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Liability of International Road Carriers (Articles 3, 17, 18 and 28 of the CMR)

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The liability of the road carrier under the CMR

Transport law provides for a relatively strict regime of liability for carriers:

- **Principles of liability in the CMR : presumption of liability**
- **Limits:** several grounds for exemption from liability



Outline of the presentation

Introduction : Principles governing the liability of the CMR road carrier

1. Presumption of liability

- **Scope of the carrier's liability :** type of damages covered by the presumption
- **Procedures for establishing damage**

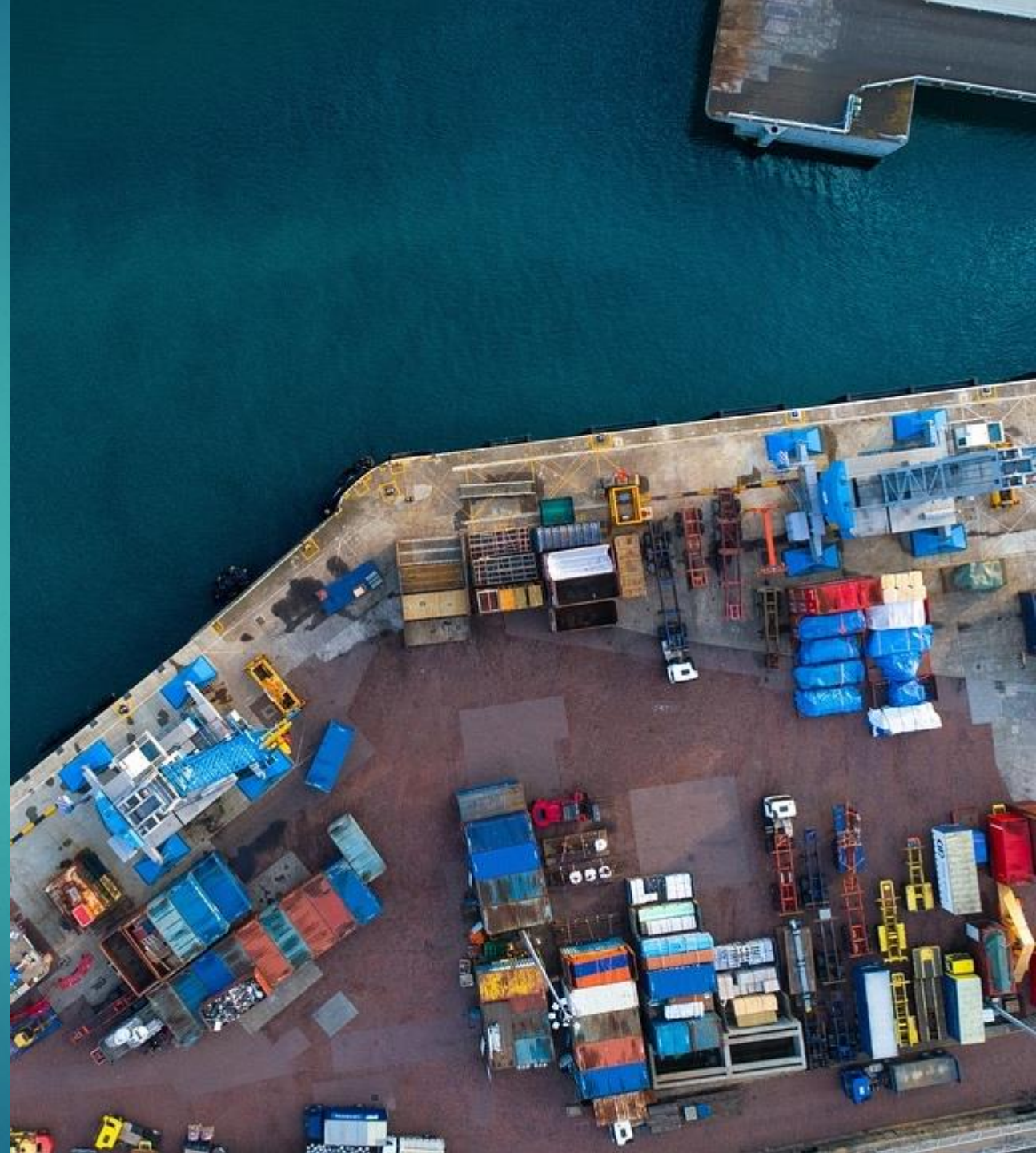
2. Grounds for exemption from liability

- **'Normal'/ordinary grounds** (Article 17.2 CMR)
- **'Special' grounds** (Article 17.4 CMR)
- **Burden of proof** (Article 18 CMR)



Introduction :

PRINCIPLES OF LIABILITY





The liability of the road carrier under the CMR

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► Introduction : PRINCIPLES OF LIABILITY

Article 17 CMR imposes a **presumption of liability** on the international road carrier

- whenever goods are damaged, lost or arrive at their destination late, **the carrier is presumed to be liable** for this breach of the contract of carriage.

>not necessary to prove a fault > sufficient to prove a loss, damage or delay.

- The presumption also covers **failures attributable to the company's staff or equipment**, with the exception of the road vehicle itself.

Art. 3 CMR: The carrier is liable for the acts and omissions of its employees (« agents & servants ») and of any other persons whose services he makes use for the performance of the carriage when such employees or persons are acting in the course of their employment...

- For this presumption to apply, certain **conditions must be met** (§ 17.3.1).



Liability of the road carrier under art. 17 CMR

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► Introduction : NATURE OF THE LIABILITY

- The Convention primarily addresses liability for **breach of the contract of carriage** $\Leftrightarrow$ **contractual liability**
- However, it **also** governs **non-contractual liability**
 - ✓ **if** "under the applicable law, loss, damage or delay occurring during carriage governed by this Convention may give rise to an extra-contractual claim" (Art. 28.1)
 - ✓ Including where the carrier is sued on account of the acts of its servants (Art. 3)

CSQ: the carrier may rely on the provisions of the Convention which exclude the carrier's liability (Articles 17.2 and 17.4) or which determine or limit the compensation payable (Articles 23 and 29).



Liability of the road carrier under art. 17 CMR

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► Introduction : LIMITS = GROUNDS FOR EXEMPTION FROM LIABILITY

The carrier may be exempted from this liability by invoking **two types of grounds** for exemption:

- so-called **normal or ordinary causes** (Article 17.2)
- and the **specific risks** particular to this Convention (Art. 17.4).

Sharing of liability: Where another party involved in the transport operation has contributed to the damage, liability may be shared between that party and the carrier (Art. 17.5).

EX. Incorrect information given by the sender (weight) causing a damage + delay due to the carrier



1) Presumption of liability of the carrier





Liability of the road carrier under art. 17 CMR

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1. Presumption of liability

The principles of liability set out in five rules:

- 1) The provisions place a genuine **presumption of liability** on the road carrier.
- 2) **Reservations** made on delivery (or after) establishes the existence of the damage and is sufficient to give rise to the carrier's liability.
- 3) The claimant is **not required to prove the carrier's fault**.
- 4) The carrier **may not**, by means of a contractual clause, **limit its liability** (Art. 41.1 CMR). Two limited exceptions (Art 23.6 > Arts 24 & 26).
- 5) The carrier is liable, as for its own acts and omissions, for the **acts of its servants and of any subcontracting** carriers whose services it uses (Art. 3 CMR).



Liability of the road carrier under art. 17 CMR

► Scope of the carrier's liability

- The presumption of liability under Article 17.1 CMR applies only to **certain types of damage**.
- Its application must be established in accordance with **certain formal requirements**.
- Furthermore, it applies only to damage that occurred **whilst the goods were in the carrier's custody**.



Liability of the road carrier under art. 17 CMR

► Scope of the carrier's liability

- **3 Types of damages** (Art. 17.1): **total or partial loss, damage or delay.**
- **Any other cause** of non-performance of the contract of carriage is thus **excluded** from the scope of the presumption.

RQ. Unlike under French law, this is therefore an **exhaustive list**.

Consequently, other forms of damage, such as :

- non-pecuniary
- or commercial damage,

are excluded from the compensation payable by the carrier.

NB: subject to Art. 23.4 « other charges »



Liability of the road carrier under art. 17 CMR

- **3 Types of damage** : total or partial loss, damage or delay in delivery.

However, the CMR does not define these types of damage (except delay).

- RQ: in principle, the law applicable to the contract of carriage would need to be consulted to define these damages

Concept of damage. Damage is deemed to have occurred when the goods are in a different, deteriorated condition from that observed when they were taken over by the carrier.

- Thus, the reduction in the value of goods transported and sold 'as salvaged', in so far as they were no longer fit for sale following a breach of the cold chain during transport, is regarded as damage (*Court of Appeal, Paris (France), 2 October 2003, No. 2001/20695: IDIT-CMR(EN) No. 42559*).
- **Damage to goods other than the goods being carried.**

The CMR governs only the carrier's liability for the loss of or damage to the goods being carried > governed by the applicable national law.



Liability of the road carrier under art. 17 CMR

- **3 Types of damage : total or partial loss, damage or delay in delivery.**
- **Total loss : According to French case law :** When no delivery at the place of destination > no trace of the consignment
 - or impossible to recover the goods.

RQ. This does not necessarily mean that the goods have disappeared or been destroyed. The goods may have been handed over to an unidentified third party (Court of Cassation (Belgium), 18 March 2016, No. C.15.0183.F: BTL 2016, No. 3597, p. 299; IDIT-CMR(EN) No. 41802).

- **Total loss/late delivery:** Where a delivery is **significantly delayed**, which may suggest that the goods have been lost
 - Art. 20 CMR establishes a **presumption of total loss** where the goods have not been delivered to the consignee **within 30 days** of the expiry of the agreed delivery period, or **within 60 days** if no delivery period has been agreed.

NB: the CMR does not define the concept of delivery, although this is addressed in Articles 13 to 16.



Liability of the road carrier under art. 17 CMR

▪ Delay

Art. 19 defines 'delay in delivery' according to whether or not a delivery period has been agreed. > when the promised service has not been performed within a specified period.

➤ No specified delivery period.

The existence of a delay therefore presupposes that **the contract has been performed**.

Total failure to carry out the transport cannot be regarded as a delay (Court of Appeal, Milan (Italy), 11 July 1975: Rev. Dr. Unif. 1977/1, p. 336; IDIT-CMR(FR) No. 19212).

NB: **A delay is not in itself a loss**, but it may give rise to a loss for the person entitled to the goods.

>To obtain compensation, it is necessary to prove not only that the delivery time has been exceeded but also the specific loss caused to that person by the delay (Court of Appeal, Paris (France), 5th Chamber, 23 May 1980: BT 1980, p. 414; IDIT-CMR No. 19211. – Court of Appeal, Agen (France), 26 November 1985: BT 1986, p. 235; IDIT-CMR(EN) No. 42512).

EX. Christmas tree order arrived in January > the recipient lost customers and money because they had to place an urgent order for trees with another supplier



Liability of the road carrier under art. 17 CMR

▪ Delay

Damages caused by a delay in delivery can take various forms:

- Most often, these are **commercial losses**, as the delay has caused the consignee to miss out on a sale, or the market value of the goods has fallen.
- However, the delay may **sometimes result in damage to the goods**, particularly in the case of perishable goods.
- In such cases, case law recognises the existence of both a delay and damage. Indeed, Article 25 of the CMR requires the carrier to compensate for any depreciation of the goods without distinguishing between the causes of the damage.

In order to benefit from the presumption of the carrier's liability, **the claimant must prove the existence of the damage.**



Liability of the road carrier under art. 17 CMR

1. Presumption of liability: Procedures for establishing the damages

- ❖ **Determination of loss and damage:** 2 procedures / total loss and partial loss.
 - **Total loss:** the **consignee cannot be required to fulfil any specific formalities** to establish the existence of the damage, insofar as no delivery has taken place.
 - **Partial loss or damage:** the consignee is required to take certain special steps to establish the damage. ⇔ **RESERVATIONS**
 - **Distinct procedures for apparent and non-apparent damage** (Art. 30.1 CMR)



Liability of the road carrier under art. 17 CMR

1. **Presumption of liability:** Procedures for establishing damage :

1) **PARTIAL LOSS or DAMAGES:** Distinct procedures for **apparent and non-apparent** damages (Art. 30.1 CMR)

► **Apparent shortages or damage:** must be recorded by the consignee at the time of taking delivery > Two procedures :

- **report** drawn up in the presence of the carrier
- and the formulation of **unilateral reservations**.

NB: Only these two methods of proof (at the consignee's discretion) are **capable of rebutting the presumption of delivery in accordance with the contract**.

Consequence: In the absence of a joint report or validly raised reservations, the consignee is presumed, until proven otherwise, to have received the goods in the condition described in the consignment note. This is therefore a **presumption of delivery in accordance with the consignment note**.

► **Losses and damage not apparent at the time of delivery:** these must be the subject of **reservations** by the consignee **no later than 7 days** from the day following delivery.



Liability of the road carrier under art. 17 CMR

2) DELAY IN DELIVERY

Art. 30.3 CMR: the consignee must **notify the carrier of any reservations within 21 days** from the day following the date on which the goods were made available

- **SANCTION** : failing that the right to claim is forfeited. The entitled party's legal action then becomes inadmissible.



Liability of the road carrier under art. 17 CMR

- **Effects of the presumption**

The purpose of the presumption in Art. 17.1 is to facilitate the award of compensation to the entitled party in terms of the burden of proof, as the latter is often far from the place where the damage was discovered. > system advantageous : **the entitled party does not need to prove that the carrier was at fault**; the carrier's liability is automatically established once it is established that the damage occurred between the time the goods were taken into custody and their delivery.

- **Presumption of fault:** **sufficient to prove the existence of damage**, which may be done, in particular, by means of reservations (Cass. com. (France), 18 Jan. 2000, No. 97-19585: BTL 2000, p. 74; IDIT-CMR(EN) No. 40358).
- **Presumption of causation:** the causal link between the damage and the carriage is also presumed. The claimant is therefore **not required to provide full and precise proof of the origin of the damage**.

How to rebut this presumption ?

- ❑ **simple presumption** which can be rebutted, in particular by the carrier proving the **existence of a ground for exemption**.



Liability of the road carrier under art. 17 CMR

2. Grounds for exemption from liability for international road carriers

- ▶ The international road carrier may rely on **two categories of grounds for exemption** : 'Normal' or ordinary grounds Art. 17.2)

RQ: This regime is less severe than that applicable to domestic road carriers in France

Evidence. To benefit from these grounds for exemption, the carrier must clearly **establish that the loss, damage or delay is indeed attributable to that event** (Article 18.1 CMR).

Condition for exemption: fault as the sole and exclusive cause of the damage.

Failing this, the carrier may nevertheless be entitled to partial exemption.

Liability of the road carrier under art. 17 CMR

2. Grounds for exemption from liability for international road carriers

► 'Normal' or ordinary grounds Art. 17.2)

- **Article 17.2** sets out a **first set of grounds for exemption** (rather similar to French law).

2. The carrier shall, however, be relieved of liability if the loss, damage or delay was caused by the wrongful act or neglect of the claimant, by the instructions of the claimant given otherwise than as the result of a wrongful act or neglect on the part of the carrier, by inherent vice of the goods or through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.

- **fault of the person entitled to compensation,**
- **instruction from the person entitled to compensation,**
- **inherent defect in the goods,**
- 'circumstances which the carrier could not avoid and the consequences of which he could not prevent'.



Liability of the road carrier under art. 17 CMR

□ 'Normal'/ordinary grounds for exemption

1°) fault on the part of the person entitled to the goods, or on the part of a person acting on their behalf

□ Fault on the part of the sender or consignee

Relevant faults. faults most often relate to a **failure to provide information or the incomplete drafting of transport documents.**

E.g. Fault on the part of the sender resulting from a failure to provide information:

- failure to inform the carrier of a particular characteristic of the goods, such as the unusual height of a machine's centre of gravity (Cass. com. (France), 5 July 1977, No. 77-11.826: BTL 1977, p. 402; IDIT-CMR(FR) No. 19697);
- act of transporting a consignment of wine in an open-top lorry in the face of foreseeable cold weather in winter and in that region, when the goods are known to belong to the category of frost-sensitive items (CA Nîmes (France), 18 May 1988: BT 1988, p. 472).
- incorrectly completed consignment note by the sender : incorrect consignee's address, or absence of a document required for customs clearance of the goods (Court of Appeal, Versailles (France), 20 Nov. 1985: BT 1986, p. 264).



Liability of the road carrier under art. 17 CMR

► 'Normal' /ordinary grounds

2°) Instructions from the entitled party

Instructions given by the sender or the consignee may also constitute grounds for the carrier's exemption from liability.

E.g.: instructions given by the consignor on the consignment note regarding the **adjustment of the refrigeration unit** (*Commercial Court of Cassation (France), 19 April 1982, No. 79-15808: BTL 1982, p. 309; IDIT-CMR(FR) No. 19504*).

Where the entitled party has reserved not only the right to decide how the vehicle is to be cleaned, but also the right to designate the person who is to carry out the cleaning, they are liable for any resulting defect in the vehicle (*Federal Court of Justice (Germany), 28 Feb. 2001: ETL 2003/1, p. 131; IDIT-CMR(EN) No. 42553*).



Liability of the road carrier under art. 17 CMR

3°) Inherent defect in the goods

Definition: a defect affecting goods that are prone to natural deterioration.

> intrinsic defect that affects the goods and predisposes them to deteriorate during carriage.

According to some authors, it is a 'relationship between the natural fragility of the goods and the conditions inherent in the carrier's normal operations'.

NB: This ground for exemption must be distinguished from 'the nature of the goods exposed to loss or damage due to causes inherent in that very nature' (preferential ground, Art. 17.4).

Liability of the road carrier under art. 17 CMR

3°) Inherent defect in the goods > Case law:

- **particular susceptibility of goods to freezing** thus constitutes an inherent defect (*Court of Appeal, Paris (France), 25 March 1969*: BT 1969, p. 174).
- *On the other hand*, as **wine is notoriously susceptible to freezing**, transporting a consignment of wine in an uncovered lorry during winter in a cold region does not constitute an inherent defect (*Court of Appeal, Nîmes (France), 18 May 1988*: BT 1988, p. 472; IDIT-CMR(FR) No. 12053).
- **diseases affecting animals**, defects in manufactured goods, the natural evaporation of certain liquids, or even parasites (*Court of Appeal, Rouen (France), 1 March 2012*, RG No. 11/01448: BTL 2012, p. 201; IDIT-CMR(FR) No. 41478) or bacteria infecting agricultural produce, etc. (*Court of Appeal, Aix-en-Provence (France), 12 May 1987*: BT 1987, p. 400; IDIT-CMR(FR) No. 8127).

NB: Case law assesses defects in the goods on the basis of **two factors**: the nature of the goods and the carrier's normal operating conditions.

Ex. Glass does not fall within the scope of §d as it is fragile, but its very nature does not mean that damage during transport is inevitable if it is properly packed (*Com. Court Ghent (Belgium), 20 June 1986* : ETL 1986, p.371 ; IDIT-CMR(EN) n°42517).

Liability of the road carrier under art. 17 CMR

4°) Circumstances which the carrier could not avoid...

The carrier may be relieved of liability where it establishes the existence of '***circumstances which the carrier could not avoid and the consequences of which it could not prevent***'.

Concept. This refers to an unusual or extraordinary event which the carrier was unable to deal with. NB: This concept is **close to force majeure under French law**.

HOWEVER, the event need not be unforeseeable here – it is a broader concept than that of force majeure under French law.

Criteria for assessment. Case law applies a case-by-case assessment.

- The mere occurrence of the event is not sufficient in itself.
- What matters is the **conduct of the carrier (& driver) before and during the event..** (*Cass. com. France, 7 Jan. 2003, BTL 2003, 49, IDIT-CMR(FR) No. 41327; IDIT-CMR(EN) No. 41291*).
- **2 Conditions.** For an unusual event to constitute grounds for exemption, it must be **unavoidable** ('which the carrier could not have avoided') and have an **insurmountable effect** ('the consequences of which ...').

The French Court of Cassation verifies that these conditions have been precisely established by the judges, failing which the judgment may be quashed on the grounds of lack of legal basis (*Cass. com. 11 July 2006, No. 04-18079; BTL 2006, No. 3140, p. 499; IDIT-CMR(EN) No. 41281*).

Liability of the road carrier under art. 17 CMR

4°) Circumstances which the carrier could not avoid...

Recent French case: **Rouen Court of Appeal, 23 January 2025**, IDIT-CMR(EN) n°42992

- ▶ **Key elements:** Transport France/Belgium – Cascade subcontracting – Parking on an isolated, poorly lit, unfenced, unguarded motorway lay-by with no CCTV – Theft of part of the load (cell phones) during the night by armed men – Article 17.2 CMR – Exemption of the carrier (yes) – Circumstances which the carrier could not avoid and the consequences of which it could not prevent (yes)
- ▶ **Summary :** While, within the meaning of Article 17.2 of the CMR Convention, simple theft does not constitute grounds for exemption, this is not the case when it involves theft committed in a group with the use or threat of a weapon in circumstances such that it could not have been prevented by the carrier. However, it is for the carrier to prove that the damage thus caused was of an irresistible nature, both in its causes and in its effects, and that, in fact, it did not commit any fault which made the theft possible, in the carriage of goods which it knew to be reported and of great value, by failing to take the necessary precautions.

Liability of the road carrier under art. 17 CMR

4°) Circumstances which the carrier could not avoid...

Recent French case: **Rouen Court of Appeal, 23 January 2025**, IDIT-CMR(EN) n°42992

- **Exemption of the carrier** whose driver, although he had stopped for the night at an isolated and poorly lit motorway service area, **could not know either the exact contents of his load** (pallets covered by black plastic film) or its value, **had to stop to comply with rest time regulations** (14 hours of driving) and was also **faced with poor weather conditions** making it difficult for heavy goods vehicles to drive (heavy snowfall).

The modest cost of transport did not include any special security services and the carrier had not received any specific instructions.

Finally, The court ruled that the fact that the driver had parked overnight at the rest area **could not be considered a fault such as to have made the theft of which he was the victim foreseeable** and such as to exclude the exemption provided for in Article 17.2 of the CMR Convention.

Liability of the road carrier under art. 17 CMR

4°) Circumstances which the carrier could not have avoided...

Preventive possibility to overcome a damage. Unforeseeability is not a condition required by the Convention, even though an event is often insurmountable only because it was unforeseeable.

According to French case law the **carrier is expected to prevent such damage.**

CSQ: The courts examine whether the carrier had taken all necessary precautions to avert the harmful consequences of an irresistible event.

Ex. stopping at a service area before nightfall, at a time when there is still a steady flow of traffic, may be regarded as a precautionary measure motivated by prudence and a desire to avoid the need to stop later and under more risky circumstances (*Court of Appeal, Paris (France), 27 April 2006*, No. 03/22003: IDIT-CMR(FR) No. 22718; IDIT-CMR(EN) No. 42563

Failure to take the necessary precautions to prevent the damage from occurring therefore precludes the benefit of this ground for exemption (*Cass. com. (France), 2 Feb. 1999*, No. 97-12.290: IDIT-CMR(FR) No. 41337; IDIT-CMR(EN) No. 41301).

In this context, French case law reintroduces, to some extent, the condition of unforeseeability.



Liability of the road carrier under art. 17 CMR

4°) Circumstances which the carrier could not have avoided...

Theft. with regard to the theft of goods, French case law specifically examines whether the carrier took the necessary precautions to prevent it. **Thus, the theft of goods is rarely regarded as a ground for exemption.**

E.g. theft following the cutting of the wire mesh fencing surrounding a secure car park, where it was established by evidence that the vehicle was parked with its rear doors facing the fence and close to it, contributed to the relative ease with which the theft was carried out (Court of Appeal, Orléans (France), 28 Feb. 2008, No. 06/03378: IDIT-CMR(EN) No. 42566).

Armed robbery. Exemption (yes).

According to the Court, the wording of the CMR is broader than the concept of force majeure, under Polish law. (*Supreme C., civil div. (Poland)*, 17 Nov. 1998, n°III CKN 23/98 : Legalis no 43103 ; IDIT-CMR(EN) n°).

(*Cass. com. (France)*, 30 June 2004, n°03-13091 : BTL 2004, n°3043, p.505 ; IDIT-CMR(EN) n°40567).

(*Queen's Bench Division (UK)*, 1 Feb. 1994 : [1994] 1 Lloyd's Rep 678 ; ETL1995, p. 218 ; IDIT-CMR(EN) n°): ineffectiveness of any preventive measure in the circumstances

Liability of the road carrier under art. 17 CMR

4°) Circumstances which the carrier could not have avoided...

► **Theft.** (CA Rennes (France), 07/11/2023, n°21/07940 : BTL N° 3950, p. 683

Carriage from France to UK- illegal immigrants had entered the vehicle– goods destroyed

The carriage contract stipulated that ‘when vehicles are to be parked, the driver must ensure that all necessary precautions have been taken (doors locked, sealed, secure car park, etc.) to prevent any incident that could compromise the safety of the goods’.

The transport order stipulated that “the contractor undertakes to park their vehicle on secure premises or in a secured car park and to ensure that the containers holding the goods being transported, as well as the trailer, are securely locked. Uncontrolled access to the goods being transported must be prevented”. It also stipulated that ‘in addition to the usual rules, all transport to Great Britain is subject to the Code of Practice established by UK Customs (...). This is to protect vehicles against stowaways (...). It is advised not to park your vehicle within a 300 km radius of Calais or the North Coast during rest periods. Park only in secure, monitored car parks”.

In practice, the driver stopped 25 km from Calais, in an unsecured car park, to take his rest period.

The court considered that the migrants’ intrusion was facilitated by the carrier’s breach of the contractual provisions. But this did not constitute a circumstance which it could not have avoided and the consequences of which it could not have prevented. As a consequence the carrier was held liable for the total or partial loss of the goods that occurred after they were taken into its care.



Liability of the road carrier under art. 17 CMR

2. Grounds for exemption from liability for international road carriers

► 'Special' grounds (Article 17.4) :

Relate to **specific risks**, taken by the carrier.

NB: this mechanism operates differently from the grounds for exemption set out in Article 17.2 (ordinary risks)

Principle:

Where one of these grounds is invoked, the carrier is not automatically exempt from liability, **but the burden of proof is reversed**

- the carrier is then **presumed not to be the cause of the damage**
- and **it is up to the claimant to prove the carrier's fault** or that the specific risk invoked by the carrier was not the cause of the damage.



Liability of the road carrier under art. 17 CMR

2. Grounds for exemption from liability for international road carriers

- **'Special' grounds (Article 17.4)** : relate to **specific risks**, such as the use of an uncovered vehicle, the carriage of live animals, etc.

The six specific grounds provided for by the CMR are:

- a) The use of open, uncovered vehicles where such carriage was expressly agreed and mentioned in the consignment note,
- b) Absence or defect in the packaging,
- c) Handling, loading, stowage or unloading of the goods by the consignor or consignee,
- d) The nature of certain goods exposing them either to total or partial loss, or to damage,
- e) Insufficient or incorrect markings or parcel numbers,
- f) The carriage of live animals.

Liability of the road carrier under art. 17 CMR

► Exemption : Burden of proof (Article 18 CMR)

- **Ordinary grounds for exemption (Art. 18.1):** the burden of proving that the damage was caused by the exempting circumstances set out **lies with the carrier**
- **Special grounds (Art. 18.2 et seq.):** the burden of **proving that the damage resulted from a specific risk rests with the carrier.**

See: (Federal Court of Justice (Germany), 13 April 2000; IDIT-CMR(EN) No. 40117).

NB: (simple) presumption of the carrier's non-liability.

- The presumption **may be rebutted** by the person entitled to the goods (18.2)
 - The presumption under Article 17.4(a) (Use of open, uncovered vehicles) is **excluded** in the **event of an abnormally significant shortage or loss of packages** (18.3)
 - **Transport under controlled temperature conditions/inherent defect in the goods** (17.4(d) (Nature of certain goods) subject to the carrier proving that it has **taken all necessary measures**, having regard to the circumstances (choice of equipment, maintenance, etc.) and that it has complied with the instructions (18.4)
 - **Transport of live animals** (17.4(f)) **subject** to the carrier proving that it has **taken all necessary measures**, having regard to the circumstances (choice of equipment, maintenance, etc.) and that it has complied with the instructions (18.5)



Thanks for
your
attention
Any
Questions ?



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