multiple shipments **but the cargo element or the time element is of no relevance**



volume & umbrella contracts

- ‘volume contract’ - denotes a single obligation to carry a **certain volume of goods** that can be discharged through multiple shipments over a **defined period**
- umbrella contract- contract for multiple shipments but the **cargo** element or the **time** element is **of no relevance**



- Cf RR and HR -> Art 80 RR (RR apply to volume contracts) & Article 2.4 HR if a contract is for the ‘future carriage of goods in a series of shipments during an agreed period, the provisions of this Convention apply to each shipment’



- **CMR?**

Is there a contract falling under the scope of a convention?

- The CMR already acknowledges the possibility that a contract can be performed over several transports (Article 34 CMR), which bears semblance to volume contracts, at least as far the possibility of partial performances is concerned. Furthermore, the general wording of Article 5.2 could suggest that multiple shipments can result from **any** contract of carriage, **including ones in which the cargo element and time element are not present.**



Incomplete contracts under national law -> GOODS

PL -> determinable together with a transport route, and due remuneration v EN - the ascertainability of goods is not necessary for the existence of a contract of carriage and the application of the CMR

Is there a contract falling under the scope of a convention?

Transport execution might be relevant

The severable character of an umbrella or volume contract means that an obligation may be performed in parts.

Period of road carrier liability starts from the moment of taking the goods over (Art 17 CMR)

If the contract parties make the method of contract execution optional, as is the case when the carrier e.g. selects the mode of transport, the CMR might apply to some but not all parts of the umbrella or volume contract at the moment of their execution.

PROBLEM 2

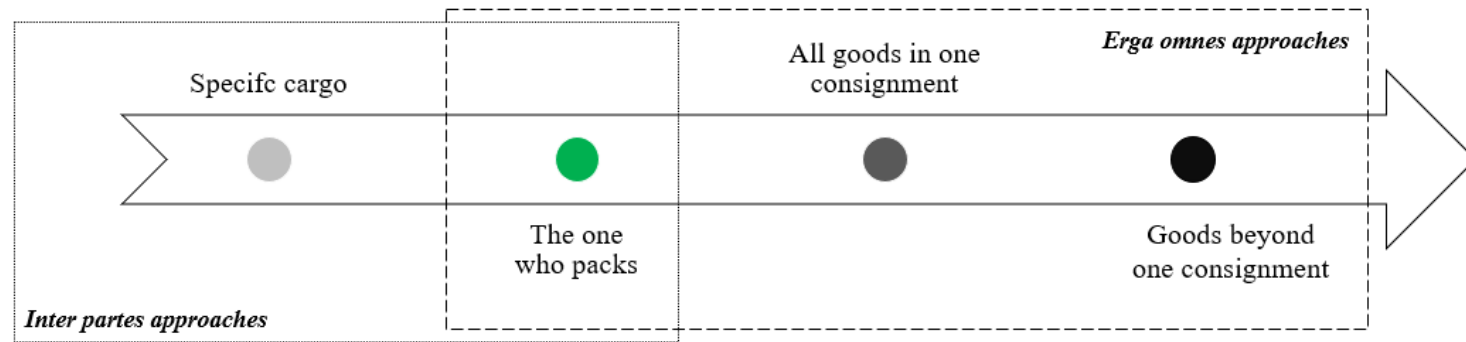
INSUFFICIENT PACKING IN A MULTIPARTY CONTEXT



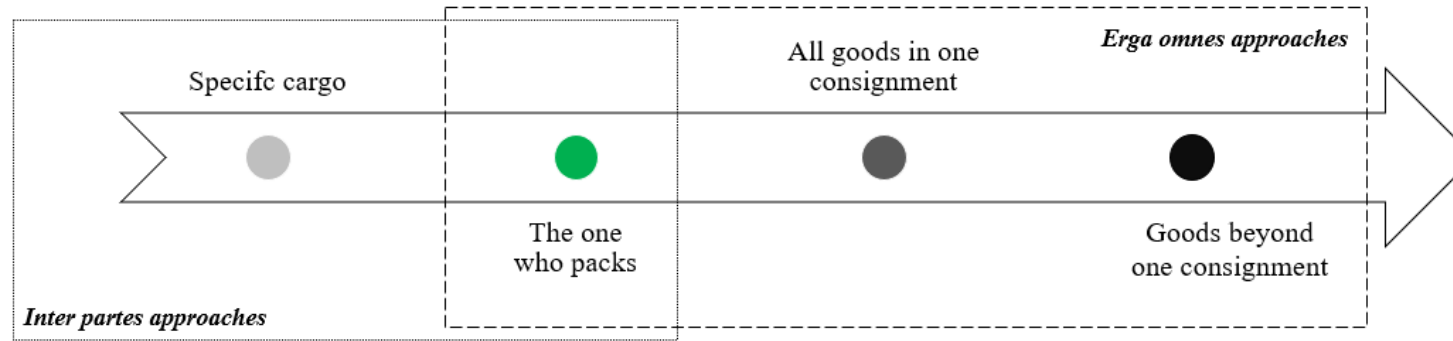
defectively packed goods damage other, adequately packed goods in a bundle

Can the carrier rely on an exoneration ground against the cargo interest whose goods were damaged?





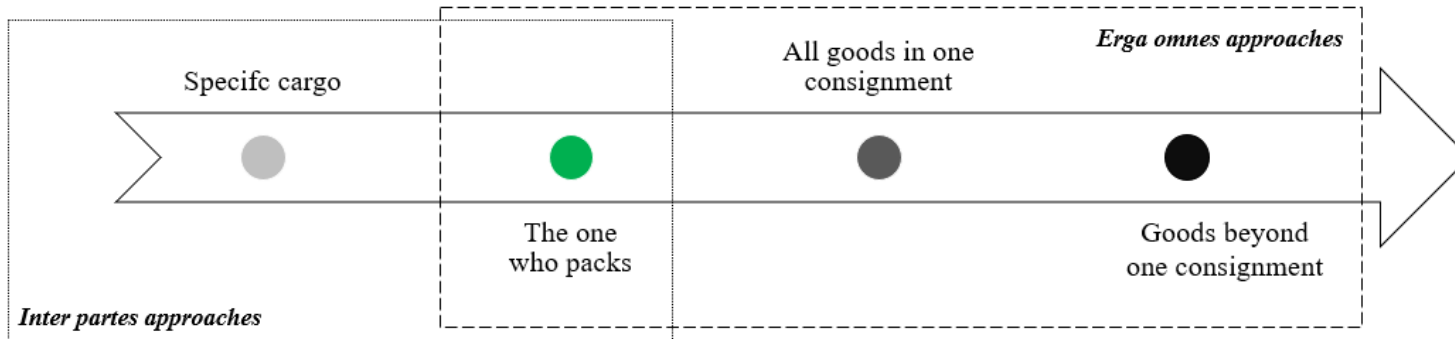
Approaches to the application of the exoneration ground to a bundle with goods.



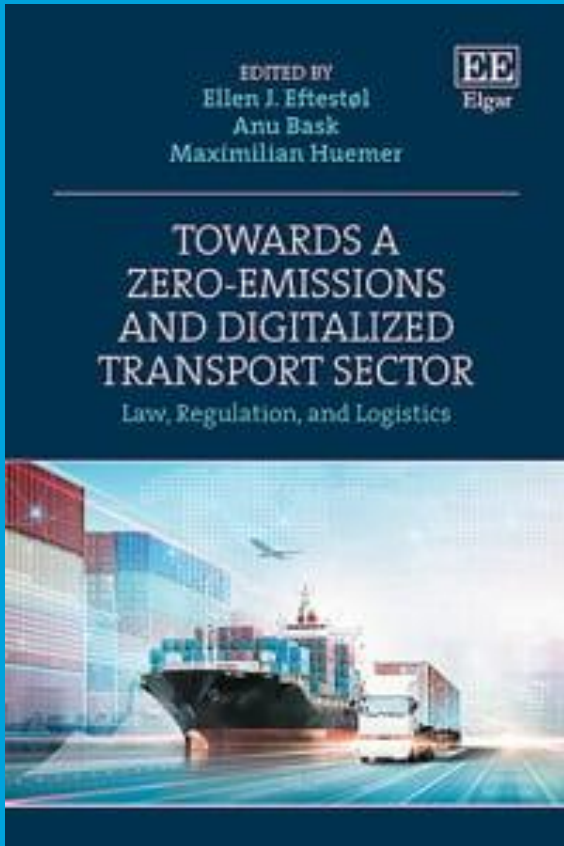
Approaches to the application of the exoneration ground to the bundle with goods.

Problems with the approaches attaching the importance to the goods:

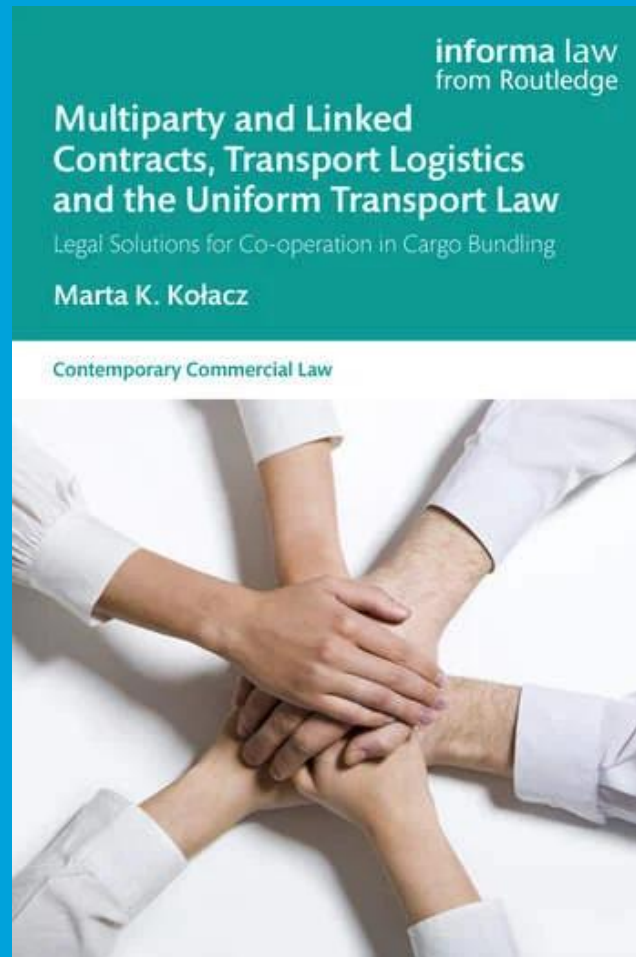
- 1) Various understandings of a term 'consignment',
- 2) The approaches do not recognize operational execution of transport– milk-runs v consolidation points
- 3) The standard of packing - the ability of the goods to withstand the dangers of the normal carriage that has been contracted for/ general practice - but for the shipper-packed units, packing includes the condition of the loading unit and the condition of the individual objects inside of it?



- ➔ Article 17.3(k) of the Rotterdam Rules provides explicitly that the packing exoneration exempts the carrier unless they are packing the goods + Article 27.3 provides that when the shipper packs a container or loads a vehicle, they must stow, lash, and secure the contents in or on the container or vehicle carefully and properly and in such a way that they do not cause harm to persons or property.
- ➔ exoneration ground could thus apply to outer and inner packing (cf. inherent vice)
- ➔ If the goods are handed over to the carrier separately, it will be able to invoke the exoneration ground only inter partes because the goods are handed over at different points and the risk of damage passes accordingly (further possibility to rely on Art 10 CMR)



Competition law aspects of
shippers' co-operation ->
Chapter 4



Coming soon

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