

Important Developments in Czech CMR Case Law

Marking 70 Years of the CMR Convention (1956–2026)

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Overview

Focus: when Czech courts disapply the carrier's Article 23 CMR limitation through Article 29 CMR — gross negligence as fault equivalent to intent.

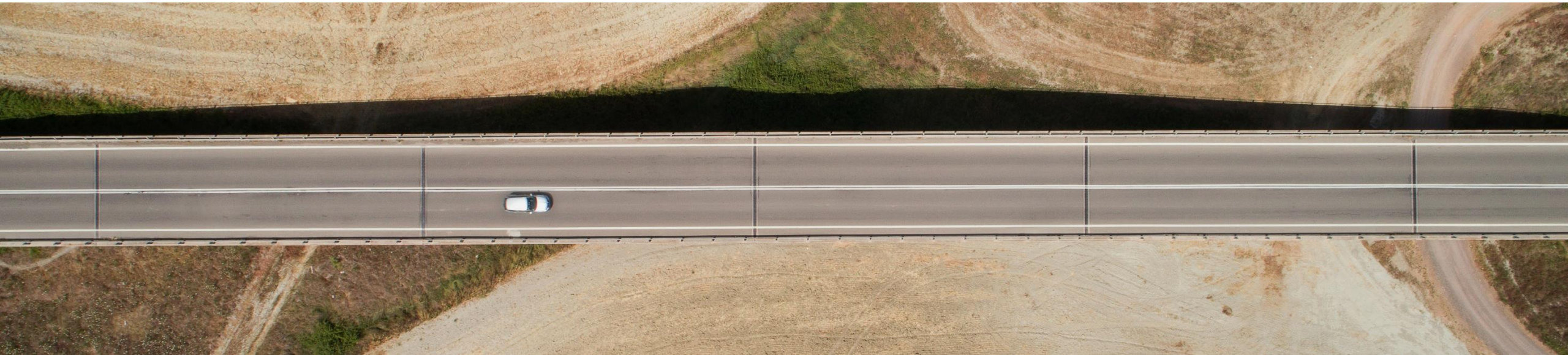
- I. Article 29 CMR: Gross Negligence and Phantom Carriers
- II. The Gross Negligence Test: Recent Supreme Court Decisions (Sender's Instructions, Route Planning, Unsecured Parking)
- III. Multimodal Transport: Where CMR's Writ Runs Out
- IV. Article 23(4) CMR: A Brief Note on "Other Charges"



I. Gross negligence & Phantom Carriers

A contractual carrier or freight forwarder subcontracts a job, often through a freight exchange such as RAAL or Timocom. A fraudster steps into the shoes of a genuine haulier. The shipment, and often the goods, go with them.

Czech courts do **not** treat this as an “unavoidable circumstance” under Article 17(2) CMR. Instead, engaging a fraudulent carrier is the *carrier's own* liability. It flows from Article 3 CMR, and that opens the door to unlimited liability under **Article 29 CMR**.



Czech Supreme Court: Article 3 + Article 29

Decision of 17 December 2018, No. 23 Cdo 2599/2018

Under Article 3 CMR, the carrier answers for the intentional acts of a subcontractor committed *in the course of carriage*.

- Includes theft of cargo by that subcontractor
- Triggers unlimited liability under Art. 29 CMR

Earlier authority:

Decision of 10 October 2012, No. 31 Cdo 488/2010 (R 20/2013)

Carrier is responsible for:

- properly selecting its employees and subcontractors,
- acts of any “persons used” in performing the carriage
- → includes theft or misappropriation of goods



GROSS NEGLIGENCE AND UNSECURED PARKING



Gross Negligence and Unsecured Parking

Decision of 24 April 2016 No. 23 Cdo 140/2016:

Parking in an unsecured area, despite a contractual requirement to take security breaks only at designated, secured facilities, is gross negligence on the driver's part.

No contractual parking instructions?

→ Czech courts look at the whole picture, asking whether the carrier took every reasonable step to prevent the loss:

- Was the chosen car park genuinely the safest realistically available?
- How diligent was the driver, in fact?
- How well was the route planned and organised?
- Were anti-theft and cargo-security measures actually in place?
- What else would a prudent carrier reasonably have done?

The Gross Negligence Test – Supreme Court Definition

Leading authority - Judgment of 17 December 2014, No. 23 Cdo 2702/2012 (R 59/2015).

- Core test For the purposes of Articles 29(1) and 32(1) CMR, conduct "equivalent to intent" under Czech law means gross negligence, defined as carelessness of the highest intensity, bordering on the intentional. Not just being careless, but rather being recklessly, almost deliberately careless.
- Case-specific factors - the conduct of the driver and other staff; efforts made to protect the shipment; the carrier's experience; the value of the goods; where the loss occurred; the technical security measures used; and the sender's instructions.
- Confirmed and applied — Nos. 33 Cdo 3160/2023, 33 Cdo 832/2024, 23 Cdo 5452/2015 and 25 Cdo 1589/2024.

Applying the Test – Recent Illustrations

ORDER OF 15 OCTOBER 2024
NO. 33 CDO 832/2024

FACTS

57 kg of cosmetics, worth EUR 8,786.38, travelled from Belgium to the Czech Republic in a single-driver tilt trailer, secured only by an unlocked steel cable. After a detour via Denmark, thieves cut the tarpaulin during a night break in the lit, unfenced car park of a Karlslunde petrol station.

LEGAL FINDINGS

No gross negligence. A commercially sensible route that met the deadline, one driver, and a lit, busy public car park simply didn't clear the bar. Kilometres driven alone cannot establish gross negligence, and what happened after the theft is beside the point. Unlike the "micro-sleep" case (No. 32 Cdo 995/2013), this route allowed for proper rest and on-time delivery.

TAKEAWAY

Article 29 demands a materially higher degree of carelessness, bordering on intent, judged on the facts as they stood at the time, not with the benefit of hindsight or by reference to how things turned out.

ORDER OF 28 MAY 2024
NO. 33 CDO 3160/2023

FACTS

The order required a 540 x 60 x 230 cm control panel to be secured against movement. On the carrier's own premises, the driver removed the straps and reversed 5–6 metres to load more goods. The ground was uneven, the crate's base too narrow, and the crate toppled and was destroyed on the spot.

LEGAL FINDINGS

The gross-negligence finding stood. The carrier ignored an express, repeated instruction concerning a high-value, unstable load, then moved the vehicle after removing the straps. That said, breaching an instruction isn't automatically fatal. The intensity of fault still has to be weighed case by case (Nos. 23 Cdo 2702/2012, 23 Cdo 1837/2015 and 23 Cdo 140/2016).

TAKEAWAY

Look at the cargo's nature and value, how clear and how often-repeated the instruction was, and what the carrier actually did. Only carelessness bordering on intent breaks through the Article 23 limit.

BRIEF NOTE — ARTICLE 23(4) CMR

“Carriage charges, customs duties and other charges incurred in respect of the carriage” are reimbursed on top of the cargo's value.

The Czech Supreme Court treats excise duty triggered by destruction in transit as exactly such an "other charge," sitting outside the 8.33 SDR/kg cap.

Why it matters: Article 23(4) exposure can be substantial, even where the ordinary cargo-value limitation remains firmly intact. The cap on cargo value is not a cap on everything.



Article 23(4): Excise Duty as an “Other Charge”

DECISION NO. 23 CDO 3530/2019

FACTS

- Alcoholic beverages moved from the Czech Republic to Italy under excise-duty suspension.
- The cargo was destroyed in an Italian road accident, making the consignor liable for the excise duty.
- The carrier paid up and sought reimbursement from its liability insurer.

LEGAL QUESTION

Does the excise duty count as cargo value under Article 23(1)–(2), or as an "other charge" under Article 23(4)?

CONCLUSION

Excise duty is an Article 23(4) "other charge" rather than cargo value, and therefore falls outside the 8.33 SDR/kg limit in Article 23(3).



Follow-up: Insurance Coverage of 'Other Charges'

Policy wording re Article 23(4) CMR: The policy's supplementary conditions expressly extended cover to import duties and customs charges under Article 23(4) CMR, but covered "other charges" under that provision only if specifically agreed (no such agreement existed here).² The decisive question was therefore whether excise duty qualifies as an "other charge incurred in connection with the carriage of the goods" under Article 23(4) CMR.

Court's reasoning – insurer's duty to pay:

- The excise duty liability arose only upon destruction of the goods in transit (not at the time of acceptance for carriage), so it did not form part of the "value of the goods" under Article 23(1)-(2) CMR.
- Applying an autonomous interpretation, the Court sided with the broader interpretation adopted by French, English and Danish courts (notably *Buchanan & Co v Babco Forwarding & Shipping* [1978] A.C. 141).⁵⁶ It held that excise duty triggered by loss of the goods during carriage falls within "other charges incurred in connection with the carriage" under Article 23(4) CMR.

Follow-up: Insurance Coverage of ‘Other Charges’

NO. 23 CDO 208/2021 — EVIDENCE MATTERS

The Supreme Court set aside the lower courts' decisions for overlooking an e-mail from the insurer's own adjuster, which had already acknowledged Article 23(4) claims for customs duty and import charges.

The lower courts ultimately ruled in favour of the carrier (claimant): they upheld the obligation of the insurer, to pay the the insurance payment for the excise duty. This outcome followed from the appellate court's proper consideration, on remand, of previously overlooked evidence (the claims handler's email and the insurer's letters), on the basis of which it found the policy wording on cover for "other charges" under Article 23(4) CMR ambiguous and, applying an interpretation based on the parties' intent, concluded that the parties had not intended to exclude excise duty from cover. The Supreme Court then dismissed the insurer's further revision (see the decision below).

NO. 23 CDO 3847/2023 — COVERAGE CONFIRMED

The insurer's appeal failed. Policy wording referring to Articles 23 and 25 CMR was held to cover Article 23(4) "other charges," including excise duty, in light of the parties' intentions and later conduct.

PRACTICAL TAKEAWAY

Carrier-liability policies should state, in plain terms, whether and to what extent, Article 23(4) charges are covered. Silence is expensive.

Also significant is the subsequent conduct of the insurer's adjuster, as well as the prior conduct of the insurance broker, and, where applicable, any other clarification of the insurance policy provided by the insurer at the stage of its conclusion.

III. Multimodal Transport: When CMR Does Not Apply

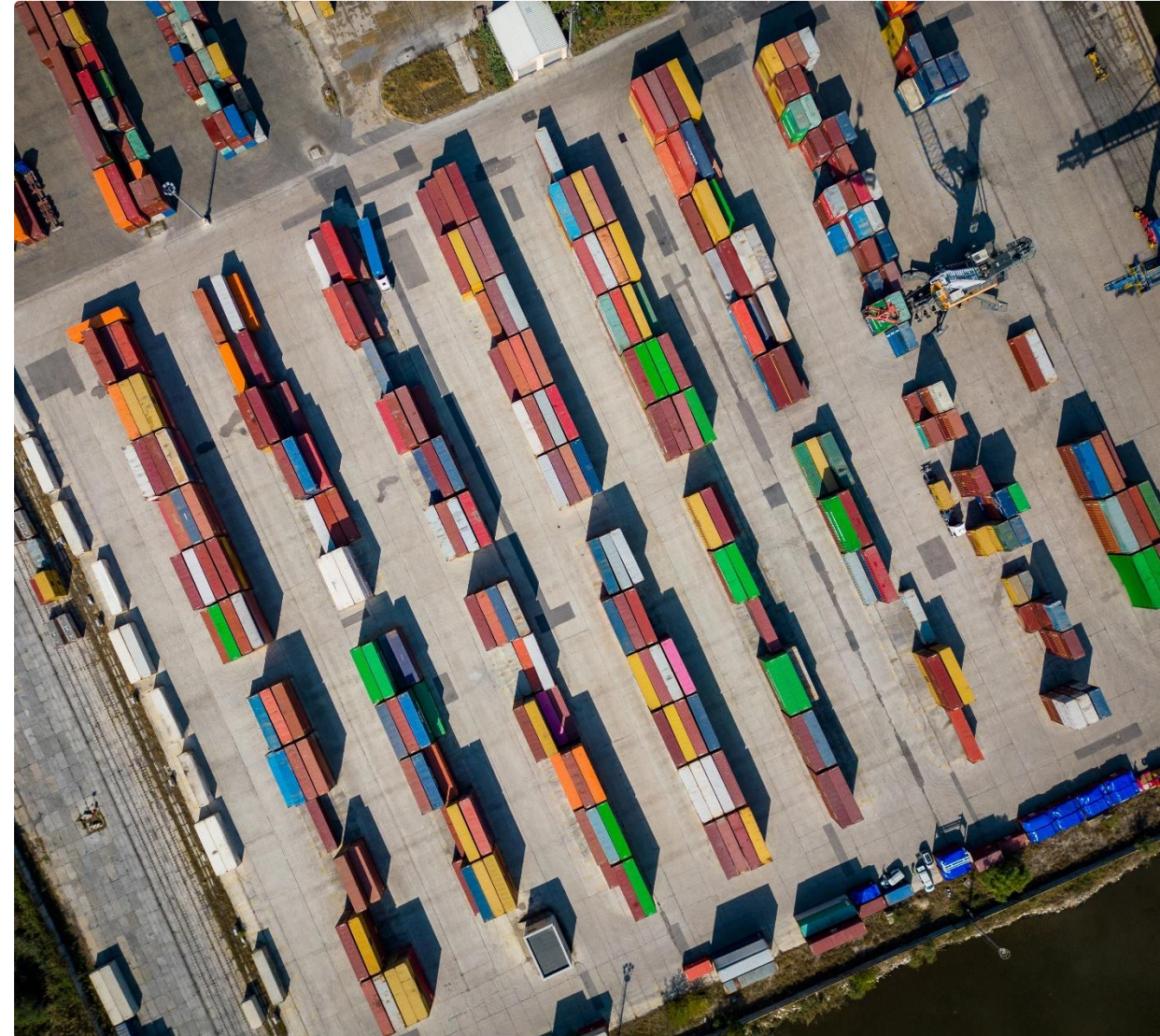
CZECH MYTH

If goods travel internationally and a lorry is involved somewhere along the way, the CMR Convention automatically applies.

REALITY

The mere involvement of road transport isn't enough.

Where goods are taken off the lorry and handed over to another mode of transport, the conditions of Article 2 CMR may simply not be met. A truck along the way is not the same as a truck that governs the rules of transit.



Multimodal Transport — Three Supreme Court Cases

NO. 24 CDO 2221/2023

A shipment from Czechia to Sweden with a transshipment onto an aircraft. The damage occurred on a domestic road leg in Sweden.

CMR did not apply. The road legs were domestic, so Article 2 wasn't satisfied, and the Montreal Convention's supplementary road-carriage rules were excluded too.

BOUNDARY

A truck's involvement, on its own, does not switch CMR on.

NO. 32 CDO 2812/2018

Prague to London shipment involved an air transshipment. No road vehicle ever crossed a state border.

Neither Article 1 nor Article 2 CMR applied. The decision confirms that it's the legal character of each leg, not the overall international destination, that decides the matter.

BOUNDARY

An international journey is not the same thing as international road carriage.

ORDER OF 30 APRIL 2025 NO. 25 CDO 1589/2024

Facts: AMPQ PRO EUROPE, s.r.o. engaged UPS Czech Republic, s.r.o. under a framework agreement of 6 August 2021 to carry Apple phones worth EUR 24,760 from Český Těšín to Switzerland. Dispatched on 29 September, the shipment vanished and was never traced, despite a follow-up search. UPS paid CZK 2,832.92 under Article 23(1) and credited the CZK 15,419 carriage price under its own late/non-delivery terms. No optional special-interest-in-delivery declaration or enhanced security had been requested.

CMR applicability: Article 1(1) was satisfied. The contractual places of taking-over and delivery lay in different states, the Czech Republic and Switzerland, both CMR parties, and that alone was enough to govern the single carriage relationship, notwithstanding an air leg and subcontractors within UPS's network. Unlike the Article 2 unbroken-road question in the other two cases, this dispute never turned on a transshipment exclusion. The overall road/international-carriage undertaking satisfied Article 1(1) in its own right.

CMR limit held firm: imperfect tracking, the loss of an ordinary shipment, and a post-loss search did not amount to gross negligence under Article 29.

Takeaway: multiple legs don't lower the Article 29 threshold; the inquiry stays every bit as fact-sensitive.

EDITORIAL CAVEAT

This decision carries limited precedential weight on CMR's applicability. The parties never disputed that CMR applied, so the Supreme Court had no occasion to review the point. The Court's earlier multimodal case law (Nos. 24 Cdo 2221/2023 and 32 Cdo 2812/2018) has only ever addressed the reverse scenario: denying CMR's application because the road leg itself was purely domestic. Neither those cases nor this one resolve the open question of whether CMR applies where the road leg of a multimodal shipment is itself international. A properly reasoned Supreme Court ruling on that scenario is still awaited. This decision's brief finding on Article 1(1) shouldn't be read as filling that gap; only its Article 29 gross-negligence analysis is truly on point.

The mode/leg analysis marks CMR's outer boundary. Once CMR applies, breaking through Article 23 still requires case-specific proof of Article 29 fault.

Consistent Line of Authority

1. CONTRACT AND LEGS — Identify the agreed mode(s), every physical leg and whether any road vehicle itself crossed a border.

2. TRANSSHIPMENT — Under Nos. 32 Cdo 1829/2015, 32 Cdo 2812/2018 and 24 Cdo 2221/2023, unloading and transferring to another mode can take the later domestic road leg outside Articles 1 and 2 CMR.

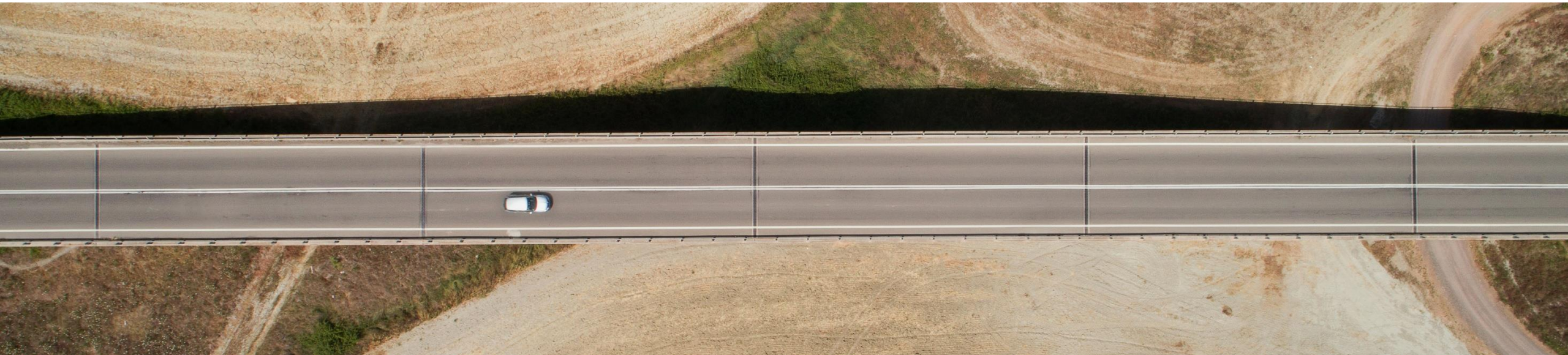
3. SEPARATE ARTICLE 29 QUESTION — Even where CMR applies, a loss occurring somewhere within a multi-leg network doesn't, by itself, prove gross negligence. No. 25 Cdo 1589/2024 confirms that the Article 23 limit gives way only where the actual conduct reaches that high, case-specific Article 29 threshold.

Fallback to national law

Where neither the CMR nor another international transport convention applies, the court falls back on national law, determined under the relevant conflict-of-laws rules.

Unlike the CMR, Czech law knows no automatic weight-based cap of 8.33 SDR per kilogram. The carrier may therefore answer for the full actual loss, unless liability has been validly limited by contract.

The general limitation period is **three years**, considerably longer than the one-year period under Article 32 CMR.



Thank You for Your Attention!

Questions?



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