SECKLAW

ADVOCATENKANTOOR

TRANSPORT EN LOGISTIEK

CMR COLLOQUIUM 2026 – FAKE CARRIERS (II)

Table of contents:

- ❑ The vital importance of road freight carriage to the EU economy
- ❑ The problem from a historical perspective: what can we learn from history?
- ❑ The problem in the modern era: fake carriers misusing online freight platforms
- ❑ Legal consequences of fake carriers actions on other logistics operators
- ❑ Carrier's limited options as regards successful recourse actions
- ❑ Insuring the risk regarding the actions of fake carriers
- ❑ Some proposals to solve or mitigate the problem

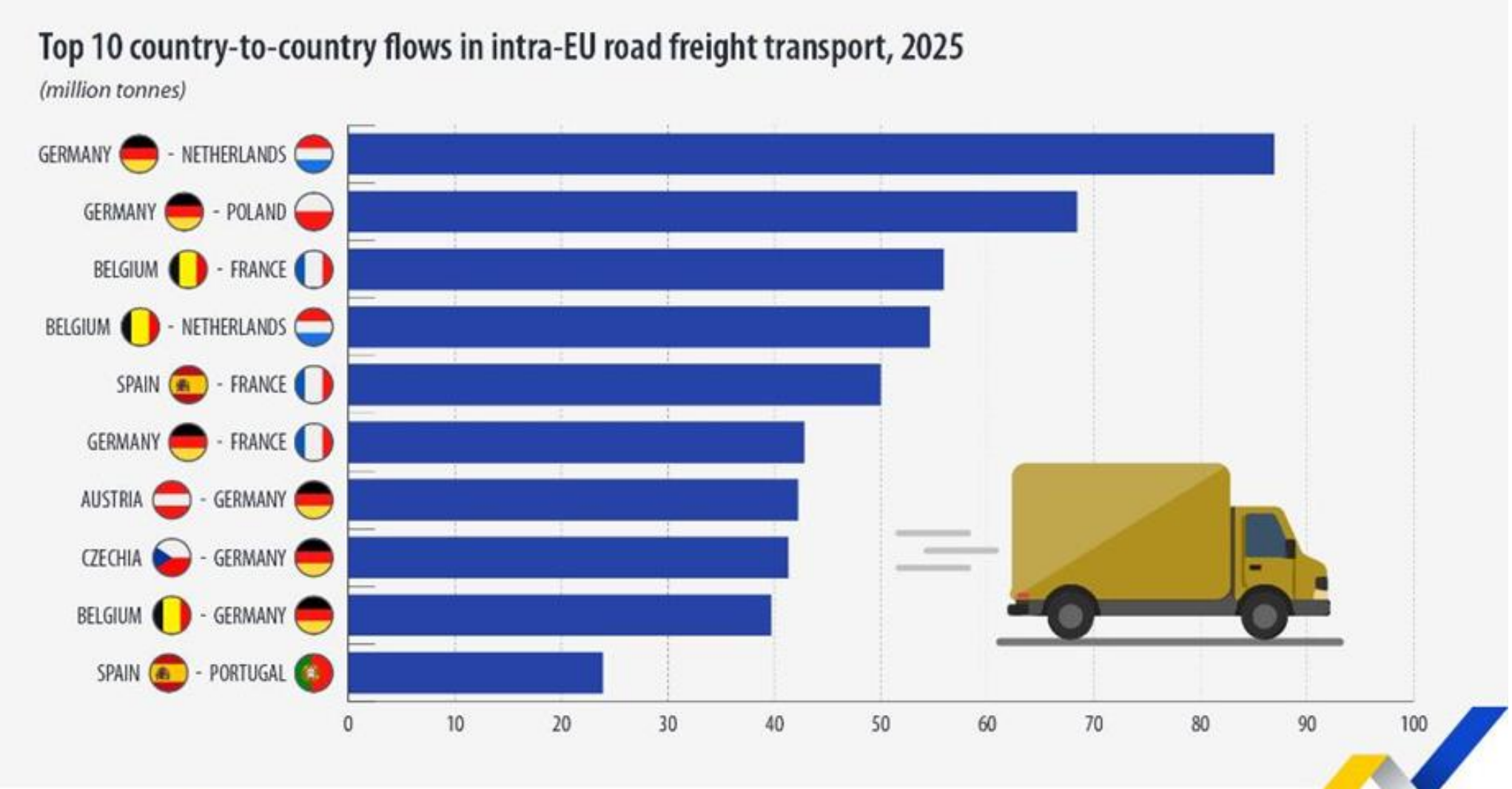
Vital importance of road freight carriage to the EU economy

- Road freight carriage is the live blood of the EU economy.
- 2025: 1.886 billion ton-kilometer (tkm*) of goods carried by road in the EU
- That is more than 15 x compared to EU inland navigation (118 billion tkm)**
- 2025: total tonnage of goods carried by road in EU = 13.3 billion ton,
- EU inland navigation carried tonnage in 2025: 460 million ton.

* 1 tkm = 1 ton of goods over a distance of 1 km

** source: https://ec.europa.eu/eurostat

Vital importance of road freight carriage to the EU economy



The problem: what can we learn from history?

- The problem: unsustainable growth of theft/embezzlement in recent years
- However, this is not new: there are examples in old literature and case law
- Question: how did the (case) law deal with the problem in the past?
- Example: *Coggs v. Bernard*: (1703) 2 Ld Raym909 (English case)
- Handed down by Sir John Holt, Chief Justice of the King's Bench
- The case relates to bailment.

The problem: what can we learn from history?

- Facts:
  - ➢ partial loss of a consignment of brandy (alcoholic beverage) during unloading after a carriage (free of charge).
- Judgment:
  - ➢ six categories of bailment were identified by the court
    - ➢ fifth category: carriage of goods for reward;
    - ➢ sixth category: carriage of goods free of charge.

The problem: what can we learn from history?

- The liability of bailee was formulated as follows:

  "(…) And this is the case of a common carrier, common hoyman, master of a ship … The law charges this person thus entrusted to carry goods against all events but acts of God and of enemies of the king. For though the force be never so great, as if an irresistible multitude of people should rob him, nevertheless he is chargeable."

The problem: what can we learn from history?

- The ***ratio* of the judgment** was more revealing as regards the risk of theft
- The court considered the following:

  "… And this is a public establishment, contrived by the policy of the law for the safety of all persons, the necessity of whose affairs oblige them to trust these sort of persons, that they may be safe in their way of dealing; for else these carriers might have an opportunity of undoing all persons that had any dealing with them, by combining with thieves, … and yet doing it in such clandestine manner as would not be possible to discover"
- The risk of theft appears clearly from this judgment
- There seems to be a correlation between the risk and the liability regime adopted by the court, the purpose of which is to protect "all persons…"

The problem: what can we learn from history?

- **What can we learn from *Coggs v. Bernard*?**

  - A contract which is based on entrusting goods (including data, nowadays) to another (contracting) party is in essence vulnerable to misuse.
  - The integrity of the carrier as bailee seems to have been secured by adopting a dissuasive liability regime which allocates most of the risk of loss to the carrier (the bailee).
  - Absence of integrity in a logistical system – or an inappropriate risk allocation mechanism – may lead to misuse of the system at the expense of *bona fide* business people, as is the case nowadays with "online freight platforms" and so-called "fake carriers".

Modern era: fake carriers misusing online freight platforms

- **The creation and development of online freight platforms**

  - Online market: where space for carriage is traded between senders and carriers
  - Examples: Teleroute, Timocom etc., users are customers who pay for the service
  - it is said to originate in France in the mid eighties (1985) via Minitel network (videotex)
  - Since the internet era it has grown considerably and has become a mature market:
    - on a weekly basis millions of transactions are concluded via online freight platforms
    - annual turnover of online freight market = +/- USD 19,6 billion (+/- € 18 billion)
  - Main reasons for success of online freight platforms:
    - development & easy access of internet
    - speed: easy to find a suitable carrier (availability of space for carriage)
    - affordability: usually at relatively low freight charges
  - Major downside: fake carriers (criminals) are also active on the market

Modern era: fake carriers misusing online freight platforms

- **The concept of “fake carrier”**

  - no legal definition of a fake carrier
  - How to describe a fake carrier?

    A fake carrier is basically someone who enters a contract of carriage as carrier while knowing that he will never honor its legal and or contractual obligations. His sole purpose is to deceive the sender and illegally take possession of the goods (embezzlement).
  - However, the term fake carrier is somehow misleading because criminals have now managed to infiltrate every single link in the supply chain.
  - Criminals may act as sender, consignee, carrier, warehouse operator, seller, buyer etc.
  - Nowadays, the generic term “fake logistic operator” seems more accurate.

Modern era: fake carriers misusing online freight platforms

- **How serious is the problem?**

  - 2024–2025: 30.543 incidents*
  - Direct financial losses +/- € 860.5 million.
  - TAPA EMEA's Theft Intelligence: +/- € 2.6 billion.
  - The EU Parliament estimate of total downstream costs: +/- € 8.2 billion per year.

(*) Source: www.trans.eu

Modern era: fake carriers misusing online freight platforms

- **Modus operandi: types of deceptive schemes***

  - Phantom and Ghost Carriers
  - Carrier identity theft & domain spoofing
  - Acquisition of Legitimate Companies for criminal purposes
  - Fictitious Pickups
  - Shipment Diversion / Rerouting Fraud
  - Double Brokering Fraud
  - and probably many more!

(*) Source: AI

Modern era: fake carriers misusing online freight platforms

- **Modus operandi: most targeted goods***

  - Clothing
  - Electronics
  - Software medium
  - High-quality building materials, including boilers, solar panels and heat pipes
  - (Non)Ferrous metals
  - Alcoholic beverages with the exception of: Beer
  - Tobacco products
  - Medicines
  - Perfumes, cosmetics

(*) Source: VNAB (Dutch Association for the Insurance Exchange)

Legal consequences fake carriers on other logistics operators

- **Legal implications for carriers under CMR**

  - Article 3 CMR = *bona fide* carrier is responsible for the acts of fake carrier
  - Article 17 CMR
    - paragraph 1 = carrier liable for the total or partial loss of goods
    - paragraph 2 = limited grounds for relief of liability for the loss
    - paragraph 5 = apportionment of liability seems possible
  - Article 29 CMR = no limitation of liability (wilful misconduct / equivalent default)
  - Article 32 CMR = period of limitation for an action against carrier = 3 years
  - **Example**:
    - 6000 laptops in a 40 ft container, weight: 12.000 kg, value: € 2.100.000,00
    - maximum compensation: € 2.100.000,00 + carriage charges + Customs duties and other charges + consequential loss etc. = risk of bankruptcy for the *bona fide* carrier.

Legal consequences fake carriers on other logistics operators

- **Legal implications for carriers under Dutch national transport law**

  - Book 8 Dutch Civil Code (DCC)
  - Principle of liability identical to Article 17 paragraph 1 CMR (8:1095 jo. 8:1102 DCC)
  - Limitation of liability = € 3,40 per kilo (Article 8:1105 DCC)
  - Loss of right to invoke limitation of liability (Article 8:1108 DCC)

    1. The carrier may not invoke any limitation in his liability to the extent that the loss or damage has arisen from his own act or omission, done either with the intent to cause damage or recklessly and with the knowledge that such damage would probably result therefrom.

  - No equivalent for Article 3 CMR = carrier not automatically liable for act fake carrier
  - Burden of proof (very high threshold) own act or omission of carrier is on claimant
  - **Same example:**
    - 6000 laptops in a 40 ft container, weight: 12.000 kg, value: € 2.100.000,00
    - compensation: probably +/- **€ 40.800** (= € 3,40 x 12.000)

Legal consequences fake carriers on other logistics operators

- **Legal implications for Dutch freight forwarders**

  - CMR not applicable to a forwarding contract (Article 8:60 DCC)
  - However the distinction between carrier and forwarding agent remains challenging
  - No other international convention = national law is applicable (Rome I & II Reg.)
  - General Terms & Conditions applicable: FENEX Conditions (1st May 2018)
  - Fault based liability system = claimant must prove fault of freight forwarder
  - Freight Forwarder's liability limited to 10.000 SDR per occurrence (or 4 SDR/kg)
  - Loss of right to invoke limitation of liability in case of willful misconduct / equivalent default (Article 8:73 DCC)

Carrier's limited options with regard to recourse actions

- **Recourse action against online freight platforms**

  - Recourse actions against online freight platforms rarely yield results
  - Freedom of contract between the operator of platform and the users
  - General terms & conditions of operator are declared applicable
    - exclusion of liability clause
    - jurisdiction clause and a choice of law clause
  - NB: annual turnover online freight market = +/- USD 19,6 billion (+/- € 18 billion)
  - Liability for fake carriers (i.e. their own customers deceptive acts) almost inexistent.

Carrier's limited options with regard to recourse actions

- **Recourse actions against criminals and their collaborators**

  - Both criminal actions as well as civil actions possible
  - However, "you can't get blood from a stone"
  - Sanctions & compensation under Dutch criminal law
    - Article 310 Dutch Criminal Code (imprisonment for theft)
    - Article 321 Dutch Criminal Code (imprisonment for embezzlement)
    - Article 416 Dutch Criminal Code (imprisonment for intentional handling of stolen goods)
    - Article 417 bis Dutch Criminal Code (imprisonment for guilt of receiving stolen goods)
    - Compensation for victims of a criminal offense (Article 36f paragraph 1 and 2 Dutch Criminal Code; Article 51f paragraph 1 Dutch Code of Criminal Procedure)
  - Sanctions & compensation under Dutch civil law
    - Article 6:162 DCC (civil action for compensation usually based on tort law)
    - Article 6:212 DCC (civil action for unjustified enrichment seems also an option)
    - Article 3:87 DCC (civil action based on property law: obligation to provide information)

Insuring the risks relating to the (accidental) use of fake carriers

- **Overview: two options within Dutch Insurance Market**

  - Traditionally no cover for the carrier under the general liability insurance policy
  - Exclusion of liability based on so-called "Care, Custody or Control" ("*opzichtrisico*")
  - Carriers need special cover for their liability relating to logistic operations
  - The Dutch insurance market offers two solutions:
    - Dutch insurance exchange and co-insurance market (many insurers under 1 policy: MAUL-policy)
    - Dutch insurance companies company market ("Provincial": 1 insurer to cover the whole risk)
  - MAUL-policy (Model Policy for Logistics Operators): G23 cover clause

Insuring the risks relating to the (accidental) use of fake carriers

- **Fake carrier risk coverage under the MAUL-policy and G23 cover clause**
  - The goods are classified in four risk categories.
  - For each category, specific safety measures are prescribed in G23 clause
    - Class I : Standard security (door, ignition, steering wheel lock)
    - Class II : B 1
    - Class III : B 2 (security system must be activated automatically independent of driver's activities)
    - Class IV : B 3 (security system must be activated automatically independent of driver's activities)
  - Article 1 G23: theft/embezzlement goods of Class I, II or III category
    - Compensation: subject to an additional deduction of +/- 30% with a minimum of +/- € 25.000,00
    - In addition: maximum compensation limited/capped to +/- € 120.000,00
    - If a digital freight exchange is used: both (2) additional deductions in clause 1 and 2 apply
  - Article 2 G23: theft/embezzlement goods of Class IV category
    - Compensation: subject to a higher additional deduction and a higher minimum
    - Maximum compensation may vary significantly from maximum in Article 1
  - Article 3 G23 cover clause: No additional deduction if assured proves four cumulative conditions
    - Therefore, carrier is required to be extremely careful and take several precautions.

Insuring the risks relating to the (accidental) use of fake carriers

- **Fake carrier risk coverage under various Dutch company policies**

  - Dutch insurance companies may incorporate/adapt G23 clause in their own policies.
  - However, some policies exclude the risk relating to fake carriers completely
  - Example:

    "Excluded from coverage is any damage that the insured is obliged to compensate to third parties if damage occurred during carriage and involves: **(a)** goods with a value of € 10.00 per kilo or more or goods falling under category IV of the risk classification associated with (…) cargo theft in professional road freight transport, and **(b)** when the insured, subordinates, or persons whom the insured makes use of for the execution of the carriage or forwarding agreement, have sub-contracted the carriage of the goods to a (sub)carrier via online freight exchanges.

Insuring the risks relating to the (accidental) use of fake carriers

- **Fake carrier risk coverage under various Dutch company policies**

  - In other policies coverage is subject to specific precautions
  - Example: TVM policy (major Dutch insurer)
    - Standard insured sum on the Logistic operator insurance is 5 million euros.
    - Wilful misconduct of driver or sub-carrier (including a fake carrier) is insured if:
      - sub-carrier is properly screened (identity and sub-carrier's own insurance coverage)
      - wilful misconduct by the driver is insured (including for liability exceeding the CMR limit) if the insured can prove that it has properly screened such driver as required by the insurance policy.
      - when Category IV goods are sub-contracted via an online freight platform, coverage is limited to the amount of the CMR limit.
      - If identity & own insurance coverage of the sub-carrier not properly screened: no insurance cover

Some proposals to solve or mitigate the problem

- **Need to adapt operator's liability regime to the risk generated by the platform**

  - It is a mature market
  - With extremely low liability exposure
  - It generates billions of dollars every year
  - It has some serious security issues which cause an existential threat to *bona fide* carriers
  - How to (re)allocate the risk generated by the platform:
    - Adopt a liability system similar to Article 17 paragraph 1 CMR
    - Limited exonerations for the platform operator similar to Article 17 paragraph 2 CMR
    - Apportionment of liability similar to Article 17 paragraph 5 CMR
    - Limitation of liability based on the value and weight of lost goods
    - Loss of right of platform operator to limit liability (when?)
    - Jurisdiction, right of action, and period of limitation (?).

Some proposals to solve or mitigate the problem

- **Creating more awareness as regards carrier's own risk management**

Please check this website: www.fakecarrier.com

A Dutch foundation based on a market-driven initiative

supported by, *inter alia*:
Dutch Association of Insurers
Transport and Logistics Netherlands
Platform Veilig Ondernemen,
The Dutch police.

SECKLAW

ADVOCATENKANTOOR

TRANSPORT EN LOGISTIEK

Thank you!