

Bucharest CMR Colloquium 2026

Celebrating 70 Years of CMR: Challenges and Innovations

Introducing CMR-AC Opinion No. 1 on piggyback transport

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Outline

■ Introduction

- Why this Opinion of the CMR AC?
- What is piggyback transport?

■ Consent of the sender required?

■ How to identify the liability regime applicable to the non-road stage?

Introduction

- (1) Why this opinion of the CMR Advisory Council?
 - CMR = uniform private law treaty.
 - To obtain uniformity in application of CMR in contracting states, courts should follow the same approach when interpreting CMR (= doctrine of **autonomous interpretation**).
 - Autonomous means independent from their domestic law rules and conceptualisations.
 - N.B. Broad support for application of interpretation Rules of Art. 31-33 Vienna Convention on the Law of Treaties (VCLT) 1969, as **codified customary international law**, even though VCLT does not retroactive effect (Art. 4 VCLT)

Introduction

■ (1) Why this opinion of the CMR Advisory Council?

■ Article 31 – General Rule of Interpretation VCLT.

- 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
- 3. (b) There shall be taken into account, together with the context: ... any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation”.
- N.B. This allows courts to look at case-law and legal literature in other CMR-states to establish prevailing views.

Introduction

- (1) Why this opinion of the CMR Advisory Council?
 - Art. 32 VCLT – **Supplementary** means of interpretation
 - Recourse may be had to supplementary means of interpretation, including the **preparatory work** of the treaty and the **circumstances of its conclusion**, in order to **confirm** the meaning resulting from the application of article 31, or to **determine** the meaning when the interpretation according to article 31:
 - (a) leaves the meaning **ambiguous or obscure**; or
 - (b) leads to a result which is **manifestly absurd or unreasonable**.
 - Article 33 – Harmonized interpretation of authentic versions.

Introduction

- (1) Why this opinion of the CMR Advisory Council?
 - The problem is however that courts generally do not have enough time and resources and are often ill-equipped to conduct the necessary comparative law research into the international case law and legal literature or the preparatory works which in the case of CMR have been made public, but which are not easily accessible.

Introduction

- (1) Why this opinion of the CMR Advisory Council?
 - This is where the CMR Advisory Council comes in to humbly offer its assistance.
 - A not-for-profit international association of academics.
 - Communicating through our website and our publications
 - Independent and neutral.
 - With great expertise on CMR.
 - Collecting international CMR case law for the IDIT Database.
 - Regularly updating our CMR Bibliography.

Introduction

- (1) Why this opinion of the CMR Advisory Council?
 - This is where the CMR Advisory Council comes in to humbly offer its assistance.
 - Drawing up and publishing Opinions and give Advice as an *Amicus Curiae* (friend to the court).
 - Organize international colloquia in collaboration with universities, stakeholders, sponsors and practitioners.
 - Organize CMR Moot Competition.
 - Encourage publications about CMR in legal journals such as *European Transport Law* and *Transportrecht*.
 - Our long term aim: to foster an international community of CMR experts and enthusiasts.

Introduction

■ (2) What is Piggyback transport?

- One means of transport (e.g. a truck) is carried as cargo on top of another means of transport (e.g. a vessel or a train)
- Origins:
 - Ancient Greeks already carried horses on board of vessels during military campaigns.
 - 1830s with rail carriage loaded on board of ships in Scotland.
 - Application in WW II with Tank Landing Ships (LSTs) during D-day.



Introduction

- (2) What is Piggyback transport?
 - One means of transport (e.g. a truck) is carried as cargo on top of another means of transport (e.g. a vessel or a train)
 - Commercial application since 1940s and 1950s to ferries and in railway tunnels.
 - Same time that CMR was being drafted (1948-1956).
 - Special concern for UK government.

Introduction

- (2) What is Piggyback transport?
 - Main issue was whether piggyback transport was to be subject to CMR liability system or to the law governing carriage of goods by sea by piggyback carrier.
 - Behind this lay concern:
 - that the road carrier would not be able to take full recourse against the non-road sub-carrier; and
 - That the sender should not be exposed to contractual exclusions and limitation of liability.
 - Ultimately, a compromise was reached and written down in Article 2 (1) CMR.

Consent of the sender

■ Opinion No. 1 dated 2 July 2026 – Interpretation of Article 2.1 CMR

- Opinions of the CMR-AC consist of (the conclusions of) the **Opinion** itself and the **Comments** explaining the methodology and reasoning applied and justifying the conclusions reached.
- Two main topics:
 - (1) Is consent of the sender required in case of piggyback transport?
 - (2) How to identify the liability regime applicable to the non-road stage?
- 34 pages in total

See:

<https://www.cmr-ac.org/opinions/opinion-n1-article-2-1-cmr-on-piggyback-transport/>

Consent of the Sender

■ Opinion No. 1 - Interpretation of Article 2.1 CMR

- Is consent of the sender required in case of piggyback transport?
 - Use of piggyback transport as a rule requires **consent** of the sender.
 - If parties conclude a contract for international carriage of goods by road, their agreement does not extend to carriage by way of another mode of transport.
 - Mere performance by the carrier of the transport by another mode cannot change the application of CMR to the contract of carriage.

Consent of the Sender

- Opinion No. 1 - Interpretation of Article 2.1 CMR
 - CMR does not specify how the sender can give his consent.
 - The law governing the contract of carriage supplementarily to the CMR must determine whether the sender has consented.
 - For courts in CMR Contracting states which are also party to the EU, this means that the Rome I Regulation will determine the applicable law.
 - The applicable law will determine whether the sender's intention to give consent must be explicitly given or may be implied or may follow from previous business practices of the parties or trade usage.

Identification of liability regime for non-road stage

■ Opinion No. 1 - Interpretation of Article 2.1 CMR

■ (2) How to identify the liability regime applicable to the non-road stage?

■ Art. 2.1 CMR is very difficult to read. Complicated structure:

➤ Main rule – CMR applies

➤ Exception – except where loss occurs or is caused during piggyback stage (non-road regime applies)

➤ Exception to the exception – except where applicable liability regime is not mandatory in nature (CMR applies).

■ Critical commentators: “indigestible” provision.

Identification of liability regime for non-road stage

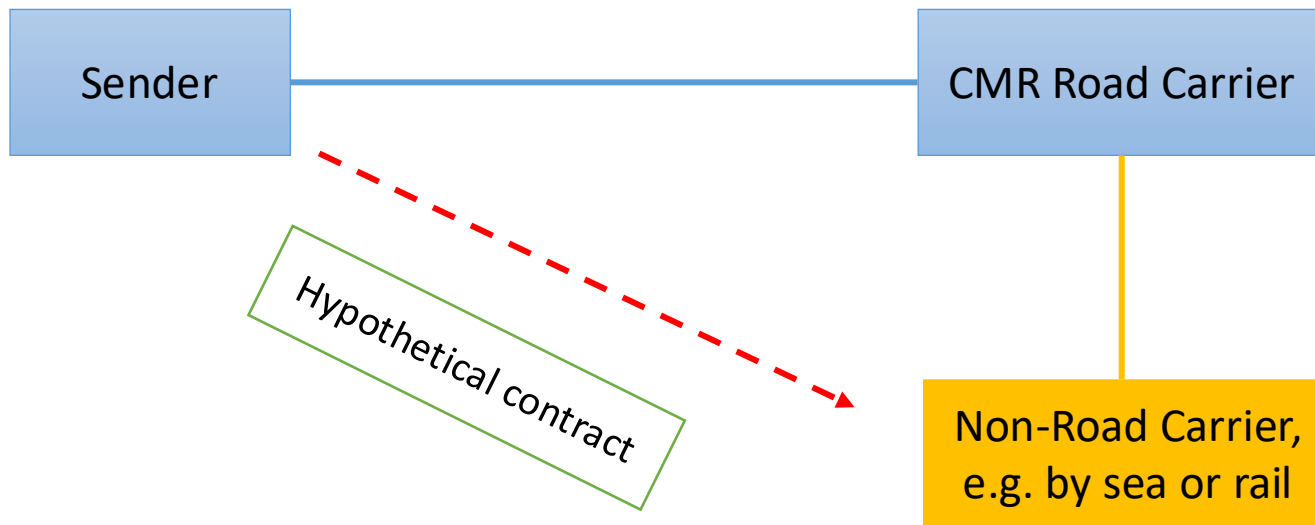
- Opinion No. 1 - Interpretation of Article 2.1 CMR
 - (2) How to identify the liability regime applicable to the non-road stage?
 - Objective of the drafters was to reconcile two objectives at the same time
 - (1) To protect the carrier's recourse position by aligning his own liability to that of the non-road carrier; and
 - (2) To protect the sender from contractual exclusions and limitations of liability under the non-road liability regime.

Identification of liability regime for non-road stage

■ Opinion No. 1 - Interpretation of Article 2.1 CMR

■ (2) How to identify liability regime applicable to non-road stage?

- Main requirement, evaluation of the liability regime which would apply to a **hypothetical contract** between the sender and the non-road carrier regarding the non-road stage.



Identification of liability regime for non-road stage

■ Opinion No. 1 - Interpretation of Article 2.1 CMR

■ (2) How to identify the liability regime applicable to the non-road stage?

- Main requirement, evaluation of the liability regime which would apply to a **hypothetical contract** between the sender and the non-road carrier regarding the non-road stage.
- **Objective** or subjective approach?
- **Abstract vs. concrete** approach?
- Mandatory nature?
- Difference between authentic French vs. English versions?
- To what degree must non-road regime be mandatory?

Identification of liability regime for non-road stage

- Opinion No. 1 - Interpretation of Article 2.1 CMR
 - (2) How to identify the liability regime applicable to the non-road stage?
 - Main findings:
 - Authentic French and English versions can be reconciled.
 - Mandatory liability regime is required
 - But liability regime does not have to be 100% mandatory.

Identification of liability regime for non-road stage

- Opinion No. 1 - Interpretation of Article 2.1 CMR
 - (2) How to identify the liability regime applicable to the non-road stage?
 - Main findings:
 - Focus on objective, abstract factors that trigger the application of the non-road conventions, not on subjective conditions precedent or conditions subsequent.
 - Main transport law conventions qualify as mandatory liability regimes, i.e.
 - Hague Rules, HVR, CMNI, Warsaw Convention, Montreal Convention, COTIF-CIM.
 - Mandatory national liability law may also qualify.

Thank you for your attention.