



APPLICATION OF THE CMR

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ARTICLE 1(1) CMR

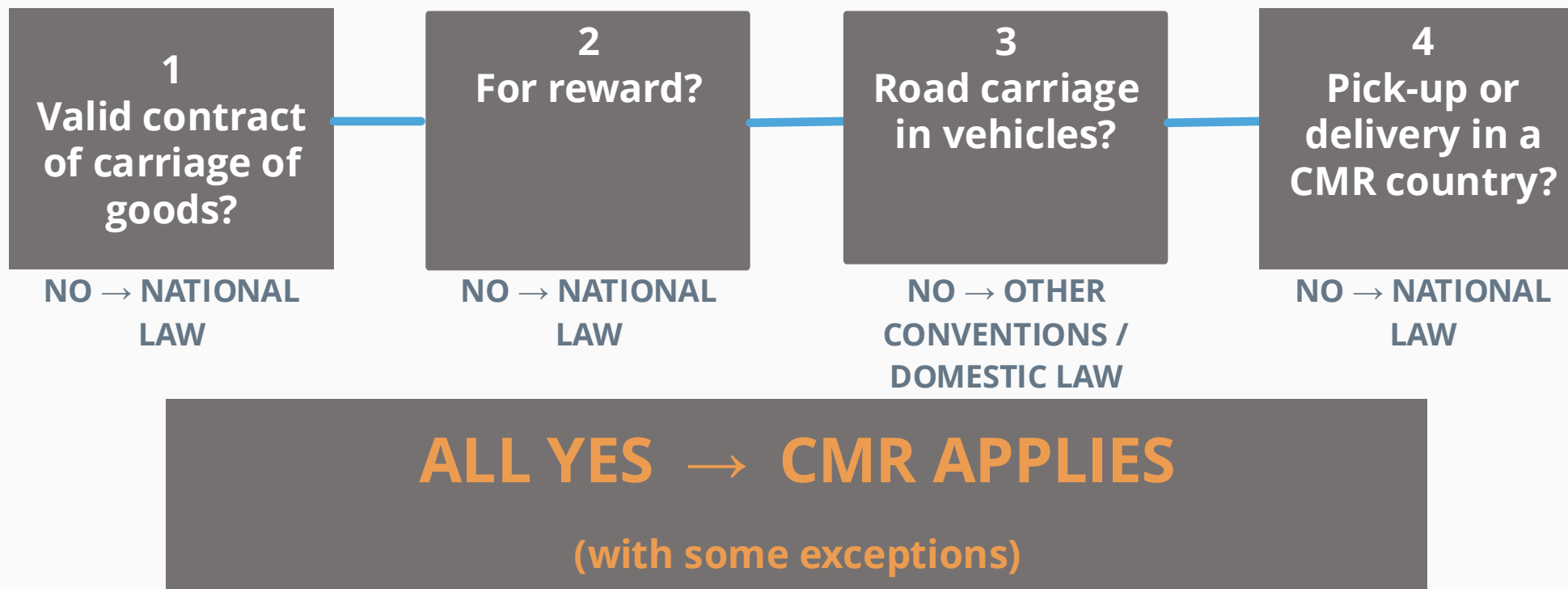
THE BASIC RULE

- The CMR Convention applies by operation of law: no clause in the order, no mention in the consignment note, not even a consignment note itself is required.
- What matters is what is agreed by the parties (what are obligations of the parties).



ARTICLE 1(1) CMR

FOUR GATES. ALL MUST OPEN.





ARTICLE 1(1) CMR WAS A CONTRACT OF CARRIAGE CONCLUDED AT ALL?

- Whether a valid contract was concluded is assessed under the applicable national law.
- Whether the concluded contract is a contract of carriage is assessed autonomously, by reference to the CMR itself.
- The parties' label is (more or less) irrelevant.
- No writing is required.



ARTICLE 1(1) CMR INTERNATIONAL – BY CONTRACT, NOT BY MAP

- The places of taking over the goods and of delivery, as specified in the contract, must be in two different countries, at least one being a Contracting State.
 - Goods stolen before the border was crossed – the contract provided for international carriage: CMR applies.
 - Route passes through three countries but taking over and delivery are in the same country: CMR does not apply.
- The goods need never actually cross the border.
- What counts is the contract.



ARTICLE 2 CMR PIGGY-BACK TRANSPORT

- Truck — ferry — truck (no transshipment).
- Where the vehicle containing the goods is carried over part of the journey by sea, rail, inland waterway or air, and the goods are not unloaded from the vehicle — the CMR applies to the whole carriage.
- Exception: if loss, damage or delay occurred during the non-road leg and did not arise from the road carrier's act or omission — liability is governed by the rules of that other mode.



ARTICLE 1(1) CMR
**MULTIMODAL CARRIAGE
(NOT PIGGYBACK) – EUROPE
DIVIDED**

Contract of carriage by road and... (e.g. by sea, by air etc.)

CMR does not apply:

- Germany
- Netherlands
- Denmark
- Switzerland

**CMR applies to the road
leg:**

- UK
- Belgium
- Finland



ARTICLE 1(1) CMR

CARRIER OR FORWARDER?

- **The decisive question – the characteristic obligation:**
 - A carrier undertakes to carry the goods.
 - A forwarder undertakes to organise the carriage.
- **Qualification is autonomous.**
- **Why does the distinction matter?**



ARTICLE 1(1) CMR

CARRIER OR FORWARDER? – WHY DOES THE DISTINCTION MATTER?

CARRIER (CMR)

- Presumed liable for loss of or damage to the goods between taking over and delivery
- Can escape only through the exhaustively listed defences
- Liability is limited
- Claims are time-barred after one year
- Jurisdiction – only the courts listed in Art. 31 CMR

FORWARDER (NATIONAL LAW)

- No direct liability for damage to the goods as such
- Liable for his own fault in performing the forwarding services
- Liable for the acts of the actual carrier only where at fault in selection (*culpa in eligendo*)
- No CMR limits
- General time bars and general jurisdiction rules apply



ARTICLE 1(1) CMR CARRIER OR FORWARDER? - INDICATORS

- **Points to carriage:**
 - Order refers to carriage only – no additional services.
 - Lump-sum (all-in) remuneration.
 - No duty to disclose sub-contractors' rates to the sender.
 - Signing / completing the consignment note as carrier.
 - Using their own means of transport (self-evident!).



ARTICLE 1(1) CMR CARRIER OR FORWARDER? - INDICATORS

- **Points to forwarding:**
 - An express undertaking to organise the carriage only.
 - Typical additional forwarding services: routing advice, packing, carrier selection, insurance, storage
 - Charging actual sub-carriers' costs, subject to the sender's approval.
 - Reference to forwarding terms and conditions.
 - Advertising as a forwarder.



ARTICLE 1(1) CMR CARRIER OR FORWARDER? - SUMMARY

- In many jurisdictions a presumption of carriage operates: the burden of proving forwarding status lies with the party claiming it.
- Practical consequence: a “forwarder” without documentary support is held liable under the CMR – with all its consequences.



ARTICLE 1(1) CMR CAN YOU OPT INTO THE CMR?

- The Convention does not apply to domestic carriage by operation of law – but can the parties bring it in?
- Yes – if the law applicable to the contract so allows (recognised by courts in France, the Netherlands, Belgium).
- Even then, the parties may shape their relations beyond the CMR only within the limits set by the applicable national law.
- Practical use: standardising liability under one regime for all legs of a logistics chain.



ARTICLE 1(4) CMR **EXCLUDED**

- **The Convention does not apply to:**
 - carriage performed under the terms of any international postal conventions.
 - funeral consignments.
 - furniture removal (furniture dismantled, packed, loaded, unpacked and reassembled = removal; mere carriage of furniture for a private person = carriage).



Thank you for your attention!