



Compensation of loss or damage and limits

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Focus: When the carrier is found liable under the CMR , the question then arises as to the extent to which they are obliged to compensate for the resulting damage.

Compensation

- ▶ Types of damage
- ▶ Calculation of damages
- ▶ Limitation of liability

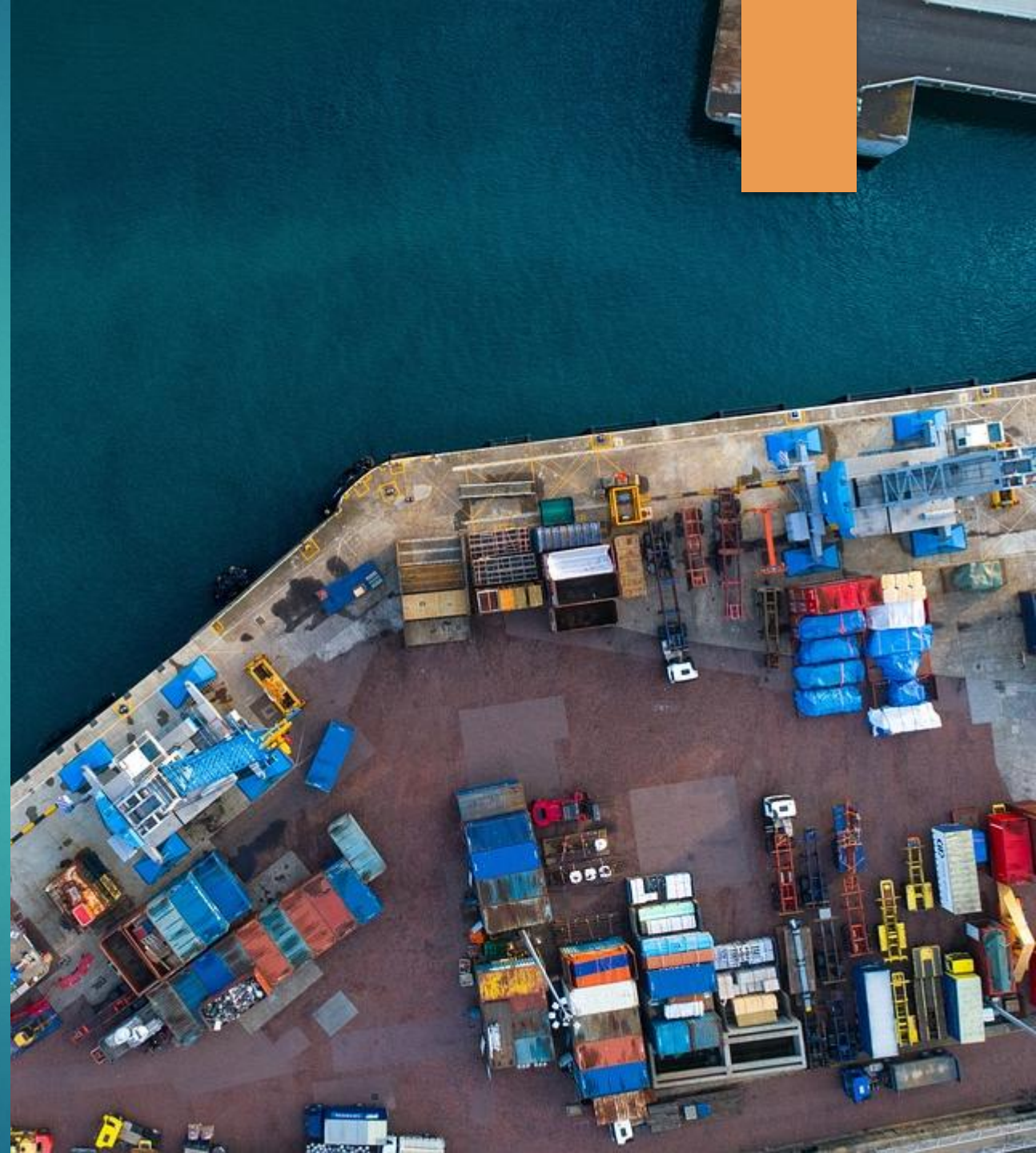


General features of compensation

- (1) Limitation of the types of damage.
- (2) Limitation of the compensation payable.



1) Types of damage eligible for compensation





Types of damage

Types of damage eligible for compensation: **Loss of or damage** to the transported cargo. (Arts 23 and 25 CMR)

Article 23 1. When, under the provisions of this Convention, a carrier is liable for compensation in **respect of total or partial loss of goods**, such compensation shall be calculated by reference to the value of the goods at the place and time at which they were accepted for carriage.

Article 25 1. In case of damage, the carrier shall be liable for the amount by which the goods have diminished in value, calculated by reference to the value of the goods fixed in accordance with article 23, paragraphs 1, 2 and 4. 2. **The compensation may not, however, exceed:** a) if the **whole consignment** has been damaged the amount payable in the case of total loss; b) if **part only of the consignment** has been damaged, the amount payable in the case of loss of the part affected.

Types of damage

Problem 1:

- ▶ **Lack of specification of a partial damage v types of the goods** -> Should the limitation be based on the physical part that was damaged (**physical approach**), or on the economic unit affected by the damage (**functional approach**)? Should be treat the same independent items versus components of a single functional unit?
- ▶ Should the limitation be determined solely by reference to the part of the cargo that was physically damaged, or should account also be taken of the economic and functional unity of the cargo? In this assessment, **should weight be given to the significance of the damaged component for the functioning of the whole and to the ease with which it can be replaced?**





Types of damage

Damage caused to **property other than the transported cargo** is in principle not covered by transport law conventions

RTT/Cargofoor (1994), HR, NL Supreme Court: [...] the carrier's liability for property other than the transported goods is not governed by the CMR, **but by the applicable national law.**

However,...



Types of damage

Problem 2:

However, damage to non-transported goods may be regarded as: ➡ Consequential loss resulting from damage to the transported goods. If so, pursuant to Art. 23 (4) CMR, it is not eligible for compensation.



Types of damage

The exhaustive list of types of damage eligible for
Compensation

Art 23.4 CMR: **In addition, the carriage charges, Customs duties and other charges incurred in respect of the carriage** of the goods **shall be refunded** in full in case of total loss and in proportion to the loss sustained in case of partial loss, but no further damages shall be payable.



Types of damage

Contaminated cargo in truck -> Damage to transported goods -> After unloading contamination of other goods -> Question: **Direct property damage OR Consequential loss?**

The key question is often not whether consequential loss is compensable, but whether the loss should be characterised as consequential loss at all.

Characterisation

Result

Damage to the goods CEMENTA/CODAN
(Danish Supreme Court, 1995)

Compensable under Art. 23 CMR

Consequential loss flowing from damage
to the transported goods
BGH 5 October 2006 (Apfelschorle case)

Generally excluded by Art. 23(4) CMR

Direct damage to other property
RTT/CARGOFOOR (Dutch Supreme Court, 1994), TIENSE SUIKER (Belgian
Court of Cassation, 2009)

Usually falls outside the CMR and may be
recoverable under national law

Costs forming part of the direct cargo
loss (e.g. mitigation, clean-up)

Sometimes recoverable



Types of damage

Problem 3: The meaning of 'other charges incurred in respect of the carriage' under 23.4 CMR

Excise duties- Yes: Buchanan v. Babco (HL) (1977) JTI
Polska/Jakubowski (UKSC) (2023) No.69 et seq. + Denmark + Italy + Czech Republic + Lithuania + Belgium **No:** Philip Morris/Van der Graaf (II) (Supreme Court 2006) + Germany + Sweden + Austria.

Intermediate position: Excise duties paid or to be paid are included in the shipping value: France – Cour de Cassation 5.10. 2010, No.09-10837.



Types of damage + delay

Delay

Article 17. 1. The carrier shall be liable for the total or partial loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery, **as well as for any delay in delivery.**

Art 19. Article 19 Delay in delivery shall be said to occur when the goods have **not been delivered within the agreed time-limit** or when, failing an agreed time-limit, the actual duration of the carriage having regard to the circumstances of the case, and in particular, in the case of partial loads, the time required for making up a complete load in the normal way, **exceeds the time it would be reasonable to allow a diligent carrier.**



Types of damage + delay

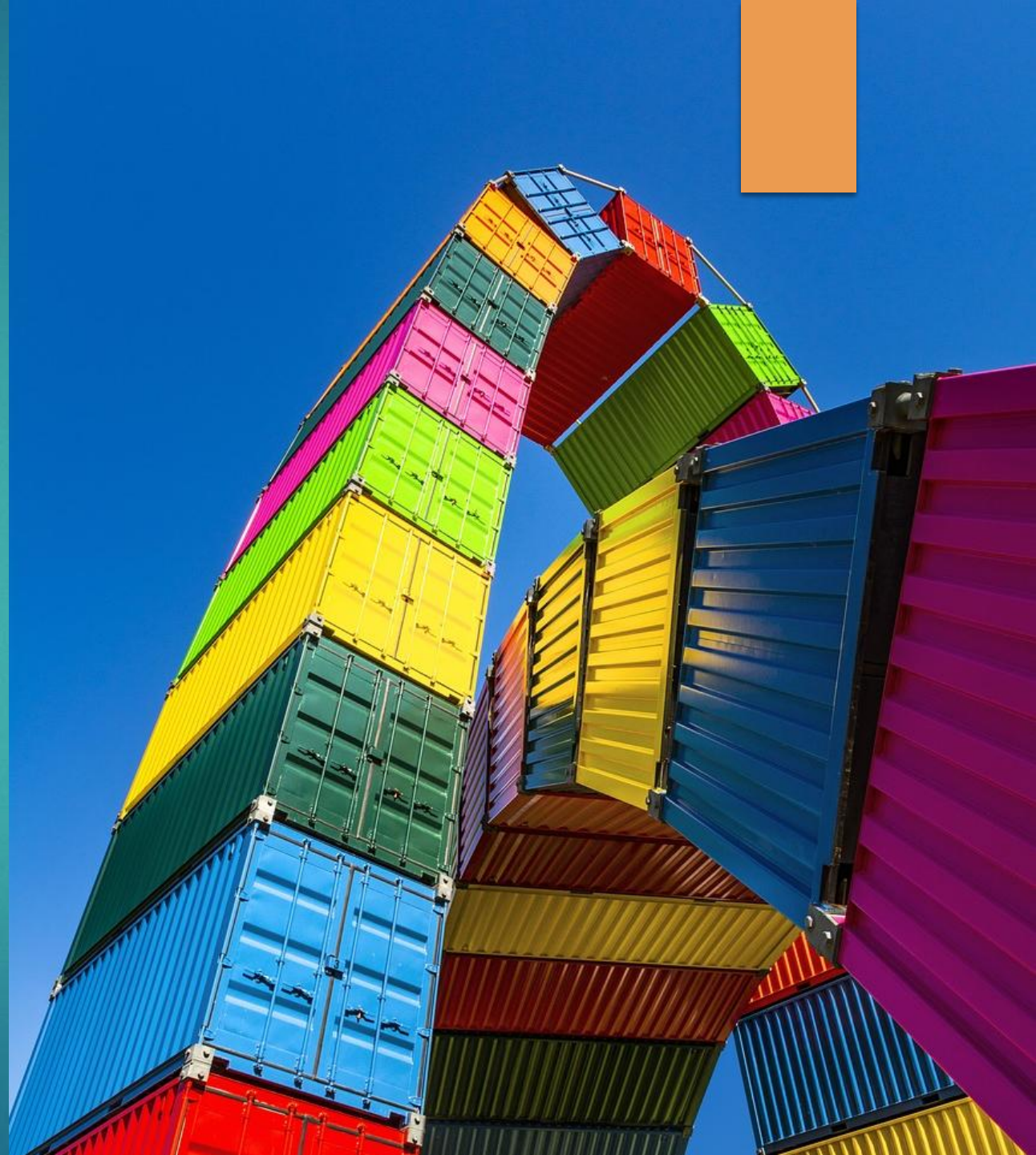
Problem 3: The meaning of duration of the carriage which **exceeds reasonable time.**

See Christmas-tree case (CA 's-Hertogenbosch 9 September 2003, ECLI:NL:GHSHE:2003:AM7822):

- ▶ *Facts:* A carrier transported a consignment of Christmas trees from the Netherlands to Italy. The goods arrived late, and the claimant sought damages for the resulting loss.
- ▶ *Issue:* Whether the parties had agreed on a specific delivery deadline, and whether the carrier was therefore liable for delay under the CMR.
- ▶ *Decision:* The Court of Appeal found that the claimant failed to prove that a specific delivery date had been agreed. The carrier was therefore not held liable for the alleged delay.
- ▶ Exceeding of expected delivery day by 1 day → exceeding reasonable time?



2) Calculation of damages





Approach to calculation

The carrier's liability is limited by operation of law (limited liability). Judges must therefore apply the limitation limit ex officio even if the carrier fails to invoke it.

Why is the Carrier's Liability Limited?

- ✓ Prevents carriers from bearing disproportionate and potentially ruinous risks
- ✓ Reflects the mismatch between:
 - low freight charges and
 - high cargo values
- ✓ Enhances insurability and legal certainty
- ✓ Promotes efficient risk allocation:
 - Cargo owner → cargo insurance
 - Carrier → liability insurance



Approach to calculation

Property damage results in compensation calculated **on the basis of the depreciation or loss of value of damaged or lost cargo**. Art. 25(1) CMR

Calculations based on market **value of export market ('the value of the goods at the place and time at which they were accepted for carriage')**(23.1).

The value of the goods shall be fixed according to

- A) the commodity exchange price or,
- B) if there is no such price, according to the current market price or,
- C) if there is no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality. (23.2)



Approach to calculation

- Limitation of liability: 8,33 SDR/kg (10,25 euro) 1 SDR – 1,23 euro.
 - If value is under 8,33 SDR/kg → full compensation value goods
 - If the value is above 8,33 SDR/kg (f.ex. iPad): compensation limited at 8.33 SDR/kg → weight of iPad = +/- 1/2 kg => compensation of 4,65
- EXCEPT:
 1. Declaration of value (rare)
 2. If the iPad gets e.g. stolen by an employee of a carrier → wilful misconduct => full compensation



next lecture on breaking the limits



Approach to calculation

Problem 4: SDR/ kg were introduced by SDR Protocol of 1978 - It replaced the historic "gold franc" metric with Special Drawing Rights (SDR), which is a basket currency defined by the International Monetary Fund (IMF).

The Protocol has a status of a convention; it needs to be ratified. There are still some CMR countries that did not ratify the protocol, and as a result use the limitation of 25 gold francs per kilogram of gross weight short (missing or damaged weight)



Approach to calculation

Problem 6: no indexation mechanism in the CMR (only in the Montreal Convention) Result-> ongoing inflation of liability limits



Approach to calculation

Delay:

Art 23.5 In the case of delay, if the claimant proves that damage has resulted therefrom the carrier shall pay compensation for such damage not exceeding the carriage charges.



Thank
you!

